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COMMITTEE/BOARD OF SUPERVISORS

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AMENDED IN BOARD 11/12/2019 ORDINANCE NO.

FILE NO. 190845

[Development Agreement - 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; 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.

NOTE: 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:

(a) California Government Code Sections 65864 et seq. authorizes any city, county, 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 10 car share spaces and no more than approximately 847-857-754 parking spaces (including 10 car share 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.

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- (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) if approved by the City's Public Utilities Commission, 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, and adopts the supplemental CEQA findings on file with the Clerk of the Board of Supervisors in File No. 190845.

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

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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) Subject to the subsequent approval of the City's Public Utilities Commission to accept the AWSS Community Benefit Fee, acting in its sole discretion (the "SFPUC Approval"), the The Board of Supervisors approves and authorizes the City's execution, delivery, and performance by the City of the Development Agreement. as follows: If the SFPUC Approval is not granted, the Board of Supervisors approves and authorizes the City's execution, delivery, and performance of a modified version of the Development Agreement that removes all references to the AWSS Community Benefit Fee. On receipt of the SFPUC Approval or the preparation of the modified Development Agreement if the SFPUC Approval is not granted. (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

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1	Ordinance, and Ordinance, have become effective. Copies of said
2	ordinances
3	are on file with the Clerk of the Board of Supervisors in File No. $\frac{190947}{}$ and File No. $\frac{190844}{}$.
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5	APPROVED AS TO FORM:
6	DENNIS J. HERRERA, City Attorney
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8	Ву:
9	Carol Wong Deputy City Attorney
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REVISED LEGISLATIVE DIGEST

(11/12/2019, Amended in Board)

[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 (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; 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 10 car share spaces and no more than 754 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.

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File	No.	190845

FORM SFEC-126 NOTIFICATION OF CONTRACT APPROVAL

(S.F. Campaign and Government Conduct Code § 1.126)

City Elective Officer Information (Please print clearly)				
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:				
-	o has an ownership of 20 percent of more in the contractor; political committee sponsored or controlled by the contractor. ractor: 3333 California LP, a Delaware Limited Partnership in the limited partnership have an ownership of 20% or			
Date that contract was approved:	Amount of contract: \$0			
Describe the nature of the contract that was approved: 3333 California Development Agreement Comments:	7.5			
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			
Print Name of Board The board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on the form sits				
Print Nan	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 Franci	E-mail:			
Signature of the Elective Officer (if submitted by City elective	officer) Date Signed			
Signature of Board Secretary or Clerk (if Submitted by Board	Mary or Clerk) Date Signed			



3333 CALIFORNIA STREET MIXED-USE PROJECT

SUPPLEMENTAL CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS: FINDINGS OF FACT, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, AND STATEMENT OF OVERRIDING CONSIDERATIONS

SAN FRANCISCO BOARD OF SUPERVISORS

November 12, 2019

In determining to approve the 3333 California Street Mixed-Use Project ("Project"), the San Francisco Planning Commission adopted the findings of fact and decisions regarding mitigation measures and alternatives and the statement of overriding considerations under CEQA on September 5, 2019, for the project described in those findings in Section I.A. Project Description. Such findings are found in Planning Commission Motion No. 20513, and Board of Supervisors File 190844.

The Board of Supervisors supplements those findings to discuss, and reject as infeasible, alternatives proposed after the public comment period on the Draft EIR had closed, to discuss and reject as infeasible individual design modifications as mitigation measures also proposed after the public comment period had closed, and to find that such design modifications would not substantially or clearly lessen the Project's significant impacts.

These supplemental findings are based upon substantial evidence in the entire record that was before the San Francisco Planning Commission (the "Commission") and is now before the Board of Supervisors including the expert opinions of preservation planners at the Planning Department. The San Francisco Planning Department is a Certified Local Government under the California Office of Historic Preservation, and qualified to provide expert opinions on matters involving historic preservation. The references set forth in these findings to certain pages or sections of the Draft Environmental Impact Report ("Draft EIR" or "DEIR"), the Responses to Comments document ("RTC") in the Final EIR, or to the letters submitted by the San Francisco Planning Department on September 4, 2019 to the Planning Commission and on November 4, 2019 to the Board of Supervisors, are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

Laurel Heights Improvement Association of San Francisco Inc. (LHIA) submitted additional alternatives and/or suggested individual design modifications as mitigation measures in letters to the Planning Commission and to this Board of Supervisors dated August 28, 2019, September 5, 2019, October 7, 2019 and November 7, 2019. These supplemental findings describe the reasons for rejecting those late-submitted alternatives and so-called mitigation measures as infeasible, and for finding that the design modifications would not substantially or clearly lessen the Project's significant impacts.

"Community Preservation Lookalike Variant"

The Board of Supervisors specifically rejects as infeasible the Community Preservation Lookalike Variant (Lookalike Variant), as described in LHIA's August 28, 2019 Supplemental EIR Comment and in the October 7 CEQA Appeal letter, based upon substantial evidence in the record, including evidence of economic, legal, social, technological, and other considerations described in these supplemental findings, in addition to those reasons described in Section VII of the CEQA Findings adopted in Planning Commission Motion 20513, which are hereby incorporated by reference.

LHIA claims that the Lookalike Variant would provide the same number of new residential units as the Project (744 units) and approximately 20,000 more gross square footage than the project. According to LHIA, the Lookalike Variant would be constructed in less than four years. LHIA also claims that the Lookalike Variant utilizes approximately 90 percent of the project sponsor's proposed buildings, designs, and locations. As described by LHIA, the Lookalike Variant would: 1) convert the interior of the main building to residential use and retain the existing 1,500-gross-squre-foot (gsf) café, 11,500-gsf childcare center, and 5,000-gsf office space; and 2) construct three new residential buildings (Plaza A, Plaza B, and Walnut buildings) along California Street, the new Mayfair building near the intersection of Mayfair Drive and Laurel Street, five new townhomes along Laurel Street, and the new Euclid building along Euclid Avenue. The proposed Masonic Building included in the Project would not be constructed in the Lookalike Variant. The Walnut Building would be 7-stories-tall and its footprint would be expanded to include a triangular area next to the SF Fire Credit Union. The Euclid Building would be 35,000 gsf smaller than what is proposed under the project, and it would be configured differently in that it would include a 30-foot setback from Euclid Green compared to the project. Under the Lookalike Variant, the childcare facility would be located in Center Building B instead of in the Walnut Building, as proposed in the project, with an outdoor play area directly south of the existing structure. The Lookalike Variant would not include retail uses.

LHIA states that the Lookalike Variant would include approximately two levels of parking in a single new underground parking garage. LHIA letter does not specify the number of parking spaces that would be provided in the Lookalike Variant. The Lookalike Variant would include a new first-floor-level, 15-foot-tall (at level one), 20-foot-wide Walnut passage, which would run through the first floor of the main building, opening up into a 35-foot-wide, 75-foot-long landscaped center court mid-building (approximately at 35 feet into the building) and leading onto the Walnut Walk alongside Eckbo Terrace and onto Masonic Avenue.

The Board of Supervisors finds that the Lookalike Variant is considerably similar to Alternative E: Partial Preservation – Residential Alternative analyzed in the EIR, as is shown in attachment A to the Planning Department's September 4, 2019 letter to the Planning Commission, which is part of the whole record before this Board. Specifically, both the Lookalike Variant and Alternative E would: 1) modify the existing main building by removing the south wing and the northern extension of the east wing and convert it to residential use; 2) construct three buildings along California Street; 3) reduce the size of Euclid building by removing the south side of the building (reduction of approximately 35,000 gross square feet compared to the Project) to retain the landscape features located at the southeast portion of the site; and 4) construct the five Laurel Duplexes, similar to the Project and Alternative E, which would construct seven duplexes on Laurel Street. Two fewer duplexes would enable a larger Euclid Green under the Lookalike Variant. As stated, the Masonic Building would not be constructed under either Alternative E or the Lookalike Variant.

The Board further finds that the Lookalike Variant would not reduce the historic resource impact to a less-than-significant level; like Alternative E, the Lookalike Variant would be a partial preservation alternative. Similar to Alternative E, the Lookalike Variant would not fully conform to the Secretary of the Interior's Standards, and it would materially impair the physical characteristics of the historic resource that justify the resource's inclusion in the California Register of Historical Resources. Similar to Alternative E, the Lookalike Variant would alter the existing office building and result in loss of the historic landscaped open space on the project site. In addition, similar to Alternative E, the Lookalike Variant would alter the most prominent views of the project site from the east on Pine Street and from the south on Masonic Avenue. The minor modifications proposed in the Lookalike Variant, such as the removal of two Laurel Duplexes closest to Euclid Green or the additional size added to the Walnut

building, would not make it considerably different from Alternative E, and would not clearly lessen the significant impacts to the historic resource as compared to Alternative E.

As discussed on EIR pp. 6.148-6.151, the EIR concludes that Alternative E would reduce the magnitude of the historic resources impact compared to the Project, but not to a less-than-significant level. This is because Alternative E would, on balance, materially alter the physical characteristics of the project site that convey its historic significance. For the reasons above, the Lookalike Variant would reduce but not eliminate the significant and unavoidable historic resource impact.

Further, the Board rejects the Lookalike Variant as infeasible because, although it would reduce the significant and unavoidable historic architectural resources impact identified for the project, it would not eliminate it, and it would fail to meet several of the project objectives to the same extent as the Project. First, due to the size and location of the uses presented in the Lookalike Variant, the alternative would not satisfy the primary objectives of the Project to create a "high quality, walkable, mixed-use community within the project site that connects with and complements the existing neighborhood commercial uses." The Lookalike Variant would contain only a very small amount of non-residential uses, and those uses would be "hidden" within the main building and not be visible from the nearby streets. Therefore, the Lookalike Variant would not be considered truly "mixed use." Unlike the Lookalike Variant, Alternative E would meet this objective by providing a mix of uses (except for the office use) similar to that of the Project, and would provide retail uses along California Street, where they would be accessible to the general public and visually connected to the retail uses on California Street on either side of the project site. In addition, the Lookalike Variant would only partially meet the objective of opening and connecting the site to the surrounding community by extending the neighborhood urban pattern because it would not provide a north-south connection similar to Walnut Walk as proposed under the Project, which is a fully open connection, and would only provide an east-west connection (the Mayfair Walk). With only a 15-foot-tall and 20-foot-wide opening at level one (15 feet high), the main building would still create a visual barrier in the north-south direction. Extension of the neighborhood urban pattern and street grid into the site is a key urban design principle consistent with the Planning Department's early input on the Project. Finally, unlike the Project, the Lookalike Variant would not help turn Masonic Avenue into a neighborhood street, as opposed to an arterial street, because the Lookalike Variant would not construct the Masonic building which would contribute to the creation of neighborhood-friendly space by providing stoops for residential units along its building frontage that meets with the sidewalk on Masonic Avenue; accordingly it fails to meet the objective of providing activated neighborhood-friendly spaces along adjacent streets to the same extent as the Project.

For these reasons, the Board of Supervisors finds that the Lookalike Variant is not considerably different from alternatives already contained in the FEIR and is not a feasible alternative. Further, the Board finds that Community Variant 2 would not eliminate the significant and unavoidable historic resource impact, and would not meet the project objectives or the City's general plan policies regarding urban design to the same extent as the Project. It was not required to be included in the Final EIR, and is hereby rejected as infeasible for the reasons set forth above, and for the same reasons set forth in the CEQA findings related to Alternative E.

"Community Full Preservation Alternative Variant 2"

In addition, the Board of Supervisors specifically rejects as infeasible the Community Full Preservation Alternative Variant 2 (Community Variant 2), as described in LHIA's August 28, 2019 Supplemental EIR Comment and again in the October 7 CEQA Appeal letter, based upon substantial evidence in the record, including evidence of economic, legal, social, technological, and other considerations described in these

supplemental findings, in addition to those reasons described in Section VII of the CEQA Findings adopted in Planning Commission Motion 20513, which are hereby incorporated by reference.

LHIA claims that the Community Variant 2 would provide the same number of new residential units as the project (744 units) and would be constructed in less than four years. According to LHIA, the Community Variant 2 would: 1) convert the interior of the main building to residential use and retain the existing 1,500-gsf café, 11,500-gsf childcare center, and 5,000-gsf office space; and 2) construct three new residential buildings (California Front, California Back, and Walnut buildings) along California Street, the new Mayfair building near the intersection of Mayfair Drive and Laurel Street, five new townhomes along Laurel Street, and the new Euclid building along Euclid Avenue. The proposed Masonic Building included in the Project would not be constructed in the Community Variant 2. The Community Variant 2 would not include retail uses.

According to LHIA, the Community Variant 2 would include an approximately two-level, underground parking garage along California Street and a total of approximately 558 on-site parking spaces. The Community Variant 2 would include a new first-floor-level, 15-foot-tall (at level one), 20-foot-wide Walnut passage, which would run through the first floor of the main building, opening up into a 35-foot-wide, 75-foot-long landscaped center court mid-building (approximately at 35 feet into the building) and leading onto the Walnut Walk alongside Eckbo Terrace and onto Masonic Avenue.

The Board finds that the Community Variant 2 is considerably similar to Alternative D: Partial Preservation – Office Alternative that is analyzed in the EIR to address the Project's significant historic resource impacts, as can be seen in Exhibit B to the Planning Department's September 4, 2019 letter to the Planning Commission, which is in the record before this Board. That Exhibit B compares the site plans for Alternative D and Community Variant 2. Specifically, like Alternative D, the Community Variant 2 would: 1) modify the existing building by demolishing the northerly extension of the east wing and adding a one-story addition; and 2) allow for the construction of buildings along California Street including a larger Walnut building (larger than under the Project or Alternative D), a Mayfair building, and five Laurel Duplexes along Laurel Street. Community Variant 2 would not include construction of a Masonic building. Unlike Alternative D which would retain office use in the existing office building, the Community Variant 2 would convert the remaining building to residential use. However, the massing and footprint of the structures on site under the Community Variant 2 would be physically similar to those under Alternative D.

As discussed on EIR pp. 6.113-6.115, the EIR concludes that Alternative D would reduce the magnitude of the historic resource impact compared to the Project, but not to a less-than-significant level. While Alternative D would retain most of the office building's character-defining features, it would demolish elements of the historic landscape on the northern and western areas of the site as well as portions of the brick perimeter wall and integrated planters along California and Laurel Streets. Prominent views of the site from east on Pine Street and from the south on Masonic and Presidio avenues would be preserved, but the view through the project site from Laurel Street would be altered with new development. Therefore, Alternative D would, on balance, materially alter the physical characteristics of the project site that convey its historic and architectural significance and is considered a partial preservation alternative.

The Board finds that the Community Variant 2 also would not reduce the historic resource impact to a less-than-significant level, similar to Alternative D for several reasons. Like Alternative D, the Community Variant 2 would minimally alter the existing office building, but the construction of the additional buildings would result in loss of elements of the historic landscape on the project site that convey its historic and architectural significance and that justify its inclusion in the California Register,

and would not fully conform to the Secretary of the Interior's Standards. In addition, similar to Alternative D, the Community Variant 2 would alter one prominent view of the project site from the west on Laurel Street, while maintaining two other views, from the east on Pine Street and from the south on Masonic Avenue. Given the physical similarities between Alternative D and the Community Variant 2, the impacts to historic architectural resources from the Community Variant 2 would be the same and as stated in the EIR on p. 6.115. The historic resource impact, although reduced, would remain significant and unavoidable in the Community Variant 2.

Further, the Board rejects the Community Variant 2 as infeasible because, although it would reduce the significant and unavoidable historic architectural resources impact identified for the project, it would not eliminate it, and it would fail to meet several of the project objectives to the same extent as the Project. First, due to the size and location of the uses presented in the Community Variant 2, the alternative would not satisfy the primary objectives of the Project to create a "high quality, walkable, mixed-use community within the project site that connects with and complements the existing neighborhood commercial uses." Alternative D would partially meet this objective by redeveloping the project site to a lesser degree than the Project. Similarly, Community Variant 2 would contain only a very small amount of non-residential uses, and those uses would be "hidden" within the main building and would not be visible from the nearby streets. In addition, the Community Variant 2 would only partially meet the objective of opening and connecting the site to the surrounding community by extending the neighborhood urban pattern, because it would not provide a north-south connection similar to Walnut Walk as proposed under the Project, which is a fully open connection between California Street and Euclid Avenue, and would only provide an east-west connection (the Mayfair Walk). With only a 15-foottall and 20-foot-wide opening at level one (15 feet high), the Community Variant 2 would continue to create a visual barrier in the north-south direction. Extension of the neighborhood urban pattern and street grid into the site is a key urban design principle consistent with the Planning Department's early input on the Project. Finally, unlike the Project, the Community Variant 2 would not help turn Masonic Avenue into a neighborhood street, as opposed to an arterial street, because the Community Variant 2 would not construct the Masonic building which would contribute to the creation of neighborhoodfriendly space by providing stoops for residential units along its building frontage; accordingly it fails to meet the objective of providing activated neighborhood-friendly spaces along adjacent streets to the same extent as the Project.

Thus, the Board finds that Community Variant 2 is not considerably different from Alternative D included in the EIR, and thus does not need to be included in the EIR. Further, the Board finds that Community Variant 2 would not eliminate the significant and unavoidable historic resource impact, and would not meet the project objectives or the City's general plan policies regarding urban design to the same extent as the Project. For these reasons, and for the same reasons set forth in the CEQA Findings related to Alternative D, incorporated here by reference, the Board rejects the Community Variant 2 as infeasible.

Individual Design Modifications as Mitigation Measures.

In its October 7, 2019 appeal of the certification of the EIR, Appellant LHIA suggests that certain individual aspects of some of the alternatives, if implemented individually, could mitigate the significant impact to historic resources, and attempts to cite to and incorporate similar suggestions from its other materials submitted after both the close of the Draft EIR comment period and publication of the FEIR. For the reasons set forth below, and as articulated in the Planning Department's November 4, 2019 response to the CEQA appeal filed by Appellant, incorporated herein by reference, the Board finds and determines that implementation of any of these so-called "mitigation measures" would not be sufficient to clearly or

substantially lessen the Project's significant historic resources impact, and rejects them as infeasible to be implemented as individual mitigation measures for the Project. The historic resource is the existing building and the integrated landscape. Individual design changes would not be effective in mitigating the historic resource impact. The Board accepts the expert opinions of the preservation staff at the Planning Department and finds that none of these design modifications, if implemented individually as "mitigation measures," (and not collectively, as in the alternatives) would substantially or clearly eliminate the project's historic resource impact, and rejects them for the reasons set forth below and for the reasons described in Section VII of the CEQA Findings adopted in Planning Commission Motion 20513, and hereby incorporated by reference. To the extent that the individual design modifications make up portions of the EIR preservation alternatives and/or the alternatives proposed by LHIA, they have also been rejected as infeasible in the CEQA Findings and this Supplemental CEQA Findings document, and were adequately presented to both the Planning Commission and the Board as alternatives. The Board finds that application of the Secretary of the Interior's Standards as mitigation measures, as suggested in LHIA's November 7, 2019 submittal, is neither a procedural nor a substantive requirement under CEQA. The Secretary of the Interior's Standards were appropriately used in the Planning Department's historic resources evaluation and in the EIR to evaluate the historic resources impacts of both the Project and the project alternatives.

The Board finds that reducing the height and adding upper floor setbacks to the proposed Laurel Duplexes would not substantially or clearly reduce the impact to historic resources. This is because reducing the height and adding a setback would not result in the retention of any character-defining features of the resource. Reduction of the duplexes' height to match the height of the homes across Laurel Street, while keeping the remaining portions of the Project (such as the demolition and reconstruction of the existing building and the construction of the additional buildings within the historic landscape) does nothing meaningful to substantially or clearly lessen impacts to the historic resource. Accordingly, this design modification was not required to be included in the EIR as mitigation, and the Board therefore rejects this design modification as infeasible.

In addition, a reduction in the proposed Euclid Building footprint (by setting back approximately 30 feet from the south side), or elimination of the two proposed Laurel Duplexes closest to Euclid Avenue would also not clearly or substantially lessen the significant historic resource. Similar to the above explanation regarding the height of the Laurel Duplexes, the reductions in proposed building footprint or removal of two proposed buildings would not substantially or clearly lessen impacts on character-defining features of the larger site, which includes the existing building and integrated designed landscape. Construction of the Euclid building, even at a smaller footprint, would still result in the demolition of the existing office building, and all of the surrounding character-defining landscape features of the site would all but be eliminated through construction of the six new buildings (in addition to the Laurel duplexes) on the site. Accordingly, these design modifications were not required to be included in the EIR as mitigation, and the Board therefore rejects these individual design modifications as infeasible.

Similarly, neither a ground-level passageway through the existing office building instead of a full passageway, or a single-story vertical additional to the existing office building, instead of the 2 to 3 stories in the Project, would substantially or clearly lessen the significant historic resource impact in a way that would allow the resource to continue to convey its historic character. Either of these design modifications would still require removal of the L-shaped wing of existing office building to allow for construction of the Euclid Building and the surrounding site would still be developed with six new buildings on the site (in addition to the Laurel duplexes), thereby impacting the landscape features that convey its historic and architectural significance and that justify its inclusion in the California Register. Similar to the design modifications noted above, reducing the height of the addition or incorporating a ground level

passageway would not substantially or clearly lessen impacts to the historic resource in any meaningful manner. Accordingly, these design modifications were not required to be included in the EIR as mitigation, and the Board therefore rejects these individual design modifications as infeasible.

Other individual elements of alternatives proposed by LHIA or other members of the public, would not substantially or clearly lessen impacts to the historic resource in any meaningful manner given the nature of the historic resource, including the size of the site, and the size of the existing building and its integration with the landscaping, and have been considered by the Board and rejected as infeasible as components of the alternatives, including those alternatives included in the EIR or suggested by the public. These individual elements also were not required to be included in the EIR as mitigation, and the Board therefore rejects these as infeasible.

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.

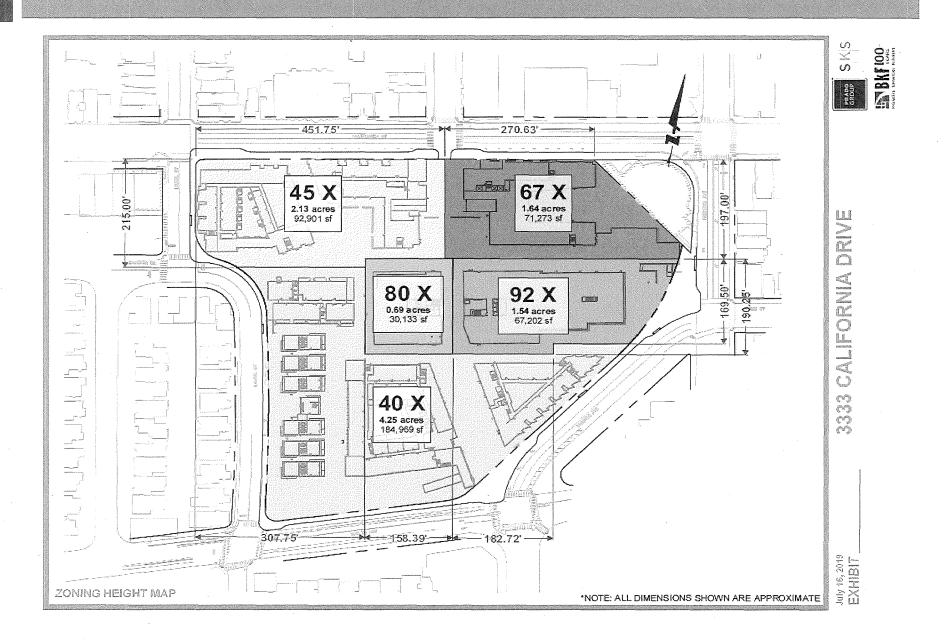
Existing Uses at the Project Site

- 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.



Proposed SUD Height and Bulk Changes

Property Description	Block/Lot	Parcel Area (Acre) (He	Existing eight and Bulk) (Heig	Proposed Jht 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

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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.

- 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

File No. 190845 Received via email 11/07/2019

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

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- D-5 Form of Deed of Trust
- E List of Approvals
- F MMRP
- G Notice of Completion and Termination
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- I Workforce AgreementJ Transportation Exhibit
- K Schedule Template for Later Approvals
- L Child Care Program
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- N Notice of Special Restrictions AB900 Determination Compliance

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- 2 AWSS Community Benefit Fee

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) ten (10) below-grade parking garages with approximately

857 parking spaces (including approximately tenten (10) car share spaces), and no more than 754 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 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**").

Findings were considered by the City in connection with approval of this Agreement. 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. On _____, the Board of Supervisors, having received the Planning K. 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:

of the Planning Commission to certify the FEIR. The information in the FEIR and the CEQA

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 <u>Exhibit B</u>.
 - 1.13 "California Plaza" is described in Section 1.a of Exhibit C.
 - 1.14 "CEQA" has the meaning set forth in <u>Recital F</u>.
 - 1.15 "CEQA Findings" has the meaning set forth in Recital I.
 - 1.16 "CEQA Guidelines" has the meaning set forth in <u>Recital F.</u>
 - 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 <u>Section 4.7</u>.
 - 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 <u>Section 4.1</u>.
- 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 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 <u>Section 11.5.2</u>.
- 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 Recital I.
- 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 <u>Section 10.5</u>.
- 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 <u>Section 11.5.1</u>.
 - 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 <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.
- "Streetscape Improvements" means the following improvements, all as 1.94 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> <u>J</u>.
 - 1.103 "Vested Elements" has the meaning set forth in <u>Section 5.1</u>.
 - 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

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, 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 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 firsta certificate of occupancy for a Building, the City may withhold athe 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 No Additional CEQA Review Required; Reliance on FEIR for Future 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 Compliance with CEQA Mitigation Measures; AB900 Compliance. 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 <u>Section 4.5.4</u>. 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.

Indemnification of City. Developer shall indemnify, reimburse, and hold 4.7 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 Vested Rights. 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, 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 <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 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 Section 5.7.2.
- 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 <u>Changes in Federal or State Laws</u>.

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 <u>Section 4.1</u>. 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 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.
- 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.
- 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 <u>Section 9.3</u> 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 <u>Section 9.6</u>, 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 <u>final</u>-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 <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

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 <u>Extension Due to Legal Action or Referendum; Excusable Delay.</u>

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, 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.

14.16 Sunshine. Developer understands and agrees that under the City's Sunshine 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.

CITY:	Approved as to form:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	DENNIS J. HERRERA, City Attorney
By: John Rahaim Director of Planning	By: Carol Wong, Deputy City Attorney
RECOMMENDED:	
By: [Name] Director, MOHCD	
By: Mohammed Nuru Director of Public Works	
Approved on, 20 Board of Supervisors Ordinance No	

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

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)	
personally appearedsatisfactory evidence to be t and acknowledged to me	the person(s) whose name(s) that he/she/they execut is/her/their signature(s) on	, a Notary Public,, who proved to me on the basis of s) is/are subscribed to the within instrument ted the same in his/her/their authorized the instrument the person(s), or the entity e instrument.
I certify under PENALTY foregoing paragraph is true		e 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 document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)	
County of San Francisco)	
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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.

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), and no more than **754** parking 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. <u>Mayfair Walk</u>: Mayfair Walk (approximately 30,685 sq. ft.) is the Project's main eastwest 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. <u>Operation of the Publicly Accessible Private Improvements.</u> 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

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
	nts and Restrictions (" Declaration ") is made as GHTS PARTNERS, LLC, a Delaware limited ITY AND COUNTY OF SAN FRANCISCO, a
RECIT	ALS
A. Declarant owns an irregularly-sh Francisco comprised of approximately 10.25 acres bounded by California Street, Laurel Street, Expense, and further described in the attached Exh	aclid Avenue, Masonic Avenue, and Presidio
B. Declarant intends to redevelop the that will include residential, retail, commercial, clean (the "Project"), under a Development Agreem, 2019 (the "Development Agreem, 2019) (the "Development Agreem) (Supervisors by Ordinance No. 2019) approved by the City's Board of Supervisors by Ordinance No. 2019, amendments to the City's Planning Cod	eement between Declarant and City dated eement"), approved by the City's Board of on November, 2019, a Special Use District Ordinance No on November
Board of Supervisors under Ordinance No.	
encroachment permit and associated encroachmen	nt 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. <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</u> <u>C</u>) specified in the attached <u>Exhibit</u> <u>C</u> in compliance with the requirements of the Development Agreement.

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.

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 <u>Section</u> 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. <u>Litigation Expenses</u>. 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 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, be	efore me,		, a notary public in and for
said State, personally appe	ared		, who proved to me
within instrument and ack	nowledged to m	ne that he/she/they r/their signature(s)	ose name(s) is/are subscribed to the executed the same in his/her/their on the instrument the person(s), or the instrument.
I certify under PENALTY Of paragraph is true and corre		the laws of the St	tate of California that the foregoing
WITNESS my hand and offi	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
within instrument and ack	nowledged to m	ne that he/she/they r/their signature(s	ose name(s) is/are subscribed to the y executed the same in his/her/their on the instrument the person(s), or the instrument.
I certify under PENALTY O paragraph is true and corre		the laws of the S	State of California that the foregoing
WITNESS my hand and offi	cial seal.		
Signature		(Seal)	

EXHIBIT A

<u>Legal Description of Project Site</u>

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

<u>Description of Buildings</u>

[see attached]

EXHIBIT B-2 <u>Depiction of Buildings and Publicly Accessible Private Improvements</u>



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 "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 Declarant may use a completed Publicly Accessible Private of Euclid Green. 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. <u>Removal of Obstructions.</u> 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 <u>Section 2.A.</u>

"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. <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- and limits the Walnut Housing Parcel to no more than 0.5 parking spaces per unit. 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.
- 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.

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

A. <u>Non-Applicability of Costa-Hawkins Act</u>. 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

Executed as of this

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.

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

day of

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)		
			, a notary public in and for
on the basis of satisfactor within instrument and a	ory evidence to be cknowledged to m and that by his/her	the person(s) whose ne that he/she/they e er/their signature(s) of	, who proved to me e name(s) is/are subscribed to the executed the same in his/her/their on the instrument the person(s), or e instrument.
I certify under PENALTY paragraph is true and con		r the laws of the Sta	te of California that the foregoing
WITNESS my hand and	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 Francis			
said State, personally	appeared		, a notary public in and for
within instrument and authorized capacity(ie	d acknowledged to me	that he/she/they executive their signature(s) on	name(s) is/are subscribed to the ecuted the same in his/her/their the instrument the person(s), or 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

terest in real property conveyed by the foregoing Grant Deed to eisco, a municipal corporation, is hereby accepted pursuant to No, approved September, 2019, and the ereof by its duly authorized officer.
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 TRUST (this "Deed of Trust") is made as of, 2019,
among LAUREL HEIGHTS PARTNERS, LLC, a Delaware limited liability company ("Trustor"),
whose address is
("Trustee"), whose address is, and THE CITY AND
COUNTY OF SAN FRANCISCO, a municipal corporation ("Beneficiary"), whose address is
, Trustor irrevocably grants, transfers and assigns to Trustee in
trust, with power of sale, all of Trustor's right, title and interest in and to that certain property
located in the City and County of San Francisco, California, more particularly described in Exhibit
A attached hereto and incorporated by reference herein (the "Land"), including, without limitation,
all improvements located on the Land ("Improvements"), subject, however, to the termination, re-
conveyance and subordination provisions of Section E.6 below. The Land and the Improvements
shall be collectively referred to in this Deed of Trust as the "Property". Capitalized terms that are
used but not defined herein shall have the meanings given such terms in that certain Development
Agreement by and between the City and County of San Francisco and Laurel Heights Partners,
LLC, dated, 2019, and recorded in the Official 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:

the document to which this certifica	te is attached, and not the	e truthfulness, accuracy, or validity of that document.
State of California County of San Francisco)	
personally appearedsatisfactory evidence to be the instrument and acknowledged to	person(s) whose nam to me that he/she/they nat by his/her/their sig	, a Notary Public,, a Notary Public,, who proved to me on the basis of me(s) is/are subscribed to the within by executed the same in his/her/their ignature(s) on the instrument the person(s), or , executed the instrument.
I certify under PENALTY OF foregoing paragraph is true and		e laws of the State of California that the
WITNESS my hand and officia	al seal.	
Signature		

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

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
	and Related Approval Actions of City and County of San Francisco Planning
	nission (referenced by Motion Number "M No." or Resolution Number "R No.")
1.	M No. []: Certifying the Final Environmental Impact Report for the 3333
2	California Mixed-Use District Project.
2.	M No. []: Adopting Findings and Statement of Overriding Considerations under the
2	California Environmental Quality Act. M No. []: Approving a Conditional Use Authorization/Planned Unit Development
3.	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.
	and Related Approval Actions of City and County of San Francisco Municipal portation Agency Board of Directors
	Resolution Number [] consenting to a Development Agreement between the
	City and Laurel Heights Partners LLC, including the Transportation Exhibit.
Final a	and Related Approval Actions of City and County of San Francisco Public Utilities aission
	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 Works1. Approval of Tentative Map

Exhibit F

MMRP

[see attached]

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 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
1. The City and Developer entered into of, 20 and recorded in the Off Francisco on, as Document Nu) (the "Development Agreement"). Cap defined shall have meaning given to such terms in	imber (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 Comhave also been completed, the City agreed, upon notice 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, has 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:	By:
By: Director of Planning	By: 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

В.

ASSIGNMENT AND ASSUMPTION AGREEMENT

entered into this day of, 20_	IENT (hereinafter, the "Assignment") is, by and between, a
(" Assignor ") and	
("Assignee").	
RECITALS	
A, a	and the City and County of San
Francisco, a political subdivision and municipal corporati	• • • • • • • • • • • • • • • • • • • •
entered into that certain Development Agreement (the	•
, 20 for reference purposes, with respect to cer	
such property is more particularly described in the Devel	
The Development Agreement was recorded in the Officia	· · · · · · · · · · · · · · · · · · ·
Francisco on as Document No	·

The Development Agreement provides that Developer (Assignor) has the right to:

(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

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.

8. Agreement s		The notice address for Assigne	e under Section of the D	evelopmen
		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 heret	o have executed thi	s 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. <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 certificate of occupancy for the Workforce Building, including any 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

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.

- (ii) provide a signed copy thereof to the FSHA within 10 business days of execution. The FSHA 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. FSH and LBE Obligations.

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. <u>Purpose and Scope.</u> This <u>Attachment C</u> ("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. Definitions. 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.
- 1. <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 byfor its review under Section 109.c herein; and
- n. Meet and Confer. 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.bc, 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.bc, 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(1)7 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. <u>Transportation Demand Management Plan</u>

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

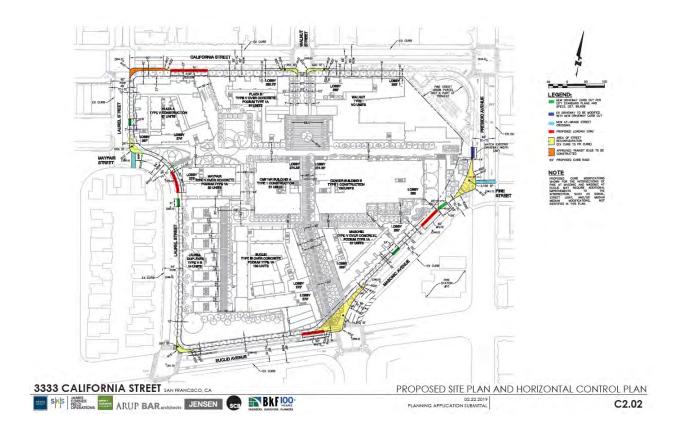




Exhibit K

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

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)		
Onpersonally appearedsatisfactory evidence to be the and acknowledged to me capacity(ies), and that by his upon behalf of which the personal certify under PENALTY foregoing paragraph is true as	e person(s) whose that he/she/they s/her/their signature son(s) acted, execu	, who pro- name(s) is/are subscrib- executed the same in e(s) on the instrument ted the instrument.	oved to me on the basis of bed to the within instrument in his/her/their authorized the person(s), or the entity
WITNESS my hand and office	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

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 <u>Exhibit D</u>) 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. Walnut Walk North 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. 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. **Housing Plan.** The Project's BMR Units shall be complete as set forth in Exhibit D, 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

facility and affordable housing as described in $\underline{Exhibit L}$ and $\underline{Exhibit D}$, respectively.

Code Section 415) have been waived in consideration of the on-site provision of a child care

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

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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").

of the Flamming 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.
J. 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.
K. On, 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.
L. On, the Board adopted Ordinance No. [], amending
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 <u>Section 11.5.1</u>.
 - 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
- 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 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 Compliance with CEQA Mitigation Measures; AB900 Compliance. 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.

Indemnification of City. Developer shall indemnify, reimburse, and hold 4.7 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 <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.
- 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.

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 <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 <u>Estoppel Certificates</u>. 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 <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

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 <u>Section 8.2</u>.
- 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 <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 <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 Approved on _____, 20__ Board of Supervisors Ordinance No. ___

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

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

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 (her/their signature	name(s) is/are sub executed the sar e(s) on the instrum	me in his/her/their authornent the person(s), or the e	sis of ment rized
I certify under PENALTY of foregoing paragraph is true as		der the laws of t	the State of California tha	t the
WITNESS my hand and office	cial seal.	•		
Signature	A1000100000000000000000000000000000000	·		

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.

		e verifies only the identity of the individual who signed 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 s/her/their signature	, a Notary Public,, a Notary Public,, who proved to me on the basis of name(s) is/are subscribed to the within instrument executed the same in his/her/their authorized e(s) on the instrument the person(s), or the entity ted the instrument.
I certify under PENALTY foregoing paragraph is true a		der the laws of the State of California that the
WITNESS my hand and office	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

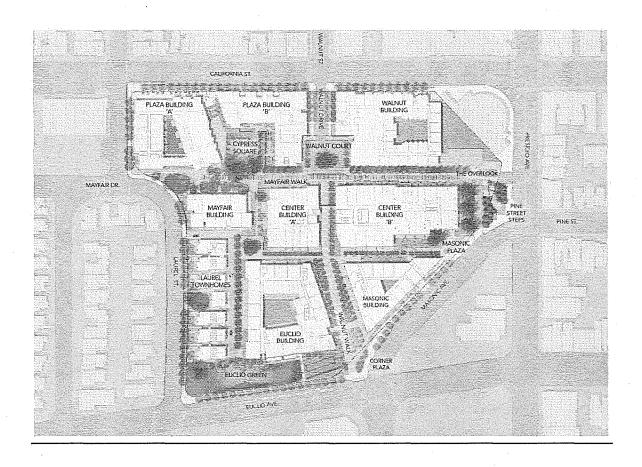


Exhibit C

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

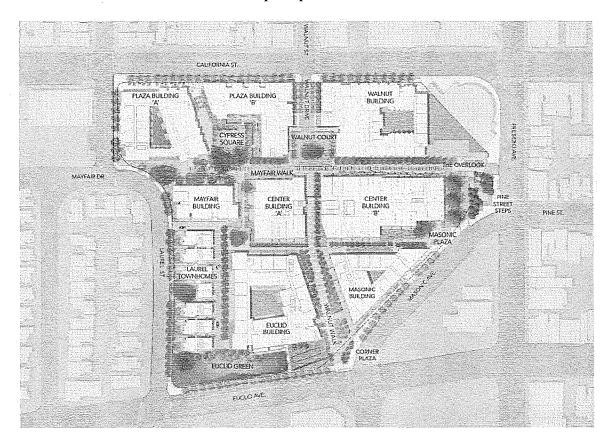


Exhibit C-2

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. <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

T done i recess Decimation		
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)		
3333 California Street APN 1032-003	SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE	
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. <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</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 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 Section 7 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:	
CITY:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation	
	By: [Name], Director of Planning	
	[Name], Director of Framming	
APPROVED AS TO FORM	1:	
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	the person(s) who	ose name(s) is/are subscribed to the
within instrument and acki	nowledged to m	e that he/she/they	executed the same in his/her/their
authorized capacity(ies), an	nd that by his/her	r/their signature(s) on the instrument the person(s), or
the entity upon behalf of wl	hich the person(s	s) acted, executed	the instrument.
I certify under PENALTY OF paragraph is true and correct		the laws of the S	state of California that the foregoing
WITNESS my hand and office	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, bet	fore me,	, a notary public in and for
said State, personally appea		, 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 ackr	lowledged to me tl	nat he/she/they executed the same in his/her/their
authorized capacity(ies), an	d that by his/her/th	eir signature(s) on the instrument the person(s), or
* * * * * * * * * * * * * * * * * * * *	<u>-</u>	cted, executed the instrument.
I certify under PENALTY OF paragraph is true and correc		e laws of the State of California that the foregoing
WITNESS my hand and offic	ial seal.	
Signature	(8	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

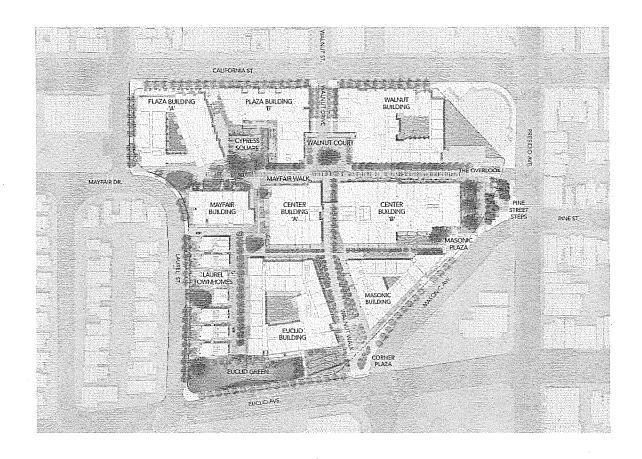


EXHIBIT C

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 "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 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. <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. 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.

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.

- G. <u>City's Remedies</u>. 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.

1.2 <u>Instruction and Completion</u>. 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 Califor	nia)	
County of San	Francisco)	
On	, before me,	, a notary public in and for
said State, pers	onally appeared	, who proved to me
	*	on(s) whose name(s) is/are subscribed to the
	•	e/she/they executed the same in his/her/their gnature(s) on the instrument the person(s), or
	behalf of which the person(s) acted,	•
- 1		
I certify under paragraph is tru		s of the State of California that the foregoing
WITNESS my	hand and 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 Franc	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 a	me that he/she/the er/their signature(s	sose name(s) is/are subscribed to the y executed the same in his/her/their s) on the instrument the person(s), or the instrument.
I certify under PENA paragraph is true and		er the laws of the S	State of California that the foregoing
WITNESS my hand	and official seal.		
Signature		(Seal)	

CERTIFICATE OF ACCEPTANCE

inis is to certify th	it the interest in real property conveyed by the foregoing Grant Deed to
the City and County of Sa	in Francisco, a municipal corporation, is hereby accepted pursuant to
Board of Supervisors' Or	dinance No. , approved September , 2019, and the
•	tion thereof by its duly authorized officer.
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:

Page 5 to Exhibit D-5

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 TRUST	this "Deed	of Trust") is made as	of , 2019,
among LAUREL HEIGHTS PA	RTNERS, LL	C, a Delaware limited lia	bility company ("Trustor"),
whose address is		, [],
("Trustee"), whose address is	-		, and THE CITY AND
COUNTY OF SAN FRANCIS	CO, a munici	pal corporation ("Bene	ficiary"), whose address is
,	Trustor irrev	vocably grants, transfer	s and assigns to Trustee in
trust, with power of sale, all of	Trustor's rig	ht, title and interest in a	and to that certain property
located in the City and County of	f San Francisc	o, California, more parti	cularly described in Exhibit
A attached hereto and incorporat	ed by reference	e herein (the "Land"), in	cluding, without limitation,
all improvements located on the	Land ("Impro	vements"), subject, how	ever, to the termination, re-
conveyance and subordination p	rovisions of S	ection E.6 below. The l	Land and the Improvements
shall be collectively referred to i	n this Deed of	f Trust as the "Property"	. Capitalized terms that are
used but not defined herein shall	have the mea	nings given such terms	in that certain Development
Agreement by and between the	City and Cou	inty of San Francisco ai	nd Laurel Heights Partners,
LLC, dated,	2019, and re	ecorded in the Official	Records of San Francisco
County as Document No.	on	, 20(the	e "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.

Page 6 to Exhibit D-5

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)				
County of San Francisco)				
On	, before me,			, a Notary Publi	c,
personally appeared		, wl	no proved	, a Notary Public to me on the basis of	
satisfactory evidence to be th	ne person(s) whose n	name(s) is/a	are subscri	ibed to the within	
instrument and acknowledge		•			
authorized capacity(ies), and the entity upon behalf of whi	•	_	` '	* * * * * * * * * * * * * * * * * * * *	ЭГ
I certify under PENALTY O 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 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.): 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 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.

Page 1 to Exhibit E

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:	
[address]	
Attn:	
	(Space above this line reserved for Recorder's use only)
"Notice") dated for reference purposes only as of by and between the CITY AND COUNTY OF municipal corporation of the State of California	LDING AND COMMUNITY BENEFITS (this of this, 20, is made SAN FRANCISCO, a political subdivision and (the "City"), acting by and through its Planning] ("Developer") [substitute party, if
of, 20 and recorded in the C Francisco on, as Document N	nto that certain Development Agreement dated as Official Records of the City and County of San Number (Book No, Reel No. apitalized terms used in this Notice that are not in the Development Agreement.
have been completed and all of the Associated Co	opment Agreement, when one or more Buildings ommunity Benefits tied to those specific Buildings on Developer's request, to execute and record a le Building.
described in the attached Exhibit A (the "Affect Community Benefits tied to that Building,	ing known as, located on the property ed Property"), together with all of the Associated have been completed in accordance with the interest in the Affected Property have the right to
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

RELATIVE TO DEVELOPMENT AGREEMENT FOR []			
entered into this		MENT (hereinafter, the "Assignment"), by and between, a	
("Assignee").			
	RECITALS		
entered into that cert, 20 for refe such property is more The Development Ag Francisco on	ain Development Agreement (the erence purposes, with respect to ce particularly described in the Devegreement was recorded in the Offic as Document No	and the City and County of Sation of the State of California (the "City "Development Agreement") dated as ertain real property owned by Assignor, elopment Agreement (the "Project Site vial Records of the City and County of Sationary of Sat	of as "). San
(i) Transfer all or a obligations under the	portion of the Project Site, (ii) a Development Agreement to a Tra	that Developer (Assignor) has the right assign all of its rights, title, interest a ansferee with respect to the portions of the the recordation of an approved Assignment	nd 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.

8. <u>Notices</u> Agreement shall be:	g. The notice address for Assignee 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

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. <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 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:

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.

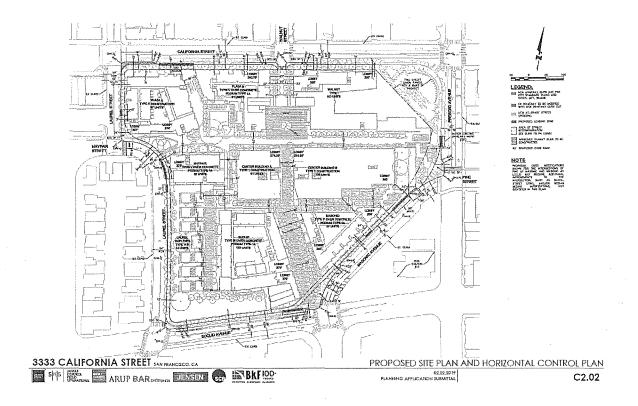
2. Reconfiguration of Slip Lanes

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





Page 4 to Exhibit J

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, <u>www.sf-planning.org</u>

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

State of California County of San Francisco)	
personally appeared satisfactory evidence to be the and acknowledged to me	that he/she/they execu /her/their signature(s) or	, a Notary Public, , who proved to me on the basis of (s) is/are subscribed to the within instrument atted the same in his/her/their authorized in the instrument the person(s), or the entity the instrument.
I certify under PENALTY Of foregoing paragraph is true and		ne laws of the State of California that the
WITNESS my hand and offic	ial 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. Walnut Walk North 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. 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 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 <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 Penson version 1016/19

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

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- 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").

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.
J. 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.
K. On, 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.
L. On, the Board adopted Ordinance No. [], amending
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 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 <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 <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 <u>Recital L</u>.
 - 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 Recital I.
- 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.
- "Streetscape Improvements" means the following improvements, all as 1.94 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> <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 <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, <u>Exhibit C</u>, <u>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 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 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 <u>Section 4.5.4</u>. 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 <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 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 <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.
- 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 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

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.
- 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 Approved on _____, 20_

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

[DEVELOPER'S SIGNATURE ON FOLLOWING PAGE]

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)	<i>:</i>	
On	person(s) whose name(s) at he/she/they executed er/their signature(s) on the second se	, who proved to is/are subscribed to the d the same in his/he instrument the per	me on the basis of ne within instrument ner/their authorized
I certify under PENALTY OF foregoing paragraph is true and		laws of the State of	California that the
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.

document to which this certificate	is attached, and no	ot the truthfulness, ac	curacy, or validity of that document.
State of California County of San Francisco)	
On	. before me.		, a Notary Public,
personally appeared	,, _	,	who proved to me on the basis of
satisfactory evidence to be th	e person(s) who	ose name(s) is/are	e subscribed to the within instrument
	/her/their signa	ature(s) on the in	e same in his/her/their authorized strument the person(s), or the entity ment.
I certify under PENALTY of foregoing paragraph is true as		under the laws	of the State of California that the
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

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

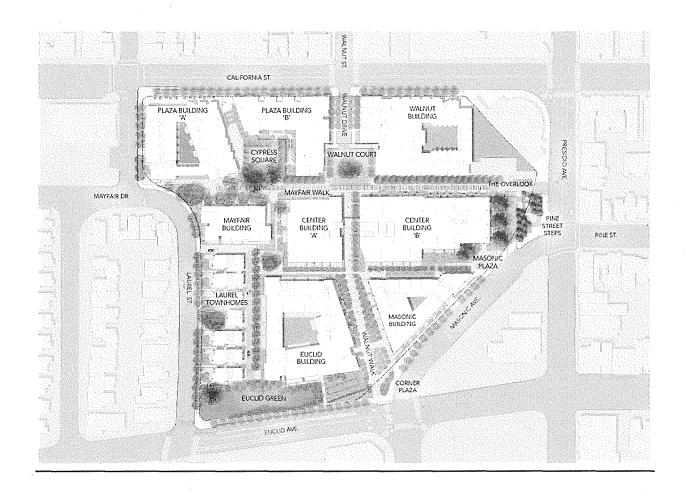


Exhibit C

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

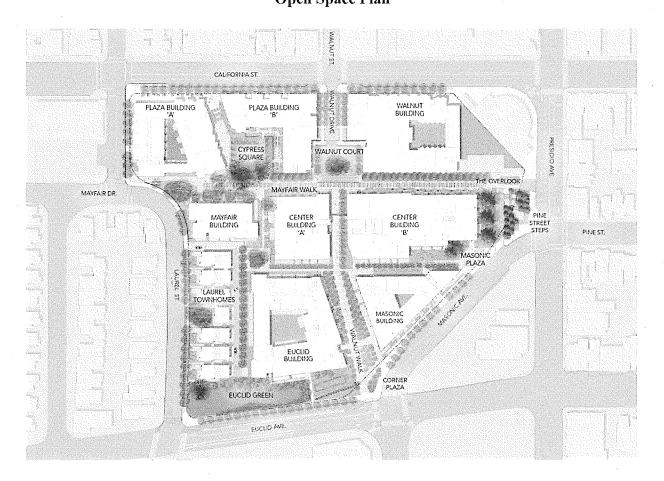


Exhibit C-2

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. <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

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
	ents and Restrictions (" Declaration ") is made as GHTS PARTNERS, LLC, a Delaware limited EITY AND COUNTY OF SAN FRANCISCO, a
RECIT	ALS
A. Declarant owns an irregularly-sh Francisco comprised of approximately 10.25 acres bounded by California Street, Laurel Street, Ed Avenue, and further described in the attached Extra Extra Comprised in the attached Extra Comprised in the Extra Comprised in	uclid Avenue, Masonic Avenue, and Presidio
R Declarant intends to redevelon the	Project Site as a large mixed-use development

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 C</u>) specified in the attached <u>Exhibit C</u> in compliance with the requirements of the Development Agreement.

(b)	Conceptual	Plans;	Changes.	If	Declarant	is	obligated	to	construct	Publicly
Accessible P	rivate Improve	ement pu	rsuant to S	Sect	<u>ion 1(a)</u> ab	ove,	then Decl	aran	t shall con	struct the
Publicly Acc	essible Private	e Improv	ement sub	ostai	ntially as d	escr	ibed in the	con	ceptual pla	ans dated
	, and	stamped	as Exhib	it	_ in the C	ity's	s Planning	Dep	oartment d	ocket for
Case No		, as :	such plans	ma	y be modif	fied j	pursuant to	o coi	nditions of	approval
for the Proje	ect adopted b	y the C	ity's Plan	nin	g Commis	sion	on Septe	embe	er, 2	019 (the
"Conceptual	l Plans"). The	improv	ements de	scri	bed in the	Con	ceptual Pla	ans,	as may be	modified
pursuant to t	his subsection	(b), and	d as const	ruct	ed pursuar	nt the	ereto shall	con	stitute the	Publicly
Accessible P	rivate Improv	ements.	Declarar	nt sl	nall have t	he r	ight to mo	odify	and/or u	pdate the
Conceptual H	lans from tim	e to time	e as it may	y de	termine in	its s	sole busine	ess ji	udgment, s	subject to
the provision	s of the follow	ving par	agraph an	d pr	ovided fur	ther	that any s	uch	modificati	ons shall
be subject to	review and a	approval	by the C	ity a	acting in it	ts re	gulatory c	apac	city with r	espect to
permit issuar	ice, if applicat	ole.	-	-	_		• .	-		~

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			
	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 Attorney				

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

State of California)	
) ss	
County of San Francisco)	
On, be	fore me,	, a notary public in and fo
said State, personally appear		, who proved to m
on the basis of satisfactory	evidence to be	e the person(s) whose name(s) is/are subscribed to the
authorized capacity(ies), ar	nd that by his/her	me that he/she/they executed the same in his/her/the er/their signature(s) on the instrument the person(s), c(s) acted, executed the instrument.
I certify under PENALTY OF paragraph is true and correct		er the laws of the State of California that the foregoin
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	fore me,	, a notar	ry public in and for
said State, personally appear	ared		who proved to me
within instrument and ack authorized capacity(ies), ar	nowledged to me that by his/her/the	person(s) whose name(s) is/are at he/she/they executed the sar ir signature(s) on the instrument ted, executed the instrument.	me in his/her/their
I certify under PENALTY OF paragraph is true and correct		laws of the State of California	that the foregoing
WITNESS my hand and offic	cial seal.		
Signature	(So	eal)	

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

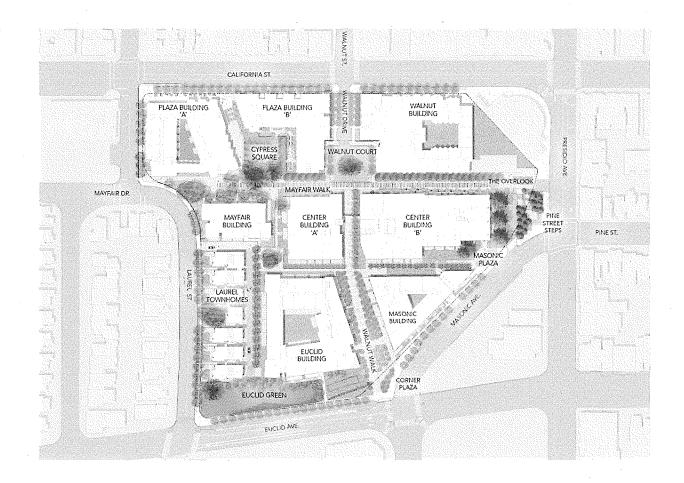


EXHIBIT C

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 "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 Declarant may use a completed Publicly Accessible Private of Euclid Green. 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 Improvement, 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 10. 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 <u>Section 2</u>.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.

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.

- В. Developer's Representations. 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. Subordination; Condition of Title. 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 Attachment D-4, 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. Costs and Fees. 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.
- Closing. 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)			
On, becaused a said State, personally appears on the basis of satisfactory within instrument and acknowledge authorized capacity(ies), and the entity upon behalf of whether the said of the s	evidence to be the per nowledged to me that ad that by his/her/their	rson(s) whose nam he/she/they execut signature(s) on the	, who proved to ne(s) is/are subscribed to ted the same in his/her/ instrument the person(s	o me o the their
I certify under PENALTY OF paragraph is true and correct		ws of the State of O	California that the foreg	oing
WITNESS my hand and of	ficial 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 Francisc	oo)	
On	, before me,	, a notary public in and for
said State, personally a	ppeared	, who proved to me
within instrument and authorized capacity(ies	acknowledged to make), and that by his/he	the person(s) whose name(s) is/are subscribed to the te that he/she/they executed the same in his/her/their r/their signature(s) on the instrument the person(s), or s) acted, executed the instrument.
I certify under PENALT paragraph is true and c		the laws of the State of California that the foregoing
WITNESS my hand an	d official seal.	
Signature		(Seal)

CERTIFICATE OF ACCEPTANCE

Inis is to certify that the interes	st in real property conveyed by the foregoing Grant Deed to
the City and County of San Francisco	, a municipal corporation, is hereby accepted pursuant to
Board of Supervisors' Ordinance No.	, approved September, 2019, and the
grantee consents to recordation thereof	by its duly authorized officer.
_	
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:

Page 5 to Exhibit D-5

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	d of Trust") is	made as of		, 2019,
among LAUREL HEIGHTS P.	ARTNERS, LI	LC, a Delaware	limited liabil	ity company	("Trustor"),
whose address is			, [
("Trustee"), whose address is			/		CITY AND
COUNTY OF SAN FRANCI	SCO, a munic	cipal corporation	on ("Benefici	ary"), whos	se address is
	, Trustor irre	evocably grants	s, transfers a	nd assigns t	o Trustee in
trust, with power of sale, all o	of Trustor's ri	ght, title and in	nterest in and	to that cert	ain property
located in the City and County	of San Francis	co, California,	more particul	arly describe	ed in <u>Exhibit</u>
A attached hereto and incorpor	ated by referen	ice herein (the "	Land"), inclu	iding, withou	ut limitation,
all improvements located on th	e Land ("Impr	ovements"), su	bject, howeve	er, to the teri	mination, re-
conveyance and subordination	provisions of	Section E.6 bel	ow. The Lar	d and the In	nprovements
shall be collectively referred to	in this Deed	of Trust as the '	'Property". C	Capitalized to	erms that are
used but not defined herein sha	ll have the me	anings given su	ich terms in t	hat certain I	Development
Agreement by and between th	e City and Co	ounty of San Fr	ancisco and	Laurel Heig	hts Partners,
LLC, dated	_, 2019, and	recorded in the	e Official Re	ecords of Sa	an Francisco
County as Document No.	on		. 20 (the "I	λ").	

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:

the document to which this cer	tificate is attached, and not th	e truthfulness, accuracy, or validity of that document.
State of California County of San Francisco)	
On	, before me,	, a Notary Public,
personally appeared		, who proved to me on the basis of
satisfactory evidence to be	the person(s) whose nan	ne(s) is/are subscribed to the within
-	~ ` ` '	y executed the same in his/her/their
authorized capacity(ies), ar	nd that by his/her/their si	gnature(s) on the instrument the person(s), or
the entity upon behalf of w	hich the person(s) acted,	executed the instrument.
I certify under PENALTY foregoing paragraph is true		e laws of the State of California that the
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

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
2	and Planning Code priority policies. Ordinance [] (File No. []): Amending the Planning Code, the Zoning Map,
<i>2</i> .	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
ara• a	
	and Related Approval Actions of City and County of San Francisco Planning nission (referenced by Motion Number "M No." or Resolution Number "R No.")
	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
	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

Exhibit F

MMRP

[see attached]

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 municipal corporation of the State of California Department, and	f 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 Or 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	on 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: 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

RELATIV	E TO DEVELOPMENT	Γ AGREEME	NT FOR [J
entered into this	T AND ASSUMPTION A day of	, 20, by	y and between	, a
	("Assignor") and		, a	
("Assignee").				
	REC	CITALS		
entered into that certa, 20 for refe such property is more The Development Ag	, a subdivision and municipa ain Development Agreem rence purposes, with responsive particularly described in reement was recorded in as Document No.	nent (the " Deve pect to certain a the Developm the Official Re	elopment Agreement") real property owned by A ent Agreement (the "Pro	dated as of Assignor, as oject Site ").
[add recital to docu information]	ment any previous trans	sfer of the Tro	ansferred Property, with	h recording
(i) Transfer all or a	evelopment Agreement p portion of the Project S Development Agreement	ite, (ii) assign	all of its rights, title,	interest and

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. Notices	. The notice address for Assignee under Section	of the Development
Agreement shall be:		, -
	Attn:	•
With copy to:		
	-	
	Δttn·	

- 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 HI	EREOF, the	parties heret	o have	executed	this	Assignment	as of the	day	and year	ìr
first above writte	en.	-				_		_	•	

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 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. <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(*I*) 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:		
If to Contractor:			
		,	
	Attn:		
If to Consultant:			
	Attn:		
arty may change its add	ress for notice purp	oses by giving the ot	her 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.

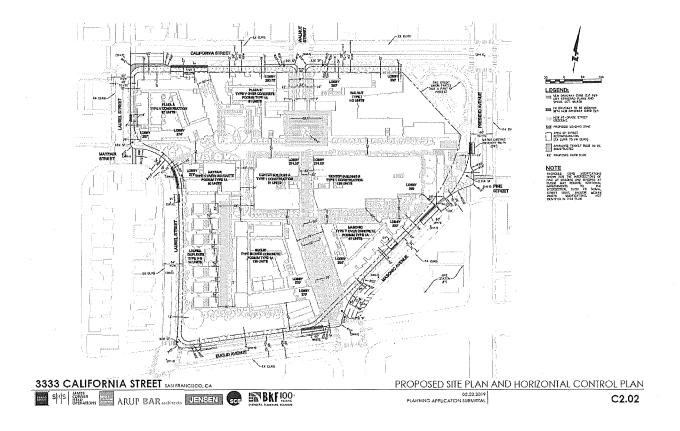
2. Reconfiguration of Slip Lanes

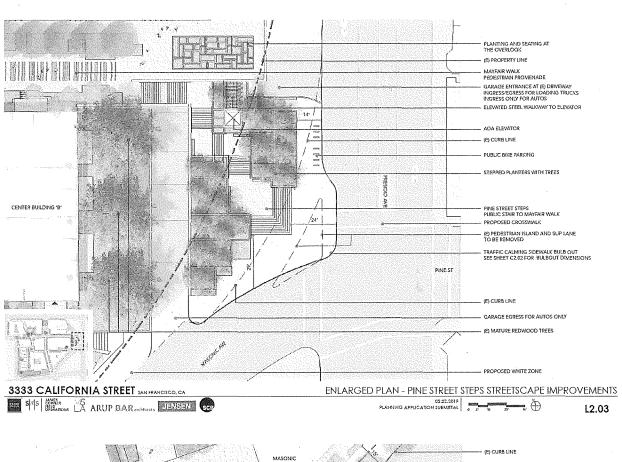
A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements 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





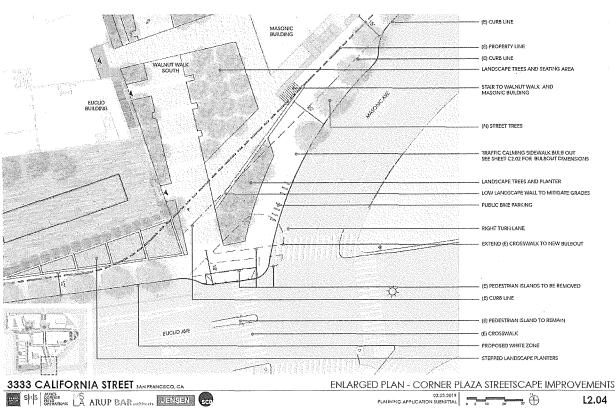


Exhibit K

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

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

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
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.
Signature

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. <u>Walnut Walk North</u> 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. **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. <u>Child Care Program.</u> The Developer shall have constructed the child care facility to warm shell condition, as described in <u>Exhibit L</u>, on the Walnut Child Care Parcel (as defined in <u>Exhibit D</u>) 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 <u>Exhibit D</u>) 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 <u>Exhibit D</u>). 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 <u>Exhibit L</u>.

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 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

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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 <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. 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. C	On, the Board of	Supervisors, having received the Planning				
Commission's r	recommendations, held a public hea	ring on this Agreement pursuant to the				
Development A	greement Statute and Chapter 56. Fo	lowing the public hearing, the Board made				
the CEQA Findings required by CEQA, incorporating by reference the General Plan Consistency						
Findings.						
J. (On, the Board ado	oted Ordinance No. [], amending				
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 the major						
encroachment permit for the Project (collectively, the "Enacting Ordinances"). The Enacting						
Ordinances took effect on						
Now the	erefore, for good and valuable conside	ration, 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 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 <u>Recital</u>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 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

 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 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, 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 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 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 <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 <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 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.
- 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 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 <u>Sidewalks, 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 Impact Fees and Exactions. 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 <u>Section 5.6</u> 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 <u>Estoppel Certificates</u>. 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 Termination. Subject to the limitation set forth in Section 9.4.4, 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.

9.4.3 <u>Limited Damages</u>. The Parties have determined that except as set 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.
- 10.2 <u>Mortgagee Not Obligated to Construct.</u> Notwithstanding any of the provisions of this Agreement (except as set forth in this Section and <u>Section 10.5</u>), 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

- 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 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 <u>Interest of Developer</u>; <u>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.
- Notification of Limitations on Contributions. Through its execution of this 13.4 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 <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]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation		Approved as to form: DENNIS J. HERRERA, City Attorney		
REC	OMMENDED:			
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 LH LLC,			

a California	limited	liability	company,
its Manager			

By: _____Name: Dan Safier

Title: Manager

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.							
document to which this continueto	is accorded, and not the fit	anitalicos, accaracy, or variatey of that accament.					
State of California)						
County of San Francisco)						
On	, before me,	, a Notary Public,					
personally appeared		, who proved to me on the basis of					
On, before me,							
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.							
WITNESS my hand and official seal.							
Signature							

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, before me,							
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.							
WITNESS my hand and official seal.							
Signature							

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 Northwesterfy 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

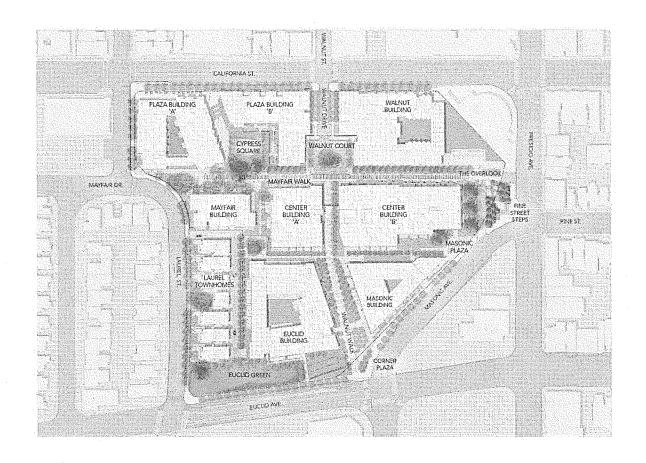


Exhibit C

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

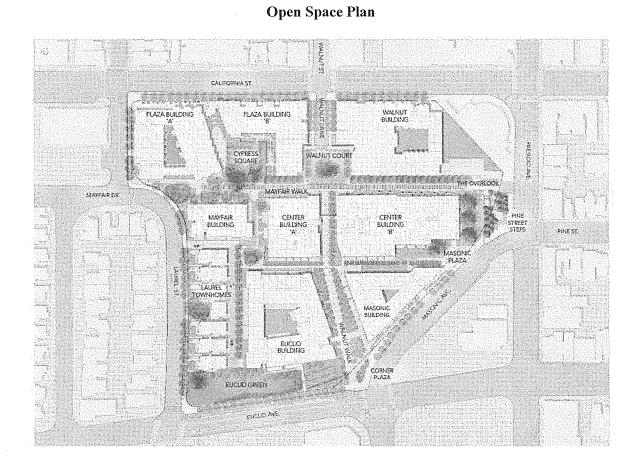


Exhibit C-2

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. <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

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

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. 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

Final and Related Approval Actions by San Francisco Public Works

Agreement between the City and Laurel Heights Partners LLC.

1. Approval of Tentative Map

1. Resolution Number [] consenting to the AWSS Schedule in the Development

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 BUIL "Notice") dated for reference purposes only as of by and between the CITY AND COUNTY OF municipal corporation of the State of California Department, and, a	f thisday of, 20, is made SAN FRANCISCO, a political subdivision and (the "City"), acting by and through its Planning
1. The City and Developer entered in of, 20 and recorded in the O Francisco on, as Document N) (the "Development Agreement"). Ca defined shall have meaning given to such terms in	umber (Book No, Reel No. pitalized terms used in this Notice that are not
2. Under Section 7.1 of the Develophave been completed and all of the Associated Cohave also been completed, the City agreed, uponotice of completion as it relates to the applicable	on Developer's request, to execute and record a
3. The City confirms that the Buildi described in the attached Exhibit A (the "Affecte Community Benefits tied to that Building, I Development Agreement. All parties with an in rely on this Notice.	have 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

RELATIVE TO DEV	ELOPMENT AGRE	EMENT FOR []	
THIS ASSIGNMENT AND ASSentered into this day of ("Assigno			
("Assigno	or") and	, a	
("Assignee").			
	RECITALS		
A.	, a	and the City and Cou	inty of San
A. Francisco, a political subdivision entered into that certain Develop , 20 for reference purpo	ment Agreement (the	"Development Agreement") o	dated as of
such property is more particularly	y described in the Deve	lopment Agreement (the "Proj	ject Site").
The Development Agreement wa			ınty of San
Francisco on as D	ocument No.	·	
[add recital to document any p information]	previous transfer of th	e Transferred Property, with	recording
B. The Development (i) Transfer all or a portion of obligations under the Developme	the Project Site, (ii) a	_	nterest and

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. 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 sh		The notice address t	for Assignee under	r Section	of the Development
		Attn:			
With c	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.

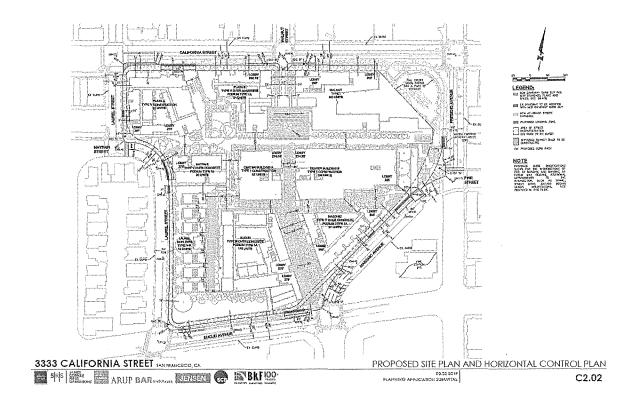
2. Reconfiguration of Slip Lanes

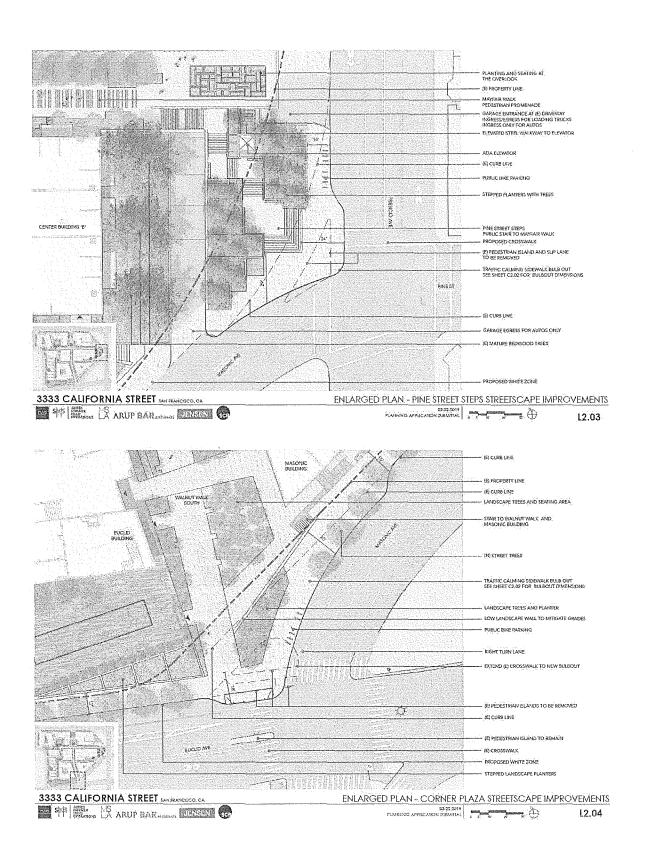
A key element of the Project's Public Improvements includes the reconfiguration of existing traffic slip lanes at the intersections of Presidio Avenue and Pine Street/Masonic Avenue and at Masonic Avenue and Euclid Avenue. These Public Improvements consist of bulb outs and other sidewalk improvements 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





J Attachment 2-2

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. <u>Publicly Accessible Private Improvements.</u> 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. <u>Presidio Overlook</u> 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 <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 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 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. No Joint Liability. 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.

City and County of San Francisco, a 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

Appendix A

OEWD / Other City Staff – Billing Rates (Hourly rates as of July 1, 2017)

OEWD Project Manager \$125

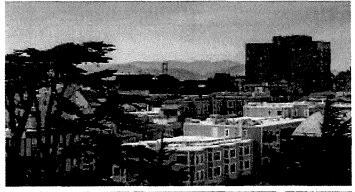
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Deputy City Attorney \$375

MTA Project Manager \$158.65

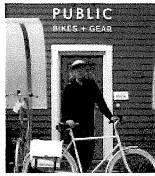
3333 CALIFORNIA STREET

3333 CALSF

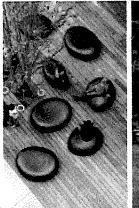




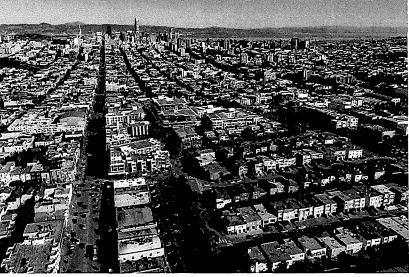




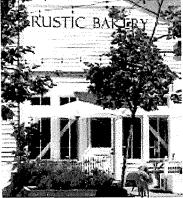


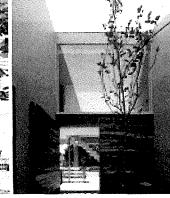




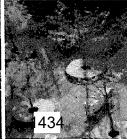




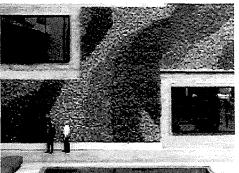












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COMMUNITY



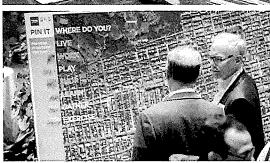
Community Engagement: 160+ Meetings Over Four and Half Years











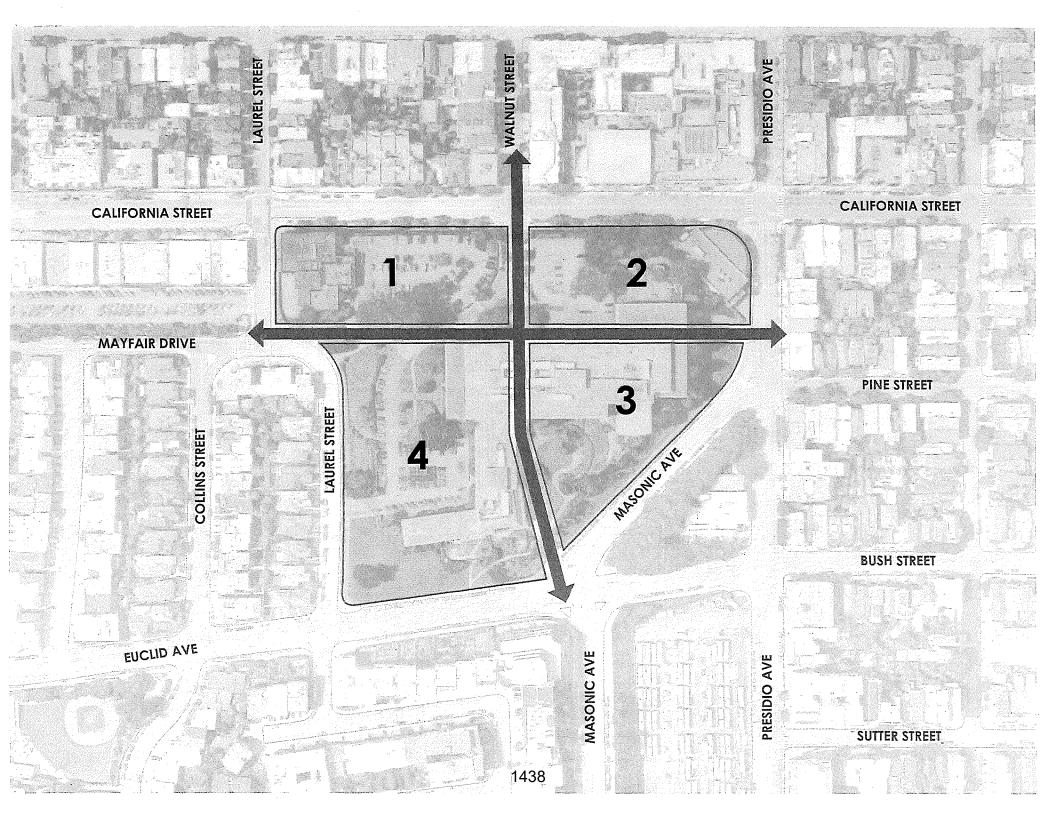




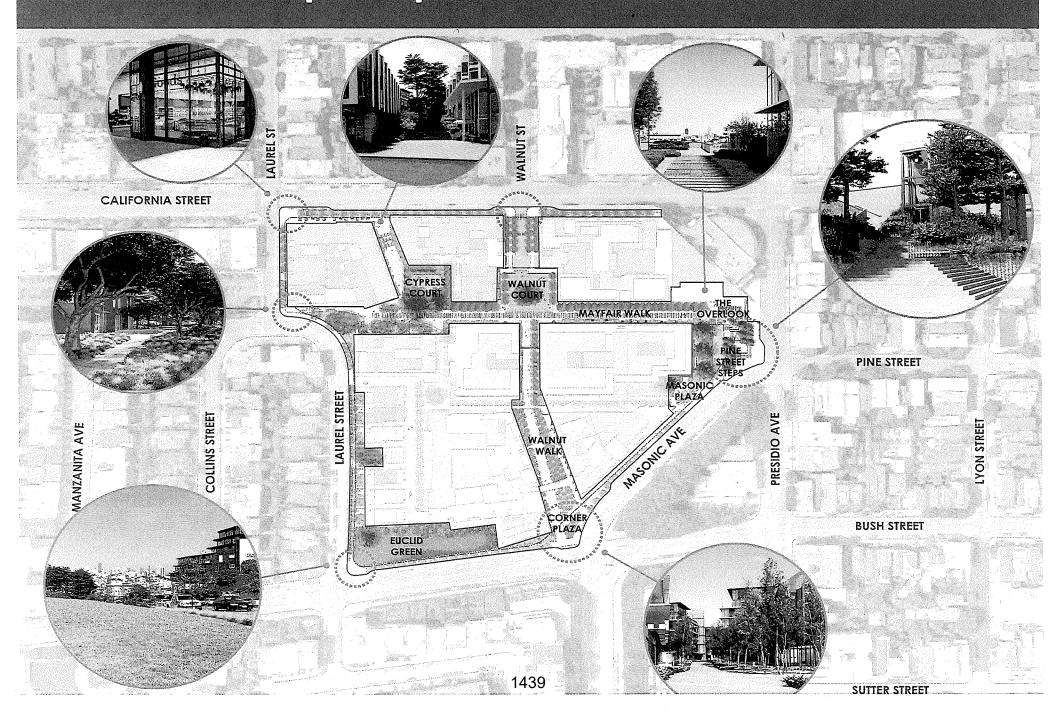
58% Family-Friendly with 2, 3, or 4 Bedrooms 25% On-site Affordable Housing for Seniors

Now: A Walled-Off Island





Network of Open Spaces and Pedestrian Access

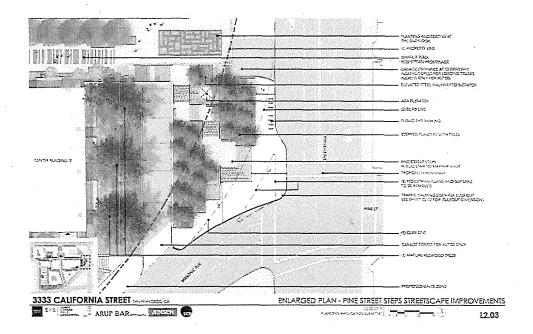


Better Streets and Public Transit First

TDM PLAN WORKSHEET

Category	Максиле	Pointa	Land Use Category			
			A Retail	B Office	C Residential	D Olher
भूमाधिका	Improve Walking Conditions; Option A; or	1	® 1	_ ⊕	<u> </u>	O
	Improve Walking Conditions; Option S	1	€		€	· –
ACTIVE-2	Bicycle Parking: Option At or	1	€	_ 🖲 _		. ⊛
	Bicycle Parking: Option 5; or	2	€ _	_ ⊜ _	®	· •
	Bicycle Parking: Option C; or	3	⊕ 3		⊕ 3	⊕
	Bicycle Parking: Option D	4	⊛	. ⊚ _		<u> </u>
मुनाग <u>्र</u> म्	Showers and Lockers	1	⊕ 1	_ ®	Ø	⊛
ACTIVE-A	Bike Share Membership: Location A; or	1	€	•	⊕	
	Bike Share Membership: Location 5	2	Ð	Ð	®	<u> </u>
ABTIUE 6A	Bicycle Repair Station	1	⊕ <u>1</u>	_ ⊕ _	⊕ 1	o <u> —</u>
APTIVE TE	Bicycle Maintenance Services	1	⊕	_ ® _		ਂ =
AMMUE 8	Fleet of Bicycles	1	⊕	_ ® _	® <u>1</u>	° =
शंकार/≓7	Bicycle Valet Parking	1	® _	_ Ø	Ø	o <u>—</u>
CSHARE-1	Car-share Parking and Membership: Option A; or	1	®	• • • • • • • • • • • • • • • • • • •	®	•
	Car-share Parking and Membership: Option B; or	2	· ② 2	_ •	_ ⊕ 2	• <u> </u>
	Car-share Parking and Membership: Option C; or	3	② _	•	®	•
	Car-share Parking and Membership: Option D; or	4	•	•	•	_ 🔾 📟
	Car-share Parking and Membership: Option E	5	©	· •	•	O —
DELLIVERY-1	Delivery Supportive Amenities	. 1	⊕ 1	_ ®	® 1	· O =
nativianzz	Provide Delivery Services	1	(A)	Ø	0	ή —

- Required TDM 50% points.
- Proposed Project TDM Plan at 75%
- \$218,000 contribution to Muni Bus



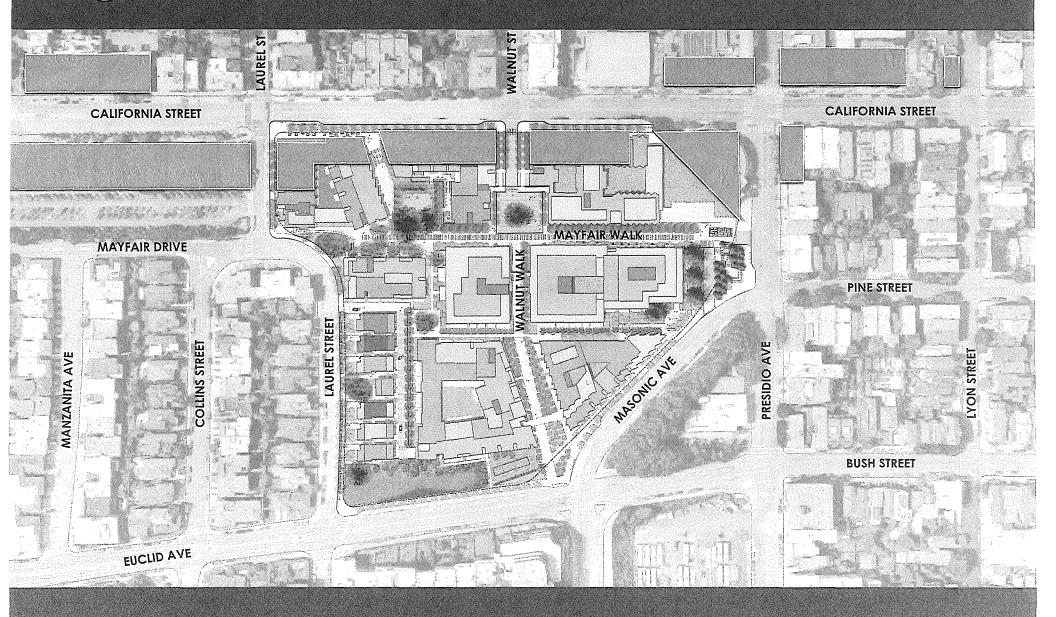
 Reconfiguration of existing slip lanes through bulb-outs and sidewalk improvements for pedestrian safety

Neighborhood Shops on California Street



Uninviting Gap in the Retail Fabric of California Street.

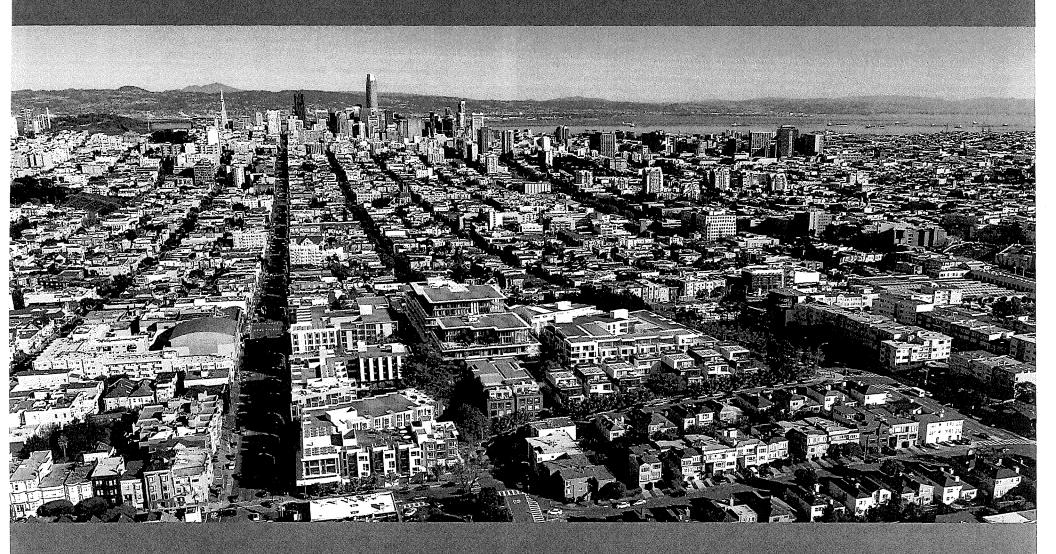
Neighborhood Retail



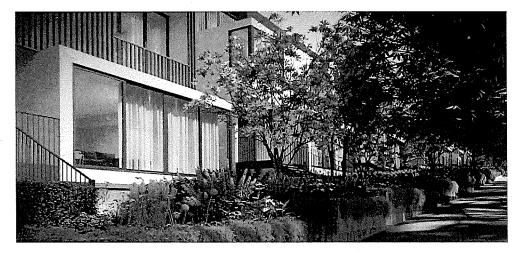
35,000 sf of California Street Retail to Compliment Laurel Village

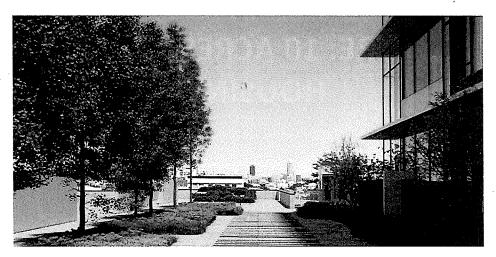


FUTURE: 10 ACRES TRANSFORMED INTO HOMES, AFFORDABLE HOUSING, OPEN SPACE, CHILDCARE & SHOPS



A Walkable, Connected, and Sustainable Community



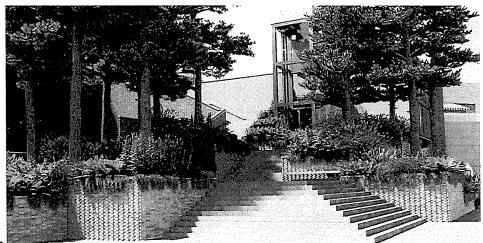




Thank You







1445



San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019





SUMMARY OF ITEMS FOR CONSIDERATION TODAY

Consideration of 3 Ordinances:

- Planning Code Text and Map Amendments (File No. 190844)
- Development Agreement (File No. 190845)
- Major Encroachment Permit (File No. 190947)

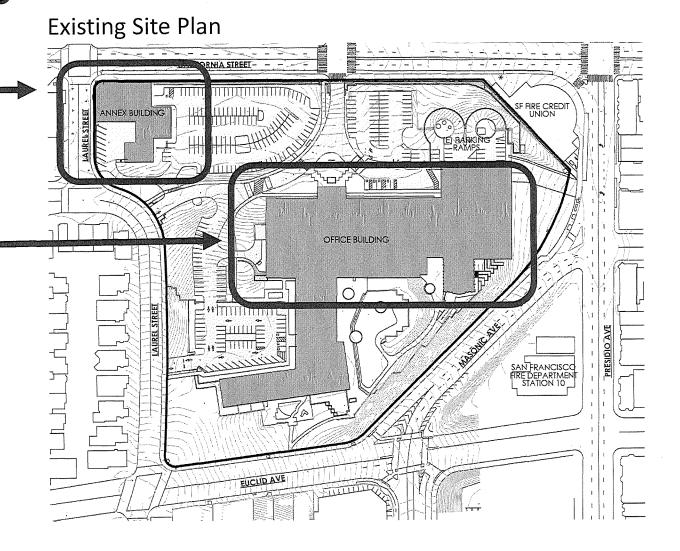
SUMMARY FROM 9/5 PLANNING COMMISSION HEARING

- Certified the Final Environmental Impact Report under CEQA
- Adopted findings and a statement of overriding consideration under CEQA
- Recommended that the Board of Supervisors approve the SUD Ordinance
- Recommended that the Board of Supervisors approve a Development Agreement ("DA")
- Approved a request for Conditional Use Authorization for a Planned Unit Development

PROJECT SYNOPSIS

Demolish existing annex building.

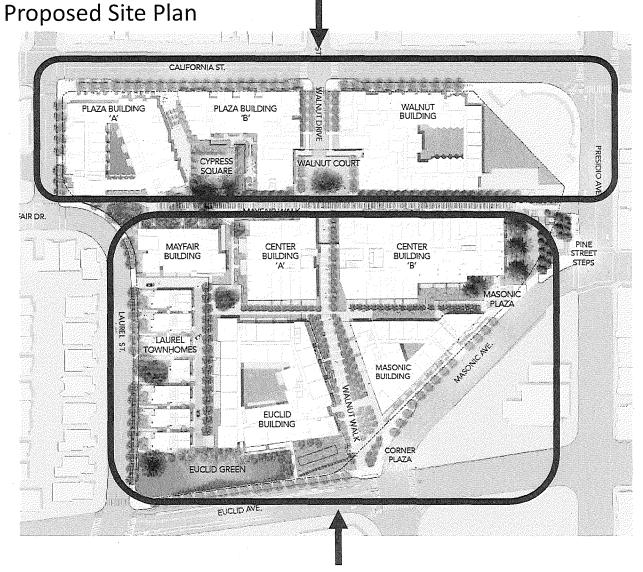
Partial demolition and adaptive reuse of existing center office building for residential uses.



PROJECT SYNOPSIS

Construct 13 new buildings as either residential-only buildings or mixed-use buildings containing non-residential uses on the first and second floors.

Mixed-Use Buildings



Residential-only Buildings

PROJECT SYNOPSIS

- 1,428,000 square feet (sf) of uses:
- Residential:
 - 978,000 sf of residential floor area
 - 744 dwelling units (25% provided as senior affordable)
- Non-Residential:
 - 35,000 sf of retail floor area
 - 15,000 sf child care facility
- 857 vehicular spaces (including 10 car-share spaces)
- 839 Class 1 and 2 bicycle parking spaces

PLANNING CODE TEXT AND MAP AMENDMENTS

- Allows non-residential uses within 1st and 2nd story of all buildings fronting California Street (subject to NC-S Zoning Controls) and:
 - Flexible Retail Uses
 - Social Service or Philanthropic Facilities
- Useable open space calculated on site-wide basis.
- Relaxes parking requirements for Child Care Facility
- Inclusionary housing + child care compliance through DA controls
- Permit review/compliance through Planning Director determination
- Extinguishes City Planning Commission Resolution No. 4109
- No Discretionary Review for projects within SUD

DEVELOPMENT AGREEMENT

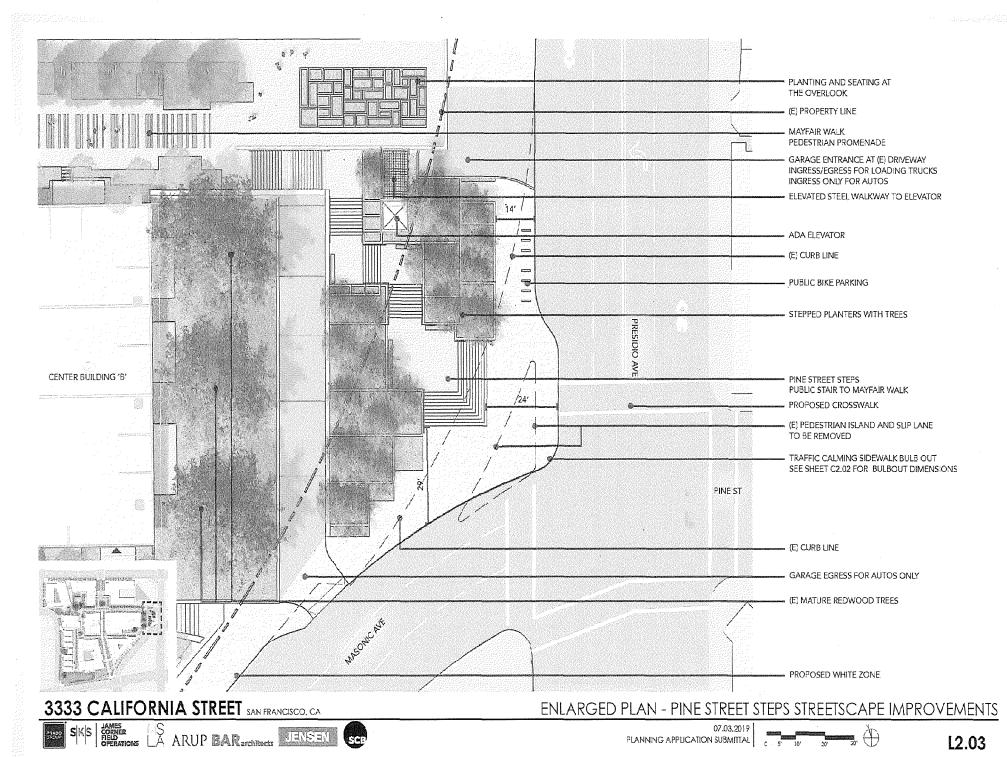
- 15 year term
- Vesting and phasing rights for developer
- Key Community Benefits
 - 25% on-site senior affordable housing units
 - Public open space & accessible pedestrian pathways
 - Childcare center with 10% of seats for low-income families
 - TDM commitments above code-requirement
 - Workforce program participation (LBE & First Source)
 - SFFD AWSS community benefit fee

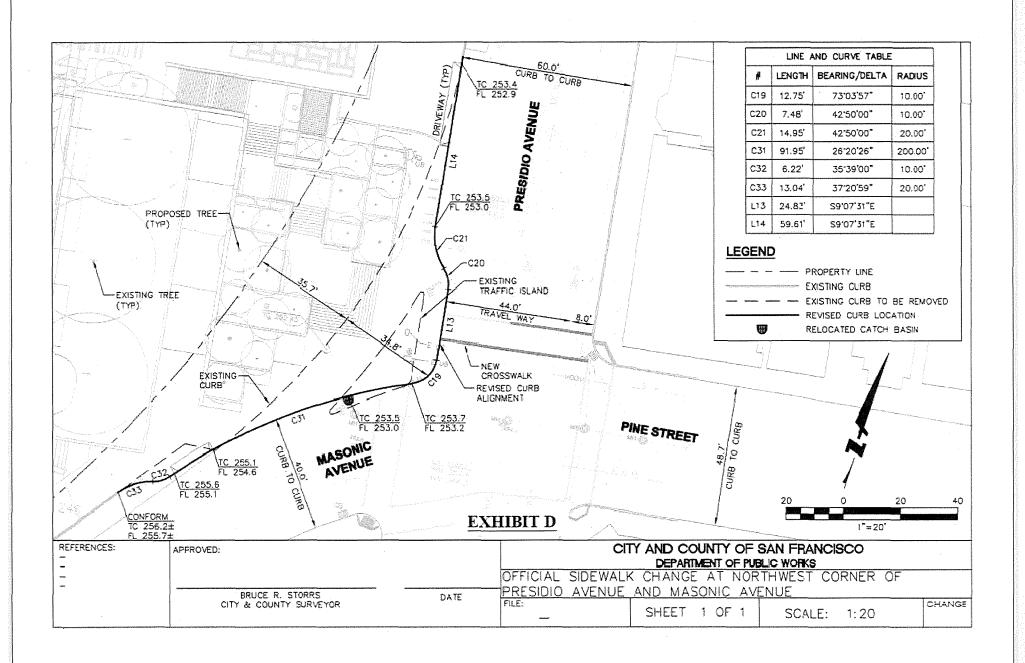
DEVELOPMENT AGREEMENT

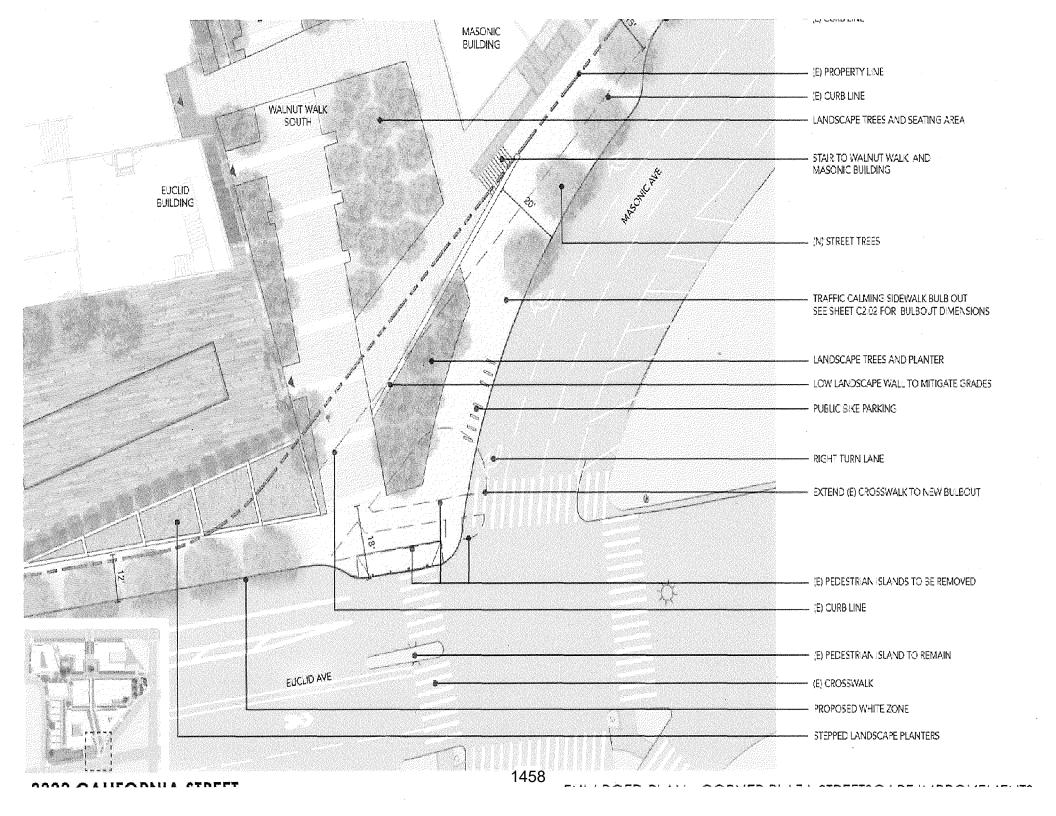
- Affordable Housing Plan
 - 25% on-site affordable housing dedicated to low-income seniors; 185 senior units & 1 on-site manager's unit
 - Located in proposed Walnut Senior Affordable Building on California Street close to retail, amenities, transit, and co-located with childcare center
 - Developer-funded, no City subsidies in project
 - Developer <u>must build and open</u> Walnut Senior Affordable Building before more than 386 market rate units are complete.

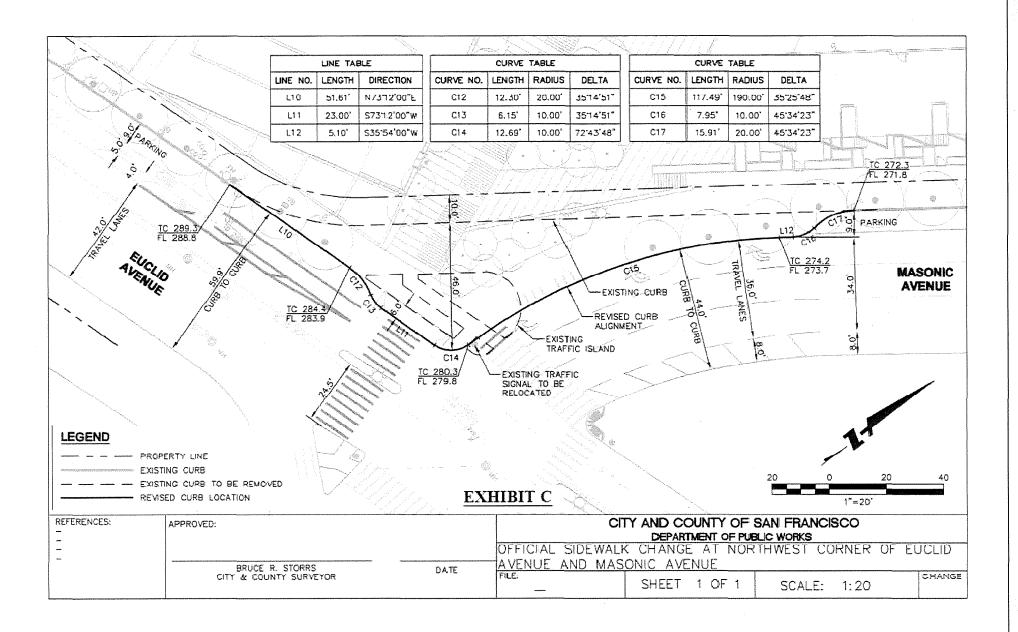
DEVELOPMENT AGREEMENT

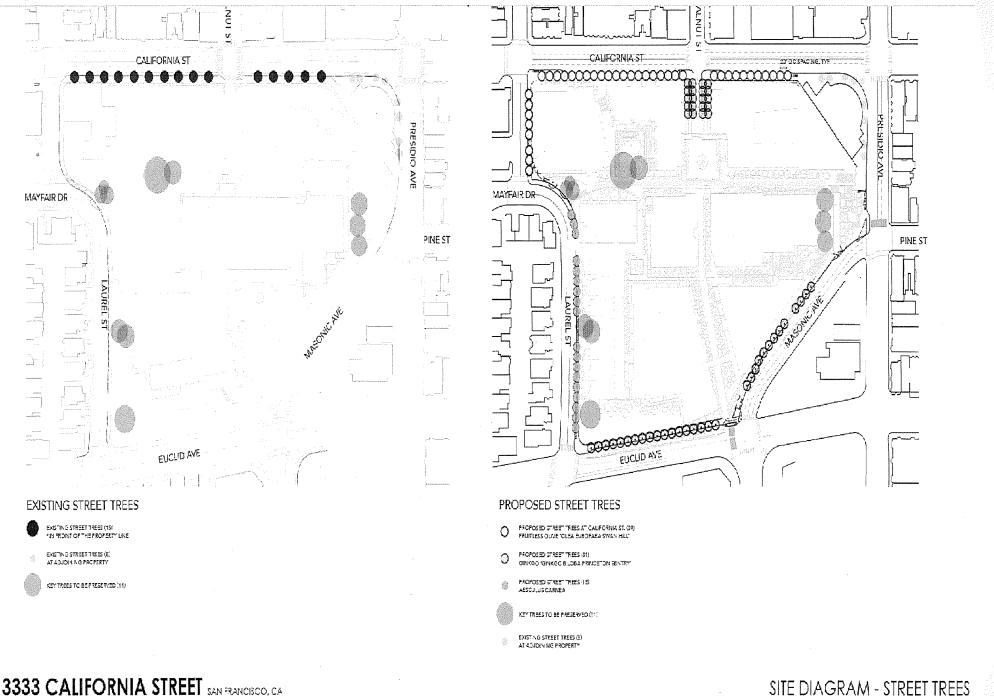
- As security to ensure Walnut Senior Affordable Building is completed:
 - Developer must fee-out into a special escrow account for each market rate unit built prior to Walnut Senior Affordable Building completion
 - Developer must place on the parcel a deed of trust in favor of the City at inception of the project
 - If developer has not completed and opened Walnut Building by year 12 of the DA term, the City may take possession of the parcel at no cost and use escrow funds to complete the senior housing project
- City and developer are working with the Housing Accelerator Fund to try to accelerate the construction of the Walnut Senior Affordable Building.











3333 CALIFORNIA STREET SAN FRANCISCO, CA















L1.03

November 12, 2019

VIA E-MAIL TO: bos.legislation@sfgov.org iocelvn.wona@sfaov.ora brent.jalipa@sfgov.org

San Francisco Board of Supervisors c/o Clerk of the Board of Supervisors City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

Record Number: 2015-014028CUA/PCA/MAP/DUA

File No: 191039: Appeal of Conditional Use Authorization

File No: 191043: Appeal of Subdivision Map

File No: 191035: Appeal of Certification of Final EIR/CEQA Findings

File No: 190844: Special Use District File No: 190845: Development Agreement File No: 190947: Major Encroachment Permit

Open Space Preservation Society, Inc. objects to each of the approvals described above on the basis that, as explained in the attached letter of Margaret Fitzgerald dated February 28, 2016, the general public holds a permanent right of recreational use on existing open space at 3333 California Street and such rights were obtained by implied dedication, prescriptive easement, and/or other applicable legal principle. The abovedescribed approvals would impinge upon these public rights, and Open Space Preservation Society, Inc. objects to the approval of each of the matters described above on that basis.

Open Space Preservation Society, Inc.

By: Jeannine Black, President

Attachment: February 28, 2019 Letter of Margaret Fitzgerald

cc: Jeffrey Lowenthal, Attorney for Laurel Heights Partners, LLC ilowenthal@steverlaw.com Stacey Quan, Attorney for Laurel Heights Partners, LLC - squan@steyerlaw.com



public's rights to the open space were secured decades ago through implied dedication, it is not necessary for the general public to rely upon its prescriptive easement rights outlined in this paragraph; rather it is another means to the same end.

It is important that the Planning Department understand these legal issues as any project plan (or any future project description in an Environmental Impact Report ("EIR") for the Site) cannot include development of the open land over which the public has a secured permanent rights of recreational use. It would not be a concession by the owner/developer to leave the open space undeveloped and allow public recreational use as the general public holds permanent recreational rights to this space. It is important to note that even the open space behind the walls that has been used as park space is also included in this dedication to the public. According to well-established case law, a wall or fence is not effective in preventing the development of adverse property rights if individuals go around the wall, as is the case here.

In sum, the open space at the Site cannot be developed as the public secured such rights through implied dedication prior to 1972 (or, alternatively, by prescriptive easement). In reviewing the development plans for the Site, the City cannot decide to allow development of any of the open space as the recreational rights to the space are held by the public at large. Any project description in the future EIR for the Site that contemplates development of any of the open space would be an inadequate project description and would eviscerate any lower impact alternative presented in the EIR. One only need to look to the seminal land use case decided by the California Supreme Court regarding this very Site' to see that an EIR will not be upheld if the project alternatives are legally inadequate. It would be misleading to the public to suggest that a lesser impact alternative is one that allows the public to use the space to which it already has permanent recreational use rights.

In sum, please be advised of the public's permanent recreational rights to all of the existing open space at the Site and please ensure that a copy of this letter is placed in the project file.

Sincerely,

Meg Fitzgerald

Margaret N. Fitzgerald

With copies to:
Mark Farrell, Supervisor
Dan Safir, Prado Group
Kathy DiVicenzi, Laurel Heights Improvement Association
Robert Charles Friese, Esq.

Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California, 47 Cal. 3rd 376 (1988).

Mohamed, Manar <manar.mohamed@intel.com>

Sent:

Sunday, November 10, 2019 9:00 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Al

hello@northernneighbors.org Please approve 3333 California

Cc:

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a resident of San Francisco- I live in District 2 & I support the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood. Please approve this project with all speed.

Thanks, Manar

Patrick Traughber <patricktraughber@gmail.com>

Sent:

Sunday, November 10, 2019 8:59 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS];

Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org

Subject:

Please approve 3333 California

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Rahul Reddy <rahulbr87@gmail.com>

Sent:

Sunday, November 10, 2019 8:15 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org

Subject:

Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I write you as a concerned citizen, homeowner, taxpayer, and resident of San Francisco. I support the project at 3333 California and believe it will enrich our neighborhood. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

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Sincerely, Rahul Reddy 1450 Franklin Street

Sent from my iPhone

Liz J. Miller <dancewithliz@gmail.com>

Sent:

Sunday, November 10, 2019 7:58 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS];

Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS)

Subject:

Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

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Please approve this project with all speed.

Thank you. Sincerely,

Liz Miller District 2 Voter

Elizabeth Zambelli <eszambelli@yahoo.com>

Sent:

Sunday, November 10, 2019 12:28 PM

To:

Board of Supervisors, (BOS)

Subject:

3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors:

I'm urging you to oppose the removal of the healthy, mature trees at 3333 California Street, including all that stretch along California Street in front of that address.

I'm a resident of the Richmond. I frequently walk down that block, and I so enjoy the trees out front. The hummingbirds do, too; they feed off the nectar in those red flowers. I often hear them chirping there, and it always brightens my day.

Removing those trees would remove a source of food and shelter for many of those birds.

Most importantly, we need our trees more than ever in this era of climate change. San Francisco already has fewer trees than many other US cities of comparable size. And as you know, we're seeing the destructive effects of climate change very dramatically here in California.

And while we haven't yet had fires in San Francisco, we have certainly suffered from the smoke pollution of the fires that have raged all around us over the past several years. We need to do everything we can to protect our environment.

Please don't allow these trees to be needlessly destroyed.

Thank you.

Sincerely,

Elizabeth Zambelli The Inner Richmond

Craig Salgado <csalgado@jccsf.org>

Sent:

Thursday, November 07, 2019 12:19 PM

To:

Board of Supervisors, (BOS)

Cc:

Marci Glazer; Bob Fields; Dan Safier; Cindy Park

Subject:

JCCSF Support for 3333 California Development Project

Attachments:

Full Board of Supervisors Letter 11-7-19.pdf

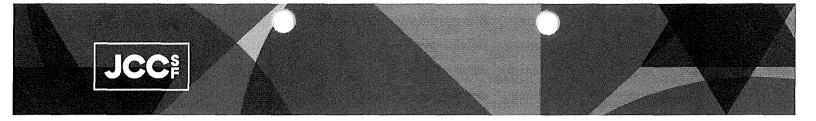
This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

Please find attached a letter of support from the **Jewish Community Center of San Francisco** for the proposed development at 3333 California Street.

Thank you for your consideration.

Craig Salgado
Chief Operating Officer
Jewish Community Center of San Francisco
3200 California Street, San Francisco, CA 94118
Direct 415.292.1242 • Main 415.292.1200 • Ext. 1242
Fax 415.276.1550 • csalgado@jccsf.org • jccsf.org



November 7, 2019

San Francisco Board of Supervisors 1 Dr. Carlton B. Goodlett Place San Francisco. CA 94102

Dear Board of Supervisors,

On behalf of the Jewish Community Center of San Francisco (JCCSF) we are extending our support for the proposed development at 3333 California Street. Our main building, located at 3200 California Street, sits directly across the street from the proposed project. The JCCSF has a rich history at the corner of California Street and Presidio Avenue, as we have occupied this location for 86 years. We have evolved with our city over the years, creating a vibrant community space for people to gather, explore, connect and flourish. We are thrilled to see the neighborhood continuing to evolve to include more affordable housing, open spaces, and retail for our community.

Over the past few years we have been a part of the robust community process conducted by the developer (Prado/SKS), and feel that the community's voices have been heard. The 3333 California project has been guided by strong public policy and is balanced by community input. Throughout the development process, the Prado Group held over one hundred and sixty community meetings, engaged with the community – including the JCCSF, city leaders, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that have improved the project and enhanced the neighborhood while providing much needed new housing – including 186 on-site affordable housing units.

Additionally, we understand that the proposed retail will be designed to fill-in where goods and services are lacking, complementing the existing retail establishments and helping to stitch the neighborhood together. The proposed design also creates more open spaces available to the community which will improve the overall quality of life for both residents and neighbors. And, we are appreciative that the design allows for the continuation of emergency evacuation space for the JCCSF.

The JCCSF believes that a more vibrant neighborhood – with more housing, open space, and neighborhood-serving retail is good for our community. We believe that this project will

JEWISH COMMUNITY CENTER OF SAN FRANCISCO
JCCSF.ORG • 3200 CALIFORNIA STREET • SAN FRANCISCO, CA 94118 • 415.292.1200



ultimately allow the JCCSF to positively impact even more people, and we are committed to working collaboratively with the developer and the City to plan for this new future neighborhood "just across the street."

Sincerely,

Marci Glazer

JCCSF CEO

Bob Fields

JCCSF Board Chair

Bot Tuels

Cc:

Dan Safier, Prado LLC

Chris Patrick <csp629@yahoo.com> Sunday, November 10, 2019 9:00 PM

Sent: To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra

(BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org Please approve 3333 California

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a resident of San Francisco and I support the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood. Please approve this project with all speed.

Chris

Matthew Ticknor <matt@junctionprops.com>

Sent:

Sunday, November 10, 2019 8:50 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org Please approve 3333 California

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a resident of San Francisco and I support the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood. Please approve this project with all speed.

Matt Ticknor 415.990.6944

Daniel Cohen <dccohe@gmail.com>

Sent:

Sunday, November 10, 2019 8:14 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org Please approve 3333 California

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

Please approve 3333 California. I am a renter who lives within walking distance of the site, and our extreme housing shortage is really squeezing me. Here in San Francisco, we have the most severe housing shortage in the entire country, which means that we need to approve as much housing as possible.

Furthermore, we are in the middle of a climate emergency, as you Supervisors are aware of (and as Supervisor Mandelman himself declared!). Approving more housing, such as this project, is the best way to mitigate climate change because it will allow people to live near their jobs, thus emitting less carbon on their commutes. 41% of California's GHG emissions are due to transportation because we largely ban low carbon lifestyles when we ban apartments!

To quote Greta Thunberg, "I am here to say, our house is on fire... I want you to act as you would in a crisis. I want you to act as if our house is on fire. Because it is."

Supervisors, it is time you started acting like our house is on fire, and that means allowing people to live low-carbon lifestyles. That means approving more housing like 3333 California.

Thank you, Daniel Cohen

Cliff Bargar <cliff.bargar@gmail.com>

Sent:

Sunday, November 10, 2019 7:22 PM

To:

Board of Supervisors, (BOS); Stefani, Catherine (BOS); StefaniStaff, (BOS); Fewer, Sandra (BOS); FewerStaff (BOS); Peskin, Aaron (BOS); PeskinStaff (BOS); Mar, Gordon (BOS); Marstaff (BOS); Brown, Vallie (BOS); BrownStaff; Haney, Matt (BOS); Haneystaff (BOS); Yee, Norman (BOS); YeeStaff, (BOS); Mandelman, Rafael (BOS); MandelmanStaff, [BOS]; Ronen, Hillary; RonenStaff (BOS); Walton, Shamann (BOS); Waltonstaff (BOS); Safai,

Ahsha (BOS); SafaiStaff (BOS)

Cc:

hello@northernneighbors.org In support of 3333 California

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Members of the SF Board of Supervisors,

As a resident of San Francisco I would like to express my support for the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, families, and low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood.

Thank you, Cliff

victoria underwood <victoria.underwood@att.net>

Sent:

Thursday, November 07, 2019 2:14 PM

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 - BOS Meeting 11-12-2019

Attachments:

3333 California - BOS Project Hearing 11-12-2019.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Letter attached. Thank you in advance for your time and consideration.

Victoria Underwood

November 7, 2019

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

Re: Laurel Heights Partners, LLC Developer neighborhood.

Redevelopment Project - 3333 California Street

Hearing Date: 11.12.2019

Dear Supervisors:

The Developer's Project has never been a negotiation. It's never been about bringing much needed housing onto the market, nor has it been about providing much needed Affordable Housing. The Planning Commission and BOS has had the opportunity to push for Affordable Housing in any number of redevelopment projects in the neighborhood that have come before them. At a minimum, they've had the opportunity to approve these projects with the proviso that the Low-Income or Affordable Housing requirement be completed first or failing that, no Certificate of Occupancy will be issued. Instead, in lieu of fees which allows for developers and neighborhoods to renege on meeting that 20 or 25% housing requirement keeps the cycle of not having enough Affordable Housing in the City of San Francisco a reality. The argument that the City will have these buildings or projects built ultimately puts an already vulnerable and economically challenged number of people out in areas the average San Franciscan would never want to live.

Proposition A should help the City with \$150 Million for Public Housing, \$220 Million for Low-Income Housing, \$60 Million for Middle-Income Housing, \$150 Million for Senior Housing, and \$20 Million for Educator Housing but it won't solve developers being able to pay an in-lieu of fee so they don't have to build in in high-end market neighborhoods. It is building Affordable Housing in these areas and exposing them to more service jobs opportunities and higher public education that helps to lift people up to a higher standard of living and opportunity for a better life. In some neighborhoods where for some reason supermarkets aren't allowed at all, perish the thought, it will raise their expectations of what a healthy life can be rather than the hardship of what it is now.

With all this in mind, the idea that the City wouldn't entertain converting the main building at 3333 California Street into needed housing and building two additional buildings on California Street and preserve the rest of the property (including the trees on California Street) and get those up and ready for occupancy in 3-5 years rather than in 13-15 years is beyond comprehension. The original 552 residences seemed to be enough housing units but, the community fully supported the additional housing to bring the number of "must-have" housing units at this site to 755.

The TMG-CPMC California-Sacramento 5-acre, Conversion Project will have 250 at-market rate residential units built in 37 buildings. At the beginning of this year, the highest median sales price for condominiums per unit was \$1.3 Million. We can only imagine how much they will cost when the development has been completed and the units come to market. No Affordable Housing Units were required for that site. Additionally, adequate parking was designed to be provided below grade within the site and no street parking is to be lost.

There are several other additional projects due to start in our immediate neighborhood at approximately the same time as the 3333 California and the CPMC California/Sacramento Street Conversion projects in 2021-2022. These are the additional project we are currently aware of:

2670 Geary Street/Former Copper Penny Restaurant at Masonic and Geary/95-residential units 3641 California Street/between Spruce and Parker/Mixed use residential and Retail/7 condos 3637-3657 Sacramento Street/demo of two bldgs. and a garage/Mixed use residential (18 units) and retail

The building of 1,125 residential units in our neighborhood will be overwhelming. So, it is important that 3333 California Street project, as the largest of the projects at 10.25 acres, be delivered in a thoughtful, balanced and timely manner without burdening the neighborhoods that surround it and, at the same time, preserve as much of the existing historical site as possible.

The neighbor groups who have been rallying to preserve the building and the site have been up against monumental forces. We have been painted and personally attacked during this process as anti-growth and unrealistic but, we stand strong. Fifteen years of redevelopment of this site is needless, burdensome and unjustified.

I personally have written so many letters to respective city departments addressing my concerns about the Developer's Plans. I've gone into great detail about traffic issues that will undoubtedly occur as a result of adding driveways and a crosswalk where there are none now, the removal of slip lanes that help to keep traffic moving through our neighborhoods that will be gone and clog traffic on all six intersections of this site. I've written about the unnecessary destruction of the mature trees on the site and in the sidewalk. The birds that migrate to the site and the bees which will potentially be lost. The impact to the environment is measurable as we face global warming and the threat of higher carbon dioxide into our environment. Greenhouse gases that have been dismissed with in lieu of fees. The introduction of zoning changes after the FEIR was approved, and an inadequate CEQA review, and Conditional Use and Subdivision Map and total disregard to the historical resources of the building and the landscaping. This process has been run like a locomotive running through and over the community without due process and without adhering to the full and complete processes as required. The design changes described in the Community Preservation Alternative were dismissed as not being viable. The design changes are feasible and don't adversely impact the site or the neighborhood to the degree of the Developer's Plans. For all these reasons and more, Appeals have been filed against the Planning Commission's incomplete actions and incomplete processes.

The impact of 15 years of needless construction when we know it's unnecessary and destructive to the site, the environment and the people who live across the street and throughout the neighborhoods that adjoin this 10-acre site certainly warrants that the process be transparent, and made without prejudice..

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:

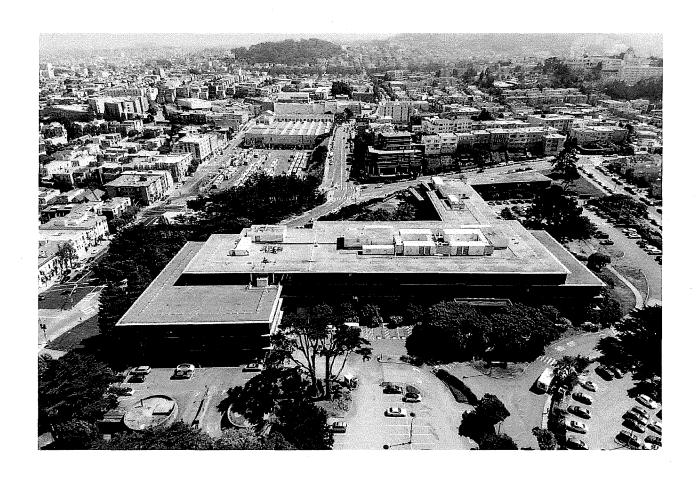
Erica.major@sfgov.org
Aaron.Peskin@sfgov.org
Ahsha.Safai@sfgov.org
Matt.Haney@sfgov.org
Board.of.Supervisors@sfgov.org
Gordon.Mar@sfgov.org
Hillary.Ronen@sfgov.org
Norman.Yee@sfgov.org
Rafael.Mandelman@sfgov.org
Sandra.Fewer@sfgov.org
Vallie.Brown@sfgov.org
Catherine.Stefani@sfgov.org
Shamann.Walton@sfgov.org
laurelheights2016@gmail.com

The first attached photo was taken from the 7th story of a building at Divisadero & Geary. I've similarly taken a photograph from the 7th floor of 3838 California next to the CPMC site on California and, there too, the massive UCSF Campus ascends above the neighborhoods as it sits on Laurel Hill.

The Developer's renderings and photographs of the site show it as sitting low and at grade level with surrounding areas to justify their need for height changes as also shown in The Chronicle's support for the Developer as seen by the second photo attached.

For as big and spread out as the site is now, it's not the skyline albatross it will be if additional floors are to be added to its current height. The trees on the site help obscure some of it now. Even so, its massive. It's the exposed air-conditioning units that have been a massive eye sore.





Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:34 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support for 3333 California (Items 23, 27, 31, 34-36)

From: Nate Keller < keller.nate@gmail.com > Sent: Monday, November 11, 2019 5:05 AM

<catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Fewer, Sandra (BOS)

<sandra.fewer@sfgov.org>; FewerStaff (BOS) <fewerstaff@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>;

PeskinStaff (BOS) <peskinstaff@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Marstaff (BOS)

<marstaff@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; BrownStaff
brownstaff@sfgov.org>; Haney,

Matt (BOS) <matt.haney@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; Yee, Norman (BOS)

<norman.yee@sfgov.org>; YeeStaff, (BOS) <yeestaff@sfgov.org>; Mandelman, Rafael (BOS)

<rafael.mandelman@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary

<hillary.ronen@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Walton, Shamann (BOS)

<shamann.walton@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Safai, Ahsha (BOS)

<ahsha.safai@sfgov.org>; SafaiStaff (BOS) <safaistaff@sfgov.org>

Cc: hello@northernneighbors.org

Subject: Support for 3333 California (Items 23, 27, 31, 34-36)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a member of Northern Neighbors, a District 2 urbanist organization that supports affordable, vibrant, walkable and safe neighborhoods. I am writing to ask for your support for the project at 3333 California. At the hearing on Tuesday, please (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34–36.

The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood.

I have lived in the city for over ten years and watched it become progressively less affordable year after year; short of unlawful attempts at banning people from moving here, more housing is the answer to not only increasingly affordability but also bringing some diversity back.

Thank you for serving in city government. Nate

Nathaniel B. Keller keller.nate@gmail.com

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:34 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Please approve 3333 California

From: Melanie Stein <melanie@marchcapitalfund.com>

Sent: Monday, November 11, 2019 8:52 AM

<catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Fewer, Sandra (BOS)

<sandra.fewer@sfgov.org>; FewerStaff (BOS) <fewerstaff@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>;

PeskinStaff (BOS) <peskinstaff@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Marstaff (BOS)

<marstaff@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; BrownStaff <brownstaff@sfgov.org>; Haney,

Matt (BOS) <matt.haney@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; Yee, Norman (BOS)

<norman.yee@sfgov.org>; YeeStaff, (BOS) <yeestaff@sfgov.org>; Mandelman, Rafael (BOS)

<rafael.mandelman@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary

<hillary.ronen@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Walton, Shamann (BOS)

<shamann.walton@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Safai, Ahsha (BOS)

<ahsha.safai@sfgov.org>; SafaiStaff (BOS) <safaistaff@sfgov.org>

Cc: hello@northernneighbors.org

Subject: Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am a San Francisco resident and I am emailing you to request that you support the project located at 3333 California.

I am writing to ask you to:

- 1. approve the Environmental Impact Report Certification in Item 23
- 2. approve the Conditional Use Authorization in Item 27
- 3. approve the Public Works Tentative Map in Item 31
- 4. approve the related legislation in Items 34-36

It goes without saying that San Francisco cannot afford to NOT approve a project that will add 744 homes to our housing inventory. This project goes along with many of San Francisco's goals: more housing, open green space, low income housing for seniors, and walkability in the city. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood. Please approve this project with all speed.

Sincerely,

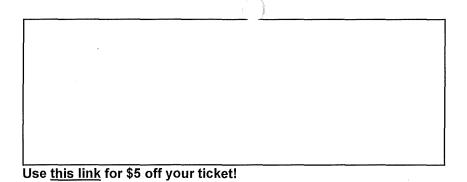
Melanie Stein

Melanie Stein

March Capital Management, LLC 3456 Sacramento Street San Francisco, CA 94118 Phone: 415-412-1659

Fax: 415-874-9893

From: Sent: -	Thursday, November 14, 2019 12:34 PM
To: Subject:	BOS-Supervisors; Major, Erica (BOS) FW: Hearing on appeal of 3333 California project
Attachments:	2019-11-11 3333 California Street Biking Elements.pdf
From: Brian Wiedenmeier <brian Sent: Monday, November 11, 201 To: Board of Supervisors, (BOS) < Subject: Hearing on appeal of 331</brian 	19 10:21 AM board.of.supervisors@sfgov.org>
This message is from outside t	the City email system. Do not open links or attachments from untrusted sources.
Dear President Yee and Superviso	ors,
	upport of the transportation and sustainability elements of the 3333 California the board at your November 12 meeting.
Sincerely,	
Brian	
Brian Wiedenmeier	
Executive Director	
415.431.2453 x 305 <u>brian@sfbike.</u> Pronouns: he, him, his	<u>org</u>
San Francisco Bicycle Coalition Promoting the Bicycle for Everyday 1720 Market St. San Francisco, CA 94102	Transportation
·	







San Francisco Bicycle Coalition 1720 Market Street San Francisco. CA 94102

T 415.431.BIKE

F 415.431.2468

sfbike.org

November 11, 2019

Board of Supervisors City and County of San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Dear President Yee and Supervisors,

On behalf of our over 10,000 members, I write in support of the transportation and sustainability elements of the 3333 California project, currently before the Board of Supervisors as a hearing on the appeal of Final Environmental Impact Report Certification for the project.

The developer Prado Group has allowed us to review the plans for the project, and we appreciate their commitment to ensuring that bicycling is an accessible mode for future residents. The 800+ bicycle parking spaces, a dedicated bicycle rental fleet and bicycle storage and repair facilities will all make bicycling an easy choice for people who will be living here.

Ensuring that shared alternative mobility options are available to shoppers along new commercial space on California street is also an important part of this development. It is essential for both residents and shoppers that bike share stations be available and we're happy to see the project committed to accommodating a bike share station at Laurel and California.

The street-level changes of this project would also bring about benefits to people walking and biking. In particular, new islands at Masonic and euclid would slow traffic down making this dangerous intersection safer for people, especially vulnerable road users such as seniors and children.

Thank you for your consideration and support of development in our city that promotes sustainable and healthy transportation choices for all San Franciscans.

Sincerely,

Brian Wiedenmeier Executive Director

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:33 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support of Project at 3333 California St.

Attachments:

19 1111 BOS Letter of Support.pdf

From: hashagenfive@gmail.com <hashagenfive@gmail.com>

Sent: Monday, November 11, 2019 2:22 PM

To: Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS)

<board.of.supervisors@sfgov.org>

Subject: Support of Project at 3333 California St.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Clerk of the Board, and staff of Supervisor Stefani's office,

Attached is my letter of support for the project at 3333 California St.

With regards,

Carla Hashagen

Carla Hashagen 1713 Broderick St. San Francisco, CA 94115

November 11, 2019

San Francisco Board of Supervisors c/o Office of Clerk of the Board 1 Dr. Carlton B. Goodlett Place City Hall, Room 244 San Francisco, CA 94102-4689

Dear Members of the Board of Supervisors:

I'm writing to express my full support for the Prado Group development proposal at 3333 California St. This project will add a meaningful number of homes to the City's housing stock, when there is such a great need for housing. In addition – it adds these 744 housing units in a neighborhood where the opportunities for infill and new housing in general are limited.

I have lived in the City for over 30 years, and within three blocks of the proposed development for over 20. Not only does this project provide needed housing, but this is an exciting proposal – one that is well thought out, respects the existing street layout, and will return access to this large parcel to the neighborhood and the City. Today, and for as long as I can remember, this 10-acre parcel has been walled off and rarely visited by anyone except those who work there. I walk throughout this neighborhood, yet in the 20 years I've lived nearby, I have only been inside the property walls 2 or 3 times. I'm eager to see this space incorporated into the fabric and grid of the neighborhood.

In 1982, when my husband and I married, we found a nice apartment in the Richmond District that was affordable for two people recently out of college. Two years later, we bought our first home in the Sunset – a purchase that was a challenge to our budget, but ultimately manageable. This year my youngest daughters graduated from college. They are now both living in Utah – where they have found not only good jobs, but housing they can afford – a circumstance they have no hope for in San Francisco, the City they have always lived in, and which they dearly love. We need more housing for people at every phase of life.

The developers have met at length with neighbors and others, and have been responsive to concerns, adapting the development over time. The proposal thoughtfully addresses construction issues, and staging to minimize neighborhood disruption. The City needs this housing, senior housing, and a child-care location. Laurel Village, where I shop regularly, will also benefit from the addition of residents in the neighborhood.

I urge you to support this project.

With kind regards,

Carla Hashagen

Board of Supervisors, (BOS)

Sent: To: Thursday, November 14, 2019 12:33 PM BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: 3333 California St Project

From: Philip Fernandez <philfdz@gmail.com> Sent: Monday, November 11, 2019 3:30 PM

Subject: 3333 California St Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisors:

San Francisco needs more housing for all. As a San Francisco tax payer since 1973, I've seen the evolution of this housing crisis. The only solution is to facilitate building more units. This proposed project provides 744 new housing units of mostly 2 to 4-bedroom homes that comprise 15% of the Board of Supervisor's annual goal of 5,000 new housing units for San Francisco. The effort of the community - over 160 public meetings - and feedback of the district Supervisor added 186 affordable housing units for low-income seniors; or 25% of the project. This project is a great solution to meet the city's 20 year housing goal.

I urge your support of 3333 California St proposal to allow more families and more seniors accessible housing.

Sincerely, Philip Fernandez

From:	Board of Supervisors, (BOS)
Sent:	Thursday, November 14, 2019 12:33 PM
То:	BOS-Supervisors; Major, Erica (BOS)
Subject:	FW: Walk SF's support of 3333 California St development
Attachments:	Walk SF Support Letter - 3333 California Stpdf
From: Jodie Medeiros <j Sent: Monday, Novembo</j 	er 11, 2019 4:20 PM
Cc: Kaitlin Roth < kroth@	s, (BOS) <box> s, (BOS) <box> spradogroup.com com ort of 3333 California St development</box></box>
This message is from	outside the City email system. Do not open links or attachments from untrusted sources.
Dear Board President Ye I want to register Walk S Attached is our letter. Thank you, ~jodie	ee, Fs support for the Prado Group project @ 3333 California Street.
Jodie Medeiros Executive Director 333 Hayes St, Suite 202 415.596.1580 (cell) walks	, San Francisco, CA 94102 of.org
Join us at <u>World Day c</u>	of Remembrance for Traffic Victims on Sunday, November 17.



November 5, 2019

Board President Norman Yee San Francisco Board of Supervisors 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

Re: Support for the project at 3333 California Support Letter

Dear Board President Yee,

On behalf of Walk San Francisco, I am writing to register our support for the proposed development located at 3333 California Street in San Francisco.

Walk San Francisco is the city's only pedestrian advocacy organization. Our mission is to make San Francisco the most pedestrian-friendly city in the nation. Walk San Francisco has reviewed the proposed project with the Prado team to assess the existing conditions for pedestrians at the proposed project site. After reviewing the plans, providing feedback and proposing changes to the design, we feel like the Prado Group is making a valuable contribution to the neighborhood.

Thankfully, this development is not directly located on the city's high-injury network of streets, the 13% of streets where 75% of the traffic crashes occur. With this amount of housing and retail comes a great deal of pedestrian foot-traffic, we want to be sure nearby streets - California, Masonic and Euclid - are all designed with pedestrians in mind. Prado Group proactively reached out to Walk San Francisco to review the project for the pedestrian-realm amenities provided. We shared our thoughts around the need for safe streets as well as safe sidewalks.

Prado has been working with SFMTA on proposed changes to the surrounding streets that will slow cars on Masonic by adding turn-pockets. They've built in three passenger-loading and rideshare access zones on the property - Masonic, Euclid and Laurel Streets – and all won't interfere with the 1-California bus. We inquired about adding a raised crosswalk at Walnut Street at the driveway entrance to the residential units which will give the pedestrians the priority over the entering/exiting vehicles. Walk SF will consult with SFMTA on this design, while the developer seems amenable to this change.

The project team has taken a good look at what will make this parcel pedestrian-friendly. Beyond the added pedestrian walkways within the property, they have set back Plaza A on California Street by 15-feet to allow larger sidewalks. Walk SF wants to see more wide sidewalks on commercial corridors to allow for ample space for foot traffic, as well as strollers, wheelchairs, and bike parking, that won't block the path of travel. In addition, Prado has bike parking in the project which will also serve for parking alternative mobility devices (e-scooters, e-bikes, etc), which will be out of the pedestrian path of travel.

In this transit rich neighborhood (the project is located directly on the 1-California bus line and only two blocks from the 38-Geary bus, which will soon be a bus-rapid-transit line) Walk SF would have liked to have seen a project with a proposed 0.5 parking ratio, vs 1:1 parking for the residential units. They have planned for rideshare service loading zones, and still providing parking for every unit to own a vehicle. This seems counter-intuitive.

Overall, the Prado team has taken a thoughtful approach with this project. We support what we have seen so far and look forward to continue working with the 3333 California team on the project.

Sincerely,

Jodie Medeiros Executive Director

cc:

San Francisco Board of Supervisors:

D1: Sandra Fewer

D2: Catherine Stefani

D3: Aaron Peskin

D4: Gordon Mar

D5: Vallie Brown

D6: Matt Haney

D8: Rafael Mandelman

D9: Hilary Ronen

D10: Shamann Walton

D11: Ahsha Safai

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:33 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: 3333 California St

From: John Hermansen < jkhermansen@gmail.com>

Sent: Monday, November 11, 2019 4:44 PM

<catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>

Subject: 3333 California St

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am writing to express my support for the project at 3333 California St. I'm asking that at tomorrow's hearing, you please approve the necessary items to move the project forward. As a Pacific Heights resident of close to 10 years, I've been consistently disappointed by The City's inability to build housing and infrastructure to support the demands of a growing workforce and population. This project has the potential to add a significant number of housing units, including housing for low-income seniors. Additionally, the open green space and retail properties would be a welcome addition to the neighborhood, and an improvement over the current abandoned office park at that location.

Thank you, John Hermansen 2848 California St

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:32 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Please approve 3333 California

From: Laura Rooklin < laura.rooklin@gmail.com> Sent: Monday, November 11, 2019 5:58 PM

<catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Fewer, Sandra (BOS)

<sandra.fewer@sfgov.org>; FewerStaff (BOS) <fewerstaff@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>;

<marstaff@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; BrownStaff <brownstaff@sfgov.org>; Haney,

Matt (BOS) <matt.haney@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; Yee, Norman (BOS)

<norman.yee@sfgov.org>; YeeStaff, (BOS) <yeestaff@sfgov.org>; Mandelman, Rafael (BOS)

<rafael.mandelman@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary

<hillary.ronen@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Walton, Shamann (BOS)

<shamann.walton@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Safai, Ahsha (BOS)

<ahsha.safai@sfgov.org>; SafaiStaff (BOS) <safaistaff@sfgov.org>

Cc: hello@northernneighbors.org

Subject: Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a resident of San Francisco and I support the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood. Please approve this project with all speed.

Sincerely, Laura Rooklin

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:32 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Stop the rubber stamping of 3333 California development plan

From: Rosemary King <rosemarydeeking@gmail.com>

Sent: Monday, November 11, 2019 7:19 PM

To: Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of

Supervisors, (BOS) <box>

Supervisors@sfgov.org>

Subject: Stop the rubber stamping of 3333 California development plan

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

11/11/19

Dear San Francisco Supervisors:

I am writing to vociferously urge you to intervene with the rubber stamped approval process for the planned development listed as 3333 California Street.

I live in Inner Richmond, but spend much time in Laurel Heights caring for my granddaughter living in an apartment near Euclid and Laurel streets. The current UCSF campus is a low rise complex with some distinct large green space areas, and many mature trees, including some towering awe inspiring trees. Some of the green areas have been accessible to local residents for children and dog use, making it a community resource.

Concerns:

- The "democratic" process for approving the developers plans has felt like a sham; the developers clearly are given priority in presenting their viewpoint, having the ear of the city employees and elected officials, and being given more weight in their proposal compared to people who actually live in the area; the planning board simply dismissed the neighborhood counter proposal for the development
- The neighborhood is primarily homes and low rise apartments; building height is important for the feeling of a neighborhood, making it feel like a place you want to live and know your neighbors; limiting the development may make it harder for the developer to reap large profits, but will maintain the area as a more liveable and a viable community
- Trees!!! The developer plans to remove all but 11 of the current 180+ trees on the property. Why? Because it is a convenient building technique for lowering building costs. Their replacement trees will be small specimens planted over 10-15 years, taking another 10 years to reach maturity; that's 20 years of needless loss of the beauty, air-cleaning, heat reducing value of the current trees; ALSO every tree is designated by the SF DPW as a significant tree. I believe that means each of the trees cannot be cut down without clear justification and community input; neighborhood residents want as many of the trees to remain; why do their voices not count?
- The building plan is for 15 years! Imagine hammering, drills, dust, trucks in your neighborhood for that length of time. SF should only approve a project that can be completed in 5 years or less; later development approvals can then be requested if needed

• More retail? Why is that needed when there is a large adjacent strip of stores (including at least 1 empty property) that offers all standard neighborhood requirements including 2 grocers, a bank, hardware store, pharmacy, and restaurants; the developers must believe retail is more lucrative — but there is no need justification; in particular, late night businesses such as bars are not needed in a residential neighborhood

Prove you care about democracy and the actual residents of San Francisco by stopping the planned development. Require more community say in the final plans including maintaining as many trees as possible.

Thanks, Rosemary King 27 Cabrillo Street, Apt A San Francisco, CA 94118 314-223-6453

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:31 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Please approve 3333 California

----Original Message----

From: Brittany Shoot <bearinmind@brittanyshoot.com>

Sent: Tuesday, November 12, 2019 12:53 PM

Cc: Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Peskin, Aaron

(BOS) <aaron.peskin@sfgov.org>; PeskinStaff (BOS) <peskinstaff@sfgov.org>

Subject: Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a longtime resident of San Francisco, and I am writing to offer my unwavering support for the project at 3333 California and to urge you to approve this vital project.

Specifically, I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36.

The project will build much needed housing for people who want to (continue to) live in our city and our neighborhoods. The 744 homes will house working people, families, and low-income seniors. The 186 homes for low-income seniors are especially important given that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in San Francisco. My neighbors and loved ones in Districts 2 and 3 have been vulnerable to these issues, and I continue to be heartbroken at how many longtime members of our community, including some of my closest friends and chosen family members, have been forced to leave due to a lack of affordable housing.

I am also excited that the 3333 California project will provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. I am also enthusiastic for an enclosed, hostile office park to be transformed into a lively, welcoming space that enriches the neighborhood. If these plans are approved, I would eagerly and intentionally spend more time in this area, which is extremely convenient to reach by bus from my home.

Please approve this project with without any further hesitation. Thank you for your time spent reading my letter, and for your work to speed this project through approvals and to completion.

Brittany Shoot

D3 resident

From:

Board of Supervisors, (BOS)

Sent:

Thursday, November 14, 2019 12:25 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Comments on 3333 California Development

Importance:

High

----Original Message----

From: Mark Bernstein < mark.bernstein@me.com>

Sent: Tuesday, November 12, 2019 2:56 PM

Cc: Tanya Bernstein <tkaminsky@gmail.com>

Subject: Comments on 3333 California Development

Importance: High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

My name is Mark Bernstein, and my wife, Tanya and I, with our 3 children (ages 7, 5 and 2) live directly across the street from 3333 California St. We have lived collectively in San Francisco for approximately 38 years. We had hoped to attend your meeting today, but 2 of our children are ill and we cannot be there in person.

While we all want better public transportation, more affordable housing and more services in San Francisco, I would be dishonest if I said that I dreamed of having all that across the street from my home in a major development. Most of us, if we are honest, have a lot of NIMBY in us. As 3333 California is built, we will miss the trees, the existing open space, the community parking and our current way of life of the neighborhood a lot! But we know that change will occur and the land at 3333 California will change.

We therefore write today with two objectives.

One we would like to express our unconditional support for the developers of 3333 California. The Prado Group in particular has, in our opinion, been very thoughtful in their planning and sensitive to all the needs and demands of the neighborhood (as well as the City). We believe that this type of smart, well balanced leadership is what is needed for the development to prosper and be built appropriately for the property. The developers have met tirelessly with neighbors, provided plans, modified plans, etc. all to be considerate for the communiy's needs. We think they should be applauded and supported for this performance.

Please note, that some of our neighbors, particularly in Laurel Heights, advocate solely for their own narrow interest. They would propose a project that puts all the development (and burden) on the more numerous neighbors who live on California Street. In our point of view, and to the detriment of the development, they have successfully advocated for less public space, less festive retail and less of a new urban addition to the neighborhood. We are sorry that the developer tried to accommodate them with such changes. But we urge you not to be swayed further by their self

interested alternative proposals. Their point of view is not shared by all in the neighborhood, and in our opinion it is not in the interest of this great neighborhood. We are certain that the current developer will do a much better job balancing the needs and protecting a wide swath of interests.

Secondly, we would ask that you consider, as you establish the development plans, that your decisions will radically affect our neighborhood and existing residents....This is not a theoretical urban planning exercise of the planning commission. Know that when you reduce parking spaces that means that elderly grandparents, neighbors, nannies, etc. will not find parking and will not be able to visit or work in our neighborhood as they can today. Know that permittting traffic and parking disruptions for an extended time will radically impact neighbors, etc. As you make decisions we hope you will consider the real consequences and not just the theoretical benefits.

We trust you will keep us in mind as you build a better city.

Thanks for your time and consideration. If you have any questions, please don't hesitate to contact us.

Sincerely,

Mark and Tanya Bernstein

3318 California St., #4 San Francisco, CA 94118 415-305-9551 **From:** Board of Supervisors, (BOS)

Sent: Thursday, November 14, 2019 12:24 PM

To: Major, Erica (BOS)

Subject: FW: Please approve 3333 California

From: Molly Alarcon <mollyalarcon@gmail.com> Sent: Tuesday, November 12, 2019 4:20 PM

<catherine.stefani@sfgov.org>; StefaniStaff, (BOS) <stefanistaff@sfgov.org>; Fewer, Sandra (BOS)

<sandra.fewer@sfgov.org>; FewerStaff (BOS) <fewerstaff@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>;

<marstaff@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; BrownStaff <brownstaff@sfgov.org>; Haney,

Matt (BOS) <matt.haney@sfgov.org>; Haneystaff (BOS) <haneystaff@sfgov.org>; Yee, Norman (BOS)

<norman.yee@sfgov.org>; YeeStaff, (BOS) <yeestaff@sfgov.org>; Mandelman, Rafael (BOS)

<rafael.mandelman@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Ronen, Hillary

<hillary.ronen@sfgov.org>; RonenStaff (BOS) <ronenstaff@sfgov.org>; Walton, Shamann (BOS)

<shamann.walton@sfgov.org>; Waltonstaff (BOS) <waltonstaff@sfgov.org>; Safai, Ahsha (BOS)

<ahsha.safai@sfgov.org>; SafaiStaff (BOS) <safaistaff@sfgov.org>

Cc: hello@northernneighbors.org

Subject: Please approve 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

I am a resident of D2 in San Francisco and I support the project at 3333 California. I am writing to ask you to (1) approve the Environmental Impact Report Certification in Item 23, (2) approve the Conditional Use Authorization in Item 27, (3) approve the Public Works Tentative Map in Item 31, and (4) approve the related legislation in Items 34-36. The project will build much needed housing for people who want to live in our city and our neighborhoods. The 744 homes will house working people, for families, and for low-income seniors. The 186 homes for low-income seniors are especially important, considering that District 2 has built no subsidized low-income housing in the past 10 years, and seniors on fixed incomes are especially vulnerable to displacement and losing their social ties in the city.

The project will also provide open green space, daycare facilities, and shopping experiences to liven up the neighborhood. The foot traffic from people who live in and work at the project will support the surrounding businesses, including the JCC across the street and the shops at Laurel Village. An enclosed, hostile office park will be transformed into a lively, welcoming space that enriches the neighborhood.

Please approve this project with all speed.

Also, I am hearing a lot of the public commenters lament the fact that some mature trees will be cut down. I love trees as much as the next gal, but this does not bother me. Having dense, walkable housing built in transit-rich areas is much more important to reaching our climate goals than avoiding a gap in tree coverage while we wait for the many replacement trees the developer will plant to grow. Let's approve this great project! No project is perfect, but we need this housing ASAP.

Thank you, Molly From:

Mary Tesluk <marytesluk@gmail.com>

Sent:

Tuesday, November 12, 2019 11:30 AM

To:

Stefani, Catherine (BOS); Yee, Norman (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Walton,

Shamann (BOS); Peskin, Aaron (BOS); MandelmanStaff, [BOS]; Haney, Matt (BOS); Mar,

Gordon (BOS); Brown, Vallie (BOS); Fewer, Sandra (BOS); Major, Erica (BOS)

Subject:

Tree Removal of 333 California - a plea to save them

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Ms. Stefani and the Board of Supervisors,

I am writing to ask that you reconsider the removal of the 190 trees at 3333 California, which are tagged to be removed by the Prado Group's project at this site.

I live in the neighborhood, on Spruce Street, and am very concerned about the process by which this enormous number of species is to be destroyed. Being familiar with real estate development, I understand that the permit to remove these trees can be separated out from the project's other permits. By bundling it, an unusual tactic on the developer's part, they are in effect, sneaking it through.

Shouldn't a more thoughtful, separate process be considered, given the high number of trees being affected? Can you consider separating the Ordinance for Major Encroachment Permit Record # 2015-014028CUA/PCA/MAP/DUA from the other permit/development requests?

Historically, these trees are important, as some tie to the site's earlier use as the Laurel Hill Cemetery, and are mid-life, healthy, mature trees.

Environmentally, this enormous quantity of trees helps contribute to the cleaner air and greener environment that will not be replaced in equal scale or number by the Prado Group's plans.

And, lastly, is this really the right time to approve such a large-scale decimation of these beautiful, healthy trees, when so much of our city and culture is consumed with such disregard for our city's beauty and natural resources? Simply put, is this absolutely necessary?

I am a designer and every day I face questions from clients to make changes to my work to accommodate different objectives and priorities - it's what we do. Can not this development be redirected to include the tress in their plan, as a way to preserve, beautiful perfectly healthy living things, and maintain some sense of sustainability in their design plans?

I can not attend today's hearing but hope you will take a moment to thoughtfully reconsider this action, and ask yourself, what is the right thing to do? It may not be the easiest thing, but I firmly believe it is the right thing.

Thanks for your time and consideration.

Mary Tesluk

0000000000000000

1 SPRUCE STREET SAN FRANCISCO, CA 94118 415 420 5714



Laurel Heights Improvement Association of San Francisco. Inc.

BY E-MAIL

November 12, 2019

San Francisco Board of Supervisors 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 and File No. 190845 - Proposed Development Agreement

File No. 190947 - Proposed Ordinance for Major Encroachment Permit

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please place the attached letter in the official Board of Supervisors files for each of the captioned matters. This letter was previously submitted to the Land Use and Transportation Committee.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathuya Germeenzi



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 21, 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 and File No. 190845 - Proposed Development Agreement

File No. 190947 - Proposed Ordinance for Major Encroachment Permit

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

Please consider the following further amendments to the captioned matters and relevant information.

Amendment to Development Agreement

As to provision 11.1 of the proposed Development Agreement, the Committee should recommend deletion of the **Planning Director's discretion** to determine "whether a proposed change constitutes a Material Change," and substitution of terms similar to those used in the Pier 70 development agreement:

This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56 [of the San Francisco Administrative Code.]

The Pier 70, 5M and Trinity Plaza development agreements do not grant such discretion to the Planning Director. (Ex. B, Pier 70, 5M and Trinity Plaza development agreement excerpts)

The proposed terms of the development agreement that would grant such discretion to the Director are unreasonable and fail to specify that the determination must be made under the definition of "Material Change" in the agreement. (Ex. A, excerpts from 3333 California

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 2

Development Agreement).

Amendment to Special Use District

Second, provision (c)(7) of the Special Use District should be changed to allow discretionary review for Material Changes to the project, but it proposes to omit them for "projects within the SUD." It would be unreasonable to grant less rights to residents near this project than residents of other areas would have. The Committee should recommend the following amendment:

(7) Discretionary Review: No requests for discretionary review shall be accepted or heard for projects within the SUD, except that any proposed Material Change, as defined in section 1.62 of the Development Agreement, shall be subject to rights of discretionary review and Planning Code section 311 notice within the SUD. (New language italicized)

Amendment to Development Agreement

Supervisor Stefani has introduced an SUD amendment in BOS File No. 191002 (p. 3) that would allow the Lucky Penny developer to pay the full in lieu fee under Planning Code section 415.5 instead of build 23% affordable housing as was specified in his SUD. (Ex. C, p. 3) The Lucky Penny developer told me he cannot afford to build the affordable housing. Given these circumstances, the existence of the 2 other options in the 3333 agreement indicates that the possibility of building 25% affordable housing is being raised as a red herring to draw attention away from undesirable aspects of the project.

Thus, the committee should recommend that the development agreement be changed to make the developer pay the full in lieu fee required by Planning Code section 415.5 to the City if the developer does not build the affordable housing and omit the option of granting the Walnut Land to the City or paying the City the value of the Walnut Land.

Developer's Disclosure Report

The Disclosure Report for Developers of Major City Projects filed by Laurel Heights Partners LLC on October 4, 2019, discloses \$118,450 donated to SPUR, \$23,350 to SFHAC, \$6,032.19 to YIMBY Action and others. (Ex. D)

Major Encroachment Permit

There is no need to widen the sidewalk along California Street because it is now 19 feet wide or remove the 15 mature street trees that run along it. The Better Streets Plan only recommends sidewalks to be between 12 and 15 feet wide. (Ex. E) Older trees sequester more

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 3

carbon emissions than younger trees. (Ex. F)

Conclusion

The Committee should recommend the amendments set forth herein.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathuju R. Devicenzi

Attachments: A through F

EXHIBIT A

File No. 190845 Received via email 10/17/19

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

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 <u>Section 5.8.4</u>.
 - 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.

- 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

EXHIBIT B

RECORDING REQUESTED BY 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 under Government Code § 27383.

Recorder's Stamp

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY
RELATING TO DEVELOPMENT OF CITY LAND
UNDER THE JURISDICTION OF
THE PORT COMMISSION OF SAN FRANCISCO

[Insert Reference Date]

(c) <u>City's Rights and Obligations.</u>

- (i) The City's obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.
- (ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to a Mortgage.
- (iii) No breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by a Mortgage will defeat or otherwise impair the Parties' rights or obligations under this Development Agreement.
- (d) <u>Successor by Foreclosure</u>. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower's rights and obligations.

10.4. Requests for Notice.

- (a) <u>Lender Request</u>. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender's behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender's address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.
- (b) <u>City Request</u>. This provision is the City's request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Mortgage be delivered to City at the address shown on the cover page of this Development Agreement.
- 10.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights at the FC Project Area and to the extent of any Interested Person's rights, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons. More specifically, this Development Agreement has no unspecified third-party beneficiaries.

11. AMENDMENT OR TERMINATION

- 11.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the FC Project Area to which the rights and obligations were assigned without affecting other portions of the FC Project Area or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the approval of any City Agency that would be affected by the amendment.
- 11.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56; or (b) by termination of the DDA as provided by Section 2.2 (DA Term).

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M PROJECT, LLC

10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by 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 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided 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, 5.6.4, 7.4.3, 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 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).

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. 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;

190-09

ORDINANCE NO.

FILE NO. 090829

[Trinity Plaza Development Agreement Amendment; Property at 1167 Market Street, 670-693 Stevenson Street, and 1164 Mission Street]

Ordinance amending a development agreement between the City and County of San Francisco and 1169 Market Street, L.P. for certain real property located at 1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052), 1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former Jessie Street between 7th and 8th Streets, altogether consisting of approximately 177,295 square feet (4.07 acres) and commonly known as Trinity Plaza, entered into on June 15, 2007, pursuant to Ordinance No. 92-07 adopted by the Board of Supervisors on April 17, 2007 (File No. 061217), to add 5 years to the term, to permit the construction of the entirety of a parking garage, to amend the definition of Existing Tenants, to identify the BMR Units for Building A, to modify the location and selection process for the Replacement Units, and to permit a Project-wide art component for the Project; and adopting environmental, General Plan and Planning Code Section 101.1(b) findings.

Note:

Additions are <u>single-underline italics Times New Roman</u>; deletions are <u>strikethrough italics Times New Roman</u>. Board amendment additions are <u>double underlined</u>. Board amendment deletions are <u>strikethrough normal</u>.

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

Section 1. <u>Findings</u>. The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction or the city, county, or city and county.

Planning Department BOARD OF SUPERVISORS

Page 1 6/10/2009 n:19nanctas200910500319100561797 doc 9.3 Review Procedure. In conducting the required initial and annual reviews of the Developer's compliance with this Agreement, the Director shall follow the process set forth in Section 56.17 of the Administrative Code as of the Effective Date.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 10.1 <u>Amendment or Termination</u>. Except as provided in Section 2.5 (Changes in State and Federal Rules and Regulations) or Section 12.5 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56 of the Administrative Code as of the Effective Date.
- 10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Subsequent Approval, or the approval of a Subsequent Approval, shall require an amendment to this Agreement. Upon 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 Subsequent Approval). Notwithstanding the foregoing, the in event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Basic Approval or Subsequent Approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 10.1 above.

10.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

- 10.2.1 If any litigation affecting the Project Site is filed challenging this Agreement, the Basic Approvals or any Subsequent Approvals (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement, any Basic Approvals, or any Subject Approvals are suspended pending the outcome of an electoral vote on a referendum, the Term shall be extended pursuant to the provisions of this Section 10.2
- 10.2.2 In the event of changed conditions, changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, or other circumstances beyond the control of the Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the Project or any portion thereof or with the ability of Developer to perform its obligations or to perform overall under this Agreement ("Excusable Delay"), the Parties agree to: (i) extend the time periods for performance of Developer's obligations; and (ii) extend the term of this Agreement. In the event that an Excusable Delay occurs, the Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of the Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay. Developer shall have first notified City of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) Developer cannot, through commercially reasonable and diligent efforts, make up for the delay within the time period remaining prior to the applicable completion date. Notwithstanding anything to the contrary in this Section, (A) the lack of credit or financing shall not be considered to be a matter beyond Developer's control and therefore no lack of such financing shall be deemed an Excusable Delay, and (B) in no event shall an Excusable Delay last for more than twenty-four (24) months.

EXHIBIT C

1	[Planning Code - Geary-Masonic Special Use District]	
2		
3	Ordinance am	ending the Planning Code to modify the Geary-Masonic Special Use
4	District regarding minimum parking requirements, ground floor celling heights, and to	
5	allow payment of an inclusionary housing fee; affirming the Planning Department's	
6	determination under the California Environmental Quality Act; making findings of	
7	consistency w	ith the General Plan, and the eight priority policies of Planning Code,
8	Section 101.1; and adopting findings of public convenience, necessity, and welfare	
9	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 double-underlined Arial font. Board amendment deletions are in strikethrough Arial font. Asterisks (* * * *) indicate the omission of unchanged Code
13		subsections or parts of tables.
14		
15	Be it orda	ained by the People of the City and County of San Francisco:
16		
17 -	Section 1.	
18	(a) The Planning Department has determined that the actions contemplated in this	
19	ordinance comply with the California Environmental Quality Act (California Public Resources	
20	Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of	
21	Supervisors in File No and is incorporated herein by reference. The Board affirms	
22	this determination.	
23	(b) On _	, the Planning Commission, in Resolution No, adopted
24	findings that the	actions contemplated in this ordinance are consistent, on balance, with the
25	City's General Plan and eight priority policies of Planning Code Section 101.1. The Board	

Supervisor Stefani BOARD OF SUPERVISORS

1	adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the		
2	Board of Supervisors in File No, and is incorporated herein by reference.		
3	(c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will		
4	serve the public necessity, convenience, and welfare for the reasons set forth in Planning		
5	Commission Resolution No, and the Board incorporates such reasons herein by		
6	reference. A copy of Planning Commission Resolution No is on file with the Clerk o		
7.	the Board of Supervisors in File No		
8			
9	Section 2. The Planning Code is hereby amended by revising Section 249.20, to read		
10	as 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 floo		
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 of Assessor's Block 1071, Lot 003		
20	as designated on Sectional Map SU03 of the Zoning Maps of the City and County of 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	(1) Use Size. Non-residential uses 3000 square feet and above shall require a
2	conditional use under Section 121.2. Uses more than 6000 square feet in size are not
3	permitted.
4	(2) Accessory Vehicle Parking. No minimum off-street parking shall be required for
5	any use in this Special Use District. No parking shall be permitted above .5 cars for each
6	Dwelling Unit.
7	(3) Car-sharing. Notwithstanding the provisions of section 166, no less than
8	25% of parking spaces provided shall be an off-street car-share parking space and shall be
9	provided on the building site. Except as expressly provided herein, all other provisions of
10	section 166 shall apply.
11	(4) Parking and Loading Access. Parking and Loading access from Masonic
12	Avenue is not permitted.
13	(5) Dwelling Unit Mix. The project shall provide a minimum dwelling unit mix of
14	(A) at least 40% two and three bedroom units, including at least 10% three bedroom units; or
15	(B) any unit mix which includes some three bedroom or larger units such that 50% of all
16	bedrooms within the project are provided in units with more than one bedroom.
17	(6) Ground Floor Non-Residential Height. Notwithstanding Section 145.1(c)(4), non-
18	residential uses on the ground floor shall have a minimum floor-to-floor height of 12 feet, measured
19	from the ground floor slab.
20	(d) Inclusionary Housing. In order to allow for the increased residential densities provided
21	by this Special Use District, on-site inclusionary units pursuant to Planning Code Section 415.6 shall
22	be required and required in the following amounts and income levels. Compliance with Section 415 et
23	seq. shall be by payment of the affordable housing fee, or provision of on-site units, as follows:
24	(1) Affordable Housing Fee. Payment of the Affordable Housing Fee pursuant to
25	Section 415.5 and subject to the following provisions:

1	(A) For a project providing Owned Units, the applicable percentage shall be
2	33% of the Gross Floor Area of residential use.
3	(B) For a project providing Rental Units, the applicable percentage shall be
4	30% of the Gross Floor Area of residential use.
5	(2) On-Site Inclusionary Units. On-site Units pursuant to Section 415.6 in the following
6	amounts and income levels:
7	(1)(A) In a rental project, at least 10% of units must be affordable to very
8	low-income households, at least 4% must be affordable to low-income households, at least
9	4% must be affordable to moderate-income households and at least 5% must be affordable to
10	middle-income households. For purposes of this section, rental units for very low-income
11	households shall have an affordable rent set at 55% of Area Median Income or less, with
12	households earning up to 65% of Area Median Income eligible to apply for very low-income
13	units. For purposes of this section, rental units for low-income households shall have an
14	affordable rent set at 80% of Area Median Income or less, with households earning up from
15	65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of
16	this section, rental units for moderate-income households shall have an affordable rent set at
17	110% of Area Median Income or less, with households earning from 90% to 120% of Area
18	Median Income eligible to apply for moderate-income units. For purposes of this section,
19	rental units for middle-income households shall have an affordable rent set at 120% of Area
20	Median Income or less, with households earning from 120% to 140% of Area Median Income
21	eligible to apply for middle-income units. For any affordable units with rental rates set at 110%
22	of Area Median Income or above, the units shall have a minimum occupancy of two persons.
23	(2)(B) In an ownership project, at least 11% of units must be affordable to
24	very low-income households, at least 5% must be affordable to low-income households, at
25	least 5% must be affordable to moderate income households and at least 5% must be

affordable 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 3. 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 4. 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

1	Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2	additions, and Board amendment deletions in accordance with the "Note" that appears under
3	the official title of the ordinance.
4	
5	APPROVED AS TO FORM:
6	DENNIS J. HERRERA, City Attorney
7	Ву:
8	Audrey Williams Pearson Deputy City Attorney
9	n:\legana\as2019\2000039\01396521.docx
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EXHIBIT D



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102 Phone: 415.252.3100 . Fax: 415.252.3112 ethics.commission@sfgov.org.www.sfethics.org

Received on:

10-04-2019 | 09:33:49 PDT

Disclosure Report for Developers of Major City Projects

SFEC Form 3500 (S.F. Campaign and Governmental Conduct Code § 3.500 et seq.) A Public Document

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
REPORT NUMBER	PERIOD COVERED
First Report	1 year prior to EEA to present (First Report)

2. DEVELOPER INFORMATION NAME OF DEVELOPER Laurel Heights Partners LLC		
BUSINESS ADDRESS c/o PSKS 150 Post Street, Suite 320 San Francisco, CA 94108		
BUSINESS TELEPHONE	BUSINESS EMAIL ADDRESS	
415-395-0880	1congdon@pradogroup.com	
NAME OF PERSON COMPLETING THIS REPORT Lisa Congdon	TELEPHONE NUMBER OF PERSON COMPLETING THIS REPORT 415-395-0880	

3. MAJOR PROJECT INFORMATION PLANNING DEPARTMENT CASE NUMBER		
2015-014928ENV	•	
DESCRIPTION OF PROJECT:		
Construction of 15 buildings comprised of 744 units, 34,496 SF retail and 14,665 SF childcare		
DATE OF ENVIRONMENTAL EVALUATION APPLICATION	DATE EIR CERTIFIED OR FINAL ENVIRONMENTAL DETERMINATION ADOPTED	
3/29/2016	09/05/2019	

4	DONATIONS TO NONPROFIT ORGANIZATIONS		
	ter the information below for each nonprofit organization (including charities, social welfare organizations, trade associations, etc.): (1)		
to which the developer and/or its affiliates have made donations during the reporting period which, when considered with all other donations to the nonprofit since one year prior to the filing of the major project's EEA, cumulatively total \$5,000 or more; and (2) which			
	has had one or more contacts with a City officer, or has provided public comment at any hearing before any City board or commission, in		
	der to influence the City officer with regard to the developer's major project. Attach supplemental sheets if more space is needed.		
	Check the box if donations were disclosed on any prior report filed with respect to the project listed on this report.		
TOTAL DONATIONS TO NONPROFITS DURING THE REPORTING PERIOD			
٠	337632.19		
\ \ \			

ITEMIZED NONPROFIT DONATION RECIPIENTS DURING THE REPORTING PERIOD		
NAME OF NONPROFIT		
SPUR		
BUSINESS ADDRESS OF NONPROFIT		
654 Mission Street SF, CA 94105		
WEBSITE OF NONPROFIT		
www.spur.org	<u></u> - *-	
EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
info@spur.org	415-781-8726	
AMOUNT OF DONATION	DATE OF DONATION	
\$ 118450		
NAME OF NONPROFIT		
JCCSF		
BUSINESS ADDRESS OF NONPROFIT		
3200 California Street SF, CA 94118		
WEBSITE OF NONPROFIT		
www.jccsf.org		
EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
	415-292-1200	
AMOUNT OF DONATION	DATE OF DONATION	
\$ ¹⁸³⁶⁰⁰		
	NAME OF NONPROFIT SPUR BUSINESS ADDRESS OF NONPROFIT 654 Mission Street SF, CA 94105 WEBSITE OF NONPROFIT www.spur.org EMAIL ADDRESS OF NONPROFIT info@spur.org AMOUNT OF DONATION \$ 118450 NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118 WEBSITE OF NONPROFIT www.jccsf.org EMAIL ADDRESS OF NONPROFIT AMOUNT OF DONATION	

	NAME OF NONPROFIT		
	Mercy Housing		
	BUSINESS ADDRESS OF NONPROFIT		
	1256 Market Street SF, CA 94102		
	WEBSITE OF NONPROFIT		
3	wwww.mercyhousing.org		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
		415-355-7100	
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 6200 \$		
	NAME OF NONPROFIT		
	SFHAC		
	BUSINESS ADDRESS OF NONPROFIT		
	95 Brady Street SF, CA 94103		
	WEBSITE OF NONPROFIT		
4	www.sfhac.org		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
	todd@sfhac.org	415-541-9001	
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 23350		
	NAME OF NONPROFIT		
	YIMBY Acgtion		
	BUSINESS ADDRESS OF NONPROFIT		
	661 Natoma Street SF, CA 94103		
	WEBSITE OF NONPROFIT		
5	www.yimbyaction.com		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
	hello@yimbyaction.org		
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 6032.19		
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED		
	Attach additional sheets to this statement to disclose additional nonprofit donations.		
	and the state of t		
l			

5. AFFILIATES DONATING TO NONPROFIT ORGANIZATIONS
Enter the information below for each affiliate of the developer which made a donation that was reported in Part 4. An "affiliate" is any
individual or entity that directly or indirectly controls, is controlled by or is under common control with, the developer. In this regard, the
term "control" means the power to direct the affairs or management of another entity, whether by contract, operation of law or
otherwise. Attach supplemental sheets if more space is needed.
TOTAL NUMBER OF AFFILIATES DURING THE REPORTING PERIOD
3

#	ITEMIZED AFFILIATES OF THE DEVELOPER WHICH MADE A DONATION DURING THE REPORTING PERIOD		
	NAME OF AFFILIATE		
	PSKS LH Development LLC		
	BUSINESS ADDRESS OF AFFILIATE		
. 1	c/o PSKS 150 Post Street Suite 320 SF, CA 94108		
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE	
	dsafier@pradogroup.com	415-395-0880	
	NAME OF AFFILIATE		
	Prado Group Inc.		
	BUSINESS ADDRESS OF AFFILIATE		
2	150 Post Street Suite 320 SF, CA 94108		
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE	
	dsafier@pradogroup.com	415-395-0880	
	NAME OF AFFILIATE		
	SKS Partners LLC		
	BUSINESS ADDRESS OF AFFILIATE		
	601 California Street SF, CA 94108		
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE	
	DKingsley@sksre.com	415-421-8200	
	NAME OF AFFILIATE		
l	BUSINESS ADDRESS OF AFFILIATE		
4			
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE	
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED		
П	Attach additional sheets to this statement to disclose additional affiliates.		
	additional anniates.		

SAN FRANCISCO ETHICS COMMISSION – SFEC Form 3500

6. VERIFICATION							
I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my							
knowledge the information I have provided here is true and complete.							
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.							
NAME AND SIGNATURE OF PERSON FILING REPORT	DATE SIGNED						
DocuSigned by: DC812E1C4A49445							
Dan Safier	10-04-2019 09:33:49 PDT						

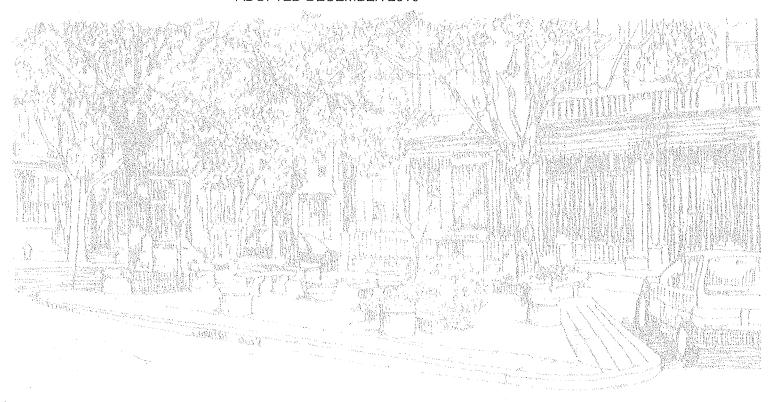
EXHIBIT E



Guide to the San Francisco Better Streets Plan

& RELATED AMENDMENTS
TO SAN FRANCISCO'S MUNICIPAL CODES

ADOPTED DECEMBER 2010



Rendering by Allan B. Jacobs

Streetscape Requirements







Street frees

Site furnishings

Stormwater management facilities

SUMMARY

The Better Streets
Plan legislation
requires property
owners and
developers making
certain changes to
their property to
provide streetscape
elements consistent
with the Better Streets
Plan.

The Better Streets Plan legislation, adopted December 7, 2010, establishes new requirements for streetscape improvements, building on existing requirements. All streetscape requirements for new development are now located in Section 138.1 of the Planning Code.

STREET TREES

In all zoning districts, property owners making certain changes are required to install street trees every 20 feet on center, as previously required.

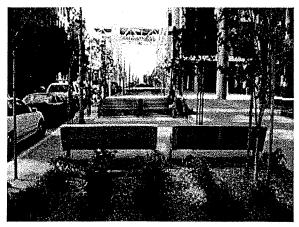
The legislation made minor changes to street tree requirements in commercial and mixed-use districts – requirements for minimum tree caliper, branching height, basin size, and tree basin edging treatment were expanded to apply to all RC, C, NC, and MU zoning districts, in addition to C-3 and DTR districts.

The legislation also expands the requirement for trees to be planted in a continuous soil-filled trench: this requirement now applies to projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

As previously, street tree requirements may be waived or modified by the Zoning Administrator, and an in-lieu fee may be assessed or sidewalk landscaping provided.



Sidewalk landscaping



Sidewalk widening

STORMWATER MANAGEMENT FACILITIES

The legislation does not change existing requirements in the Public Works Code and Building Code regarding stormwater management. As before this legislation, projects that will disturb greater than 5,000 square feet of the ground surface, measured cumulatively over time, are required to manage the quantity and quality of stormwater runoff to meet or exceed either LEED sustainable sites 6.1 or 6.2 guidelines.

Projects may meet this requirement either on their site or by making improvements in the public right-of-way. Any development project that meets the thresholds above is required to submit a Stormwater Control Plan.

OTHER STREETSCAPE ELEMENTS

The legislation creates new requirements for projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

In any zoning district, for projects that meet these thresholds, the City may require standard streetscape elements per the appropriate Better Streets Plan street type.

Any development project that meets the thresholds above must submit a streetscape plan to the Planning Department for review. The streetscape plan will be reviewed as part of overall project approvals.

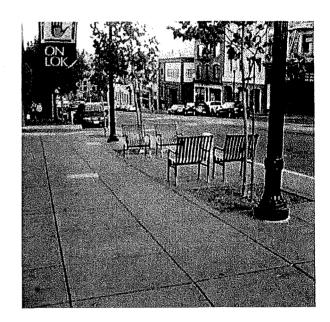
SIDEWALK WIDENING

For the thresholds listed in the previous section, the City may also require sidewalk widening so that the resulting sidewalk meets or exceeds the *recommended* sidewalk width for the relevant street type from the Better Streets Plan.

Where development projects would create new streets, sidewalks must meed or exceed the recommended sidewalk width. This width may be decreased if a consistent front setback is provided.

Sidewalk widths

	subjects.	CHMODIANION .	ana en vitviano en extinutt
COMMERCIAL	Downtown commercial	Per Downtown Streetscape Plan	
	Commercial throughway	12'	15'
	Neighborhood commercial	12'	15'
RESIDENTIAL	Downtown residential	12'	15'
	Residential throughway	12'	15'
	Neighborhood residential	10'	12'
OTHER	Industrial	8'	10'
	Mixed-use	12'	15'
SPECIAL	Parkway	12'	17'
	Park edge	12'	24'
	Multi-way boulevard	12'	15'
	Ceremonial	varies	varies
	Alley	6'	9,
	Shared public way	NA	NA
	Paseo	varies	varies



SIDEWALK WIDTH (4.2)

The Plan identifies a minimum and recommended sidewalk width for each street type. Sidewalks below the minimum width for the relevant street type should be widened as opportunities allow. Recommended sidewalk widths allow the provision of all features and elements necessary to create a gracious, usable pedestrian environment. The City should strive to meet recommended sidewalk widths wherever possible.

SIDEWALK ZONES (4.2)

In order to function for all users, sidewalks should allow sufficient clear width for through travel while providing amenities to serve passers-by. To that end, the Plan identifies a set of sidewalk "zones" to organize elements on the sidewalk. Each zone should meet guidelines for width, use, and appropriate elements.

The five sidewalk zones are:

Frontage zone: The area adjacent to the property line that transitions between the sidewalk and building uses

Throughway zone: The portion of the sidewalk for pedestrian travel along the street

Furnishing Zone: The portion of the sidewalk used for various streetscape amenities and functional elements, including plantings, street lights, furnishings, and surface utilities

Edge zone: The area of the sidewalk used by people getting in and out of parked vehicles

Extension zone: The area where pedestrian space may be extended into the roadway, via features such as curb extensions, landscaping, or paving treatments

SAN FRANCISCO ETTERSTREETS PLICIES AND GUIDELINES FOR THE PEDESTRIAN R





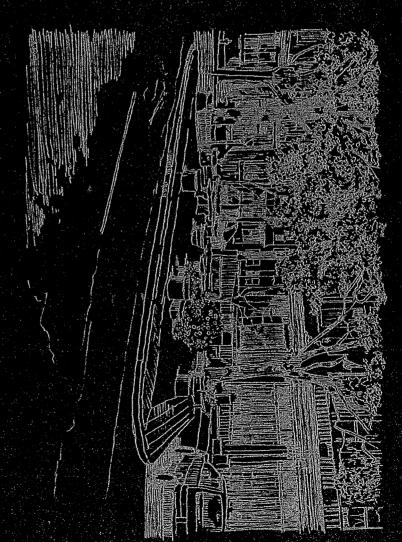






ADOPTED BY THE SAN FRANCISCO BOARD OF SUPERVISORS ON DECEMBER 7, 2010





Interactions With Adjacent Parcels

The Better Streets Plan focuses primarily on improvements to the public right-of-way. However, fronting properties also exert a strong influence on the quality and character of the pedestrian realm that go beyond the scope of this plan. Specific ways in which properties can enhance or detract from the public realm include:

- Parking lot edges: opportunities for landscaping and screening of surface lots
- Building setbacks: balancing the desire for a consistent street wall with opportunities for wider sidewalks or fronting plazas
- Ground-floor uses and building design that creates activity at street level
- Overhead projections, such as awnings, marquees, signs, and balconies, that can add character to a streetscape, but may also interfere with tree plantings or accessibility

Minimum Sidewalk Width

All sidewalks should meet the minimum widths described in Figure 4.3, as measured from the face of the curb. Existing sidewalks may be narrower than the minimum widths for a variety of reasons, from physical constraints to historical context. Sidewalks that are below these widths should be considered deficient; when funding allows or the street is otherwise being reconstructed, they should be considered for widening as feasible given right-of-way constraints.

Where it is not possible to achieve minimum widths within existing rights-of-way, requiring consistent building setbacks may be considered as a way to provide extra space.

FIGURE 4.3
MINIMUM AND RECOMMENDED SIDEWALK WIDTH BY STREET TYPE

THE RESERVE AND ADDRESS OF THE PERSONS OF THE PERSO	STATE OF THE PARTY	
Downtown commercial	Per Downtown Streetscape Plan	
Commercial throughway	12'	15'
Neighborhood commercial	12'	15'
Downtown residential	12'	15'
Residential throughway	12'	15'
Neighborhood residential	10'	12'
Industrial	8'	10'
Mixed-use	12'	15′
Parkway	12'	17'
Park edge	12'	24'
Multi-way boulevard	12'	15'
Ceremonial	varies	varies
Alley	6'	9'
Shared public way	NA	NA
Paseo	varies	varies
	Downtown commercial Commercial throughway Neighborhood commercial Downtown residential Residential throughway Neighborhood residential Industrial Mixed-use Parkway Park edge Multi-way boulevard Ceremonial Alley Shared public way	Commercial throughway 12' Neighborhood commercial 12' Downtown residential 12' Residential throughway 12' Neighborhood residential 10' Industrial 8' Mixed-use 12' Parkway 12' Park edge 12' Multi-way boulevard 12' Ceremonial varies Alley 6' Shared public way NA

Recommended Sidewalk Width

Sidewalks should strive to meet or exceed the recommended sidewalk widths, as measured from the face of the curb, shown in Figure 4.3. These widths allow for the provision of all desired streetscape elements on the sidewalk. Major new development or redevelopment areas that create new streets must meet or exceed recommended sidewalk widths.

On new streets, where continuous building setbacks are proposed, minimum sidewalk width may be narrowed by the width of the applicable frontage zone, as determined on a case-by-case basis.

Streetscape improvement projects should evaluate opportunities to widen sidewalks to the recommended minimums as conditions allow. However, most street improvements in San Francisco take place within existing constrained rights-of-way (as opposed to entirely new streets), and trade-offs among various travel modes are often necessary.

Sidewalk and Median Width

Though medians can add aesthetic value and safety benefits, roadway space is often more valuable to pedestrians as part of sidewalks rather than as part of a median, particularly where sidewalks are less than the recommended sidewalk width for the appropriate street type. On the other hand, due to the difficulty and cost of moving curbs, utilities, driveways, site furnishings and plantings (especially if trees are mature), widening sidewalks by a small amount may be a less cost-effective manner of improving a street than adding median space. This determination should be made on a case-by-case basis.

SIDEWALK ZONES

This section includes dimensions and guidelines for each sidewalk zone. The dimensions for sidewalk zones are meant as a general guide, within overall sidewalk width as described above. Appropriate widths for each sidewalk zone vary based on numerous conditions, such as overall sidewalk width, pedestrian volumes, adjacent land uses, presence of driveways, etc. Dimensions include the width of the curb.

Considerations for width of individual sidewalk zones will differ for constrained sidewalks; that is, sidewalks that are below the recommended widths shown in Figure 4.3. Constrained sidewalks are discussed in the following section.

Fronlage zone

Use: Adjacent uses may occupy this zone for outdoor displays, café or restaurant seating, and plantings, with appropriate permits.

Architectural elements that encroach into the street such as awnings, canopies, and marquees may also occupy this zone.

On sidewalks not wide enough to accommodate a large furnishing zone, elements that would normally be sited there such as benches, newsracks, trash cans and poles may occupy the frontage zone to keep the throughway zone clear.

Width: On all street types, the frontage zone should be 18 inches to provide a comfortable shy distance for pedestrians or to allow adjacent uses to utilize the space.

On commercial street types, the frontage zone should be a minimum of 2 feet in width to allow for café tables and seating, benches, planting, merchandise displays, and other amenities, and higher volumes of window shopping and entering and exiting of doors. In many cases, the frontage zone should be wider to create a generous scating area.

Where there is relatively little pedestrian traffic, or where there are continuous building setbacks, the Frontage Zone may be decreased, or eliminated altogether, as determined on a case-by-case basis.

Throughway Zone

Use: The throughway zone is intended for accessible pedestrian travel only and should be clear of obstacles, including driveway aprons or other changes to cross-slope. The walking surface may be constructed of any walkable, accessible material.

In limited circumstances on narrow sidewalks, ADA-compliant tree grates may be counted toward the minimum clear path of travel; however, as they are difficult to maintain to an accessible standard, this is not a preferred solution.

Overhanging elements such as awnings, store signage, and bay windows may occupy this zone as long as there is a clear distance under them of at least 80 inches, as required by accessibility standards.

Width: Accessibility regulations require a clear path of travel of minimum 4 feet in width, widening to a minimum of 5 feet at least every 200 feet.

Alleys should maintain a minimum 4 feet clear path of travel; all other street types should maintain a minimum 6 feet of clear. In very limited circumstances (such as neighborhood residential streets with very low pedestrian volumes), this may be reduced to 4 feet minimum. Where adjacent frontage or furnishing zones are kept clear of obstacles and are paved with an accessible surface, this width may be included in the minimum required clear width.

For streets with higher pedestrian volumes, such as commercial and downtown streets, additional width should be provided to accommodate large numbers of pedestrians.

Furnishing zone

Use: The furnishing zone acts as a buffer between the active pedestrian walking area (throughway zone) and street traffic. Street trees and other landscaping, streetlights, site furnishings, traffic and parking poles and equipment, utility poles and boxes, fire hydrants, and other site furnishings should be consolidated in this zone. See Chapter 6 for specific guidelines for each of these elements.

The furnishing zone may be differentiated from the throughway zone through paving scoring, materials, or edge treatments to indicate that the furnishing zone is a place for lingering as opposed to moving.

Width: Where street trees or sidewalk landscaping is provided, the furnishing zone should be a minimum of 3 feet in width. (See Section 6.1)



As the furnishing zone acts as a buffer between pedestrians and the roadway, the width of the furnishing zone should be based upon traffic speeds and volumes and whether on-street parking is provided. If no on-street parking is provided and traffic speeds are 25 mph or less, the furnishing zone dimension should be a minimum of 4 feet in width. For speeds of 30 mph or above, the furnishing zone should be one foot wider for every 5 mph increment in posted speed above 30 mph.

In many circumstances, the furnishing zone may be considerably wider than this, to incorporate significant planting, seating, or stormwater facilities, and give the sense of the furnishing zone as a public space.

Where there is a continuous landscape treatment, a minimum 3 foot walkable path should be provided from the edge zone to the throughway zone every 20 feet, aligned with the mid-point of the parking space. See also the City's Sidewalk Landscape Permit guidelines.

Edge zone

Use: The edge zone is the interface between the roadway and the sidewalk, and is intended for use by people accessing parked cars. To allow people to get into and out of parked vehicles, the edge zone should have a walkable surface.

The edge zone may have some vertical elements, such as street lights, utility poles, parking meters, or traffic and parking signs, as long as these elements are non-continuous and allow space between for car doors to swing open and for people to access parked vehicles.

Street tree basins may also intrude into the edge zone, with the same requirements. Continuous sidewalk plantings are not generally allowed in the edge zone; however, where there is no adjacent parking lane, the edge zone may contain continuous sidewalk plantings or site furnishings.

See also the City's Sidewalk Landscape Permit guidelines.

Width: On streets with no parking lane, the edge zone may be omitted.

On streets with parallel parking, where there is a continuous planting strip or other continuous raised element (such as a raised planter, or stormwater planter with lip), the Edge Zone must be a minimum of 2 feet wide to allow access to parked vehicles.

Regularly-spaced non-continuous elements, such as parking meters, poles and street trees and basins, may encroach to within 18 inches of the face of the curb so long as elements allow space for open car doors and for people to get in and out of cars.

On streets with angled or perpendicular parking, the edge zone must be a minimum of 30 inches.

All dimensions are given from face of curb.

Extension zone

Use: The extension zone refers to specific conditions where the sidewalk extends into the parking lane. Specific examples include curb extensions, flexible use of parking lanes, and bicycle parking, tree planting, and stormwater features in the parking lane.

The extension zone may house elements such as landscaping, seating, stormwater facilities, and other site furnishings. Elements such as newsracks, traffic and parking signs, and kiosks may be consolidated in the extension zone (on curb extensions) to free up sidewalk space for through travel.

Width: Where the pedestrian realm is expanded into the extension zone, it should take up the full width of the curb extension or parking lane. Curb extensions should follow the guidance in Section 5.3. Parking lane treatments should follow the guidance in Section 5.6.

FIGURE 4.4
SUMMARY OF SIDEWALK ZONE GUIDELINES

ZONE	extersion :	EDGE	FURNISHINGS	THROUGHWAY	FROMFAGE
Width	Width of parking lane	O' (where no parking lane, or no continuous planting) 2' (where parking lane and continuous planting) 2'6" (where angled or perpendicular parking)	3' (where trees or landscaping are provided) 4' (+ 1' for every 5 mph increment over 25 mph) Wider (as needed for site furnishings/public space)	4' minimum per ADA and on alleys: widening to 5' every 200'. 6' on other street types Wider (to accommodate expected pedestrian volumes)	18" 2'+ (commercial and mixed-use streets) Less (where continuous setback is provided)
Use	All site furnishings, trees and land- scaping, street lighting, and utilities Flexible use of parking lane	Walkable surface Non-continuous vertical elements such as street lights, utility poles, parking meters, etc. with 18" clearance to curb Street trees and basins, with non-continuous planting	All site furnishings, trees and landscaping	Clear of obstacles; accessible walking surface Overhanging elements (>80") Tree grates (not preferred)	Displays, cafe seating Furnishings aligned with frontage Planters (surface or above-ground) Overhanging elements

CONSTRAINED SIDEWALKS

This section describes how sidewalk zones should be divided in situations where the sidewalk width is constrained; that is, where sidewalks are below the recommended overall width shown in Figure 4.3. On constrained sidewalks, individual sidewalk zones must be correspondingly smaller as well, necessitating trade-offs. Some sidewalk zone dimensions are fixed as discussed in the previous section (such as minimum required through width for accessibility, or edge zone width where there is a continuous sidewalk planter), while others are variable depending on conditions.

Where a constrained sidewalk width does not allow for the recommended dimensions for each zone, the design of the street should meet the following criteria (in order of priority):

- Accommodate required access for people with disabilities and access to adjacent uses and transit stops.
- → Accommodate expected levels of pedestrian activity.
- Provide necessary buffering between the active area of the sidewalk and adjacent traffic.

→ Integrate design elements to enhance the public realm, and provide space for adjacent businesses to use the sidewalk for seating and displays.

In many cases, individual sidewalk zones should be greater than the minimum depending upon the context. For example:

- → On streets with significant pedestrian volumes, the throughway zone should be proportionally wider.
- → Where there is significant high-speed vehicle traffic and a need for buffering pedestrians, or a desire to create a public space character or significant planting area, the furnishing zone should be proportionally widet.
- → On commercial streets with larger numbers of restaurants where there is a desire to encourage outdoor seating, the frontage zone should be proportionally wider.

Sidewalk dimensions are given from face of curb.

6 Foot Sidewalk (Alleys)

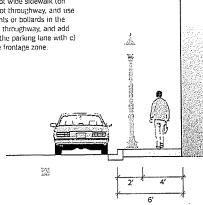
Six foot sidewalks (typically found on alleys) do not have enough room for a furnishing zone with tree plantings. Alternatively, the frontage zone may have a building-adjacent planter, leaving 4 to 5 feet for through travel. Curb extensions may allow for additional plantings, trees, or site furnishings. Converting the alley to a shared public way is preferable, to allow more comfortable pedestrian space.

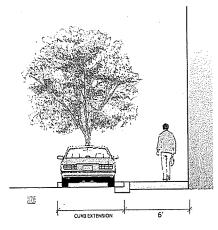
7 to 8 Foot Sidewalk

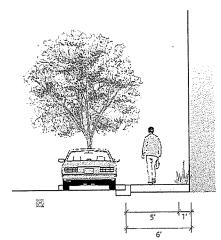
On 7 to 8 foot sidewalks, a 3 foot furnishing zone with street trees would leave 4 to 5 feet of through width. This width is sufficient on alleys and on some neighborhood residential streets with low pedestrian volumes; however, on most streets, a 6 foot throughway zone should be provided, meaning there is not enough space for a row of street trees. The designer should consider narrower design elements in the edge zone, such as street lights or bollards. Curb extensions may allow for additional plantings, trees, or site furnishings.

Constrained Sidewalks: 6 Feet

Three options for designing a 6 loot wide sidewalk (on alleys): a) Retain a minimum 4 foot throughway, and use nerrow elements such as streetlights or bollards in the edge zone, b) Retain a 5 to 6 foot throughway, and add street trees on curb extensions in the parking lane with c) optional 1 foot wide planter in the frontage zone.

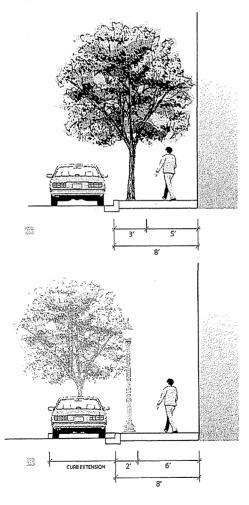


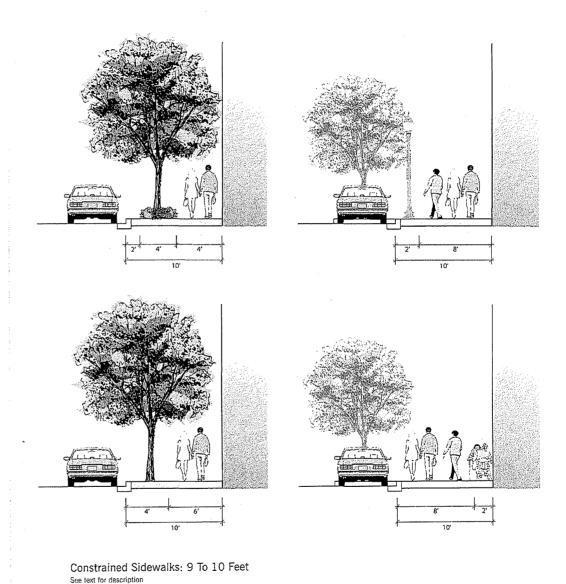




Constrained Sidewalks: 7 To 8 Feet

Two options for dividing an 8 foot wide sidewalk: a) On alleys or some neighborhood residential streets, retain a minimum 4 foot throughway, and plant trees in the furnishings zone (min. 3 feet); b) On other street types, retain a 6 foot throughway, use narrow elements such as streetlights or bollards in the Edge Zone, and add optional curb extensions with street trees.





9 to 10 Foot Sidewalk

A 9 or 10 foot sidewalk allows a few options for dividing the sidewalk space:

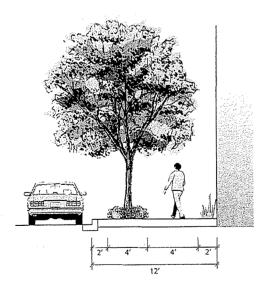
- → On alleys or some neighborhood residential streets, use a 4 to 5 foot throughway zone, 3 to 4 foot furnishing zone with street trees and landscaping, and 2 foot edge zone. The presence of the edge zone allows for a planting strip;
- → Where a 6 foot clear path is required, the sidewalk could be divided into a 6 foot throughway zone and a 3 to 4 foot furnishing zone, with street trees but no planting strip; or
- → On downtown or commercial streets with congested sidewalks (such as on Stockton Street), there should be a 6 foot or greater throughway zone, with either or both a 2 foot frontage zone (for merchandise displays or outdoor seating) or edge zone (with narrow design elements such as street lights or bollards).

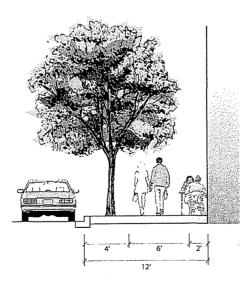
11 to 12 Foot Sidewalk

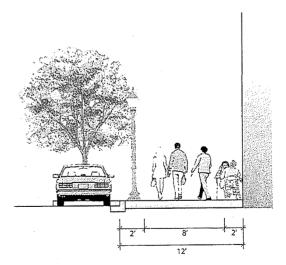
11 to 12 foot sidewalks meet the minimum overall sidewalk widths described in Figure 4.3. However, they still may not be wide enough to achieve all the desirable amenities that create a quality streetscape. Eleven to twelve foot sidewalks may be divided in numerous ways, including:

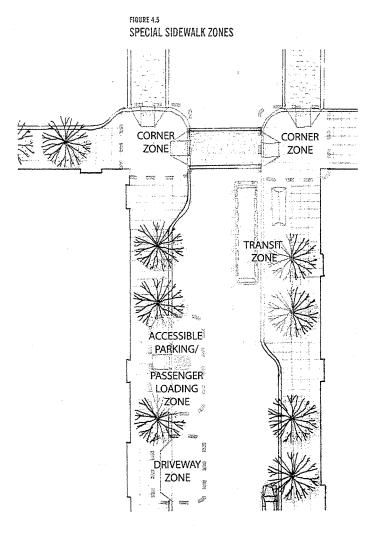
- → On residential streets, an optional 2 foot frontage zone (with plantings), a 4 to 6 foot throughway zone, a 4 foot furnishing zone with optional planting strip, and 2 foot edge zone;
- → On commercial, downtown, or mixed-use streets, a 2 foot frontage zone (for displays or seating), a 6 foot throughway zone, and a 4 foot furnishing zone; or
- → On downtown or commercial streets with congested sidewalks, an 8 foot or greater throughway zone, with a 2 foot frontage zone (for merchandise displays or outdoor seating) and/or edge zone (with narrow design elements such as street lights or bollards).

Constrained Sidewalks: 11 To 12 Feet See text for description









SPECIAL SIDEWALK ZONES

Certain portions of the streetscape require special consideration in terms of the spacing and placement of streetscape elements. The following guidelines offer specific guidelines for these areas.

Corners

Corners (as defined by an extension of the property line to the curb) should be kept clear of obstructions. They should maintain drivers' and pedestrians' clear views of each other. Amenities should be clustered adjacent to corners but not within the corner zone itself.

The following streetscape elements are appropriate for corners:

- → Corners should include curb ramps and detectable warning surfaces per accessibility regulations.
- → Pre-existing utility poles and sub-surface vaults may be prohibitively expensive to move, and may remain in place. However, they should be relocated as funding and opportunities allow.
- → On residential streets, corners may include a corner planter to the width of the furnishing zone on the adjacent sidewalks, so long as sufficient clear width for curb ramps is maintained.

Transit Stops

Transit stops require special layout guidelines due to the high number of people often waiting near them and the need to board and alight from transit vehicles. Transit stops require special layout guidelines to accommodate passengers who are waiting, boarding or alighting, and the need for vehicles to deploy lifts. See Section 5.5.

Accessible Parking and Passenger Loading Zones Accessible parking and passenger loading zones require special streetscape considerations to ensure that passengers may safely get into and out of vehicles. Specific guidelines include:

- → Street trees, furnishings and other obstructions should allow a minimum of 8 feet of clear sidewalk width adjacent to the curb.
- → Special paving treatments and sub-surface utilities may be located within this zone, as long as they provide an accessible surface.

Driveways

Driveways present special challenges to the pedestrian due to changes in cross-slope and the presence of vehicles crossing the sidewalk. See Section 6.6.

Medians

Medians can add substantial greenery to the streetscape, decrease impermeable surface, offer opportunities for pedestrian refuges, and offer locations for lighting and some utilities.

Wide medians on some streets offer opportunities for lines of trees that are otherwise difficult to achieve along sidewalks.

Sufficiently wide medians (12 feet or more) generally can be designed to include seating and gathering areas and other pedestrian amenities.

Medians also create opportunities for pedestrian refuges at busy intersections. See Section 5.4.



EXHIBIT F



All things green, from conservation to Capitol Hill

FORESTS

When It Comes to the Climate, Older Trees Do It Better

Scientists long assumed that as trees got older, they grew slower—just like us. But a new study underscores the climate benefits of the oldest, biggest trees

By Bryan Walsh @bryanrwalsh Jan. 15, 2014

Lika FPK

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Read Later

The giant coastal redwoods of northern California are breathtaking—literally. They are the tallest trees on Earth, growing to more than 350 ft. (106 m), with trunks that can be more than 25 ft. (7.6 m) across. The oldest redwoods date back to the time of the Roman Empire, though few of that age still remain, since more than 95% of the original old-growth forest has been lost, mostly for lumber. And the trees are unparalleled living carbon banks—a large redwood can sequester a ton of carbon from the air in its trunk and roots.

Despite the redwoods' beauty, though, scientists have long assumed that very old trees like them absorb less and less carbon as they age, slowing down like the rest of us as we get older. That idea has

important implications for global warming: climate scientists assume that younger trees will take up carbon more rapidly than their older counterparts, which means youth is valued when it comes to using trees as carbon stores.

Harak Sund via Cally Inspect

Harald Sund via Getty Images

Old, big trees like the giant redwood sequester carbon faster than young trees

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But according to a new study published in *Nature*, it turns out that the oldest trees are actually still growing rapidly, and storing increasing amounts of carbon as they age. An international research group led by Nate Stephenson of the U.S. Geological Survey Western Ecological Research Center reviewed records from forest studies on six continents, involving 673,046 individual trees and more than 400 species, going back as far as 80 years ago. For 97% of the species surveyed, the mass growth rate—literally, the amount of tree in the tree—kept increasing even as the individual tree got older and taller. Even though trees tended to lose leaf density as they aged—which, as a victim of male pattern baldness, I can sympathize with—the total amount of leaf cover kept increasing as the tree itself got bigger and older. In other words, the number of leaves per cubic foot fell off but the leafy surface area grew and grew. That enabled the tree to keep absorbing an increasing amount of carbon as it aged.

(MORE: That Thing About Money Not Growing on Trees Just Got More Complicated)

For some species of trees, that increase could be enormous. A single big tree could sequester the same amount of new carbon in a year as might be contained in an entire mid-sized tree. For sports fans, it would be as if Jamie Moyer, a baseball pitcher who was a record 49 years old when he recorded his last win, could best Jose Fernandez, a Miami Marlins pitcher who won the National League Rookie of the Year in 2013 at the age of 21.

Of course, human beings don't age like trees—except maybe for Peyton Manning—and that's probably a good thing. "In human terms, it's as if our growth just kept accelerating after adolescence, instead of slowing down," Stephenson said in a statement. "By that measure, humans could weigh half a ton by middle age, and well over a ton by retirement."

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some of them will die, leaving older and bigger trees but fewer of them, sort of like the way a high school class will begin to thin out as the reunions pile up over the years. But on a tree by tree basis, elderly trees are carbon $vacuums. That \verb|'s| one more reason to appreciate-- and conserve-- these ancient, majestic forests.$

(MORE: Woody Harrelson, Sustainable Paper Salesman)

Bryan Walsh @bryanrwalsh

Bryan Walsh is a senior editor at TIME.

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Living Magazine

Major, Erica (BOS)

From:

BOS Legislation, (BOS)

Sent:

Tuesday, November 12, 2019 10:45 AM

To:

jeannine.black@gmail.com; BOS Legislation, (BOS); Wong, Jocelyn (BOS)

Cc:

Major, Erica (BOS)

Subject:

FW: File No: 190947: Major Encroachment Permit

Attachments:

OSPS to BOS 20191112 cover letter.pdf; OSPS to BOS 20191112 Margaret Fitzgerald

letter p1.pdf; OSPS to BOS 20191112 Margaret Fitzgerald letter p2.pdf

Forwarding to the Land Use Committee Clerk for inclusion in the legislative history file.

Regards,

Brent Jalipa Legislative Clerk

Board of Supervisors - Clerk's Office 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco, CA 94102

(415) 554-7712 | Fax: (415) 554-5163 brent.jalipa@sfgov.org | www.sfbos.org



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From: jeannine.black@gmail.com < jeannine.black@gmail.com >

Sent: Tuesday, November 12, 2019 10:39 AM

To: BOS Legislation, (BOS)

bos.legislation@sfgov.org>; Jalipa, Brent (BOS)

brent.jalipa@sfgov.org>; Wong, Jocelyn

(BOS) < jocelyn.wong@sfgov.org>

Subject: File No: 190947: Major Encroachment Permit

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Re: 3333 California Street, San Francisco CA

Major Encroachment Permit

Board of Supervisors File No: 190947

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see attached letter and attachment for official file.

Kindly acknowledge receipt.

Open Space Preservation Society, Inc. By: Jeannine Black, President

November 12, 2019

VIA E-MAIL TO: bos.legislation@sfgov.org jocelyn.wong@sfgov.org brent.jalipa@sfgov.org

San Francisco Board of Supervisors c/o Clerk of the Board of Supervisors City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

Record Number: 2015-014028CUA/PCA/MAP/DUA

File No: 191039: Appeal of Conditional Use Authorization

File No: 191043: Appeal of Subdivision Map

File No: 191035: Appeal of Certification of Final EIR/CEQA Findings

File No: 190844: Special Use District

File No: 190845: Development Agreement File No: 190947: Major Encroachment Permit

Open Space Preservation Society, Inc. objects to each of the approvals described above on the basis that, as explained in the attached letter of Margaret Fitzgerald dated February 28, 2016, the general public holds a permanent right of recreational use on existing open space at 3333 California Street and such rights were obtained by implied dedication, prescriptive easement, and/or other applicable legal principle. The above-described approvals would impinge upon these public rights, and Open Space Preservation Society, Inc. objects to the approval of each of the matters described above on that basis.

open Space Preservation Society, Inc.

: Jeannine Black, Presiden

Attachment: February 28, 2019 Letter of Margaret Fitzgerald

cc: Jeffrey Lowenthal, Attorney for Laurel Heights Partners, LLC - jlowenthal@steyerlaw.com Stacey Quan, Attorney for Laurel Heights Partners, LLC - squan@steyerlaw.com

Margaret Fitzgerald

30 Wood Street, San Francisco, CA 94118

Date: February 28, 2016

Ms. Mary Woods Planner - North West Quadrant San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94108-2414

RE: 3333 California St. Development

Dear Ms. Woods:

I am writing regarding the development of the 3333 California Street development, currently the UCSF Laurel Heights Campus (the "Site"). It is my understanding that the San Francisco Planning Department is working with the developer of the Site regarding the initial project plans for the proposed development. The owner of the fee interest and the developer of the Site are limited in their joint ability to develop the Site because the owner of the Site does not have free and clear title; rather the general public holds a permanent recreational interest in all of the open space at the Site. Therefore, any development plans at the Site may not impinge upon this open space.

The general public holds a *permanent* right of recreational use on all of the open space at 3333 California and such rights were obtained by implied dedication. Dedication is a common law principle that enables a private landowner to donate his land for public use. Implied dedication is also a common law principle and is established when the public uses private land for a long period of time, which period of time is five (5) years in California. In 1972, the California legislature enacted Civil Code Section 1009 to modify the common law doctrine of implied dedication and to limit the ability of the public to secure *permanent* adverse rights in private property. Here, however, the existing open space at the Site was well established and well used as a park by the general public long before the completion of the construction of the full footprint of the improvements at the Site in 1966. Therefore, the general public has permanent recreational rights to the open space at the Site; the rights were obtained by implied dedication prior to the enactment of Cal. Civil Code Sec. 1009 in 1972.

Even if the general public had not secured permanent rights to recreational use through implied dedication prior to 1972, the public and countless individuals have acquired a prescriptive easement over the recreational open space. The recreational use has been continuous, uninterrupted for decades, open and notorious and hostile (in this context, hostile means without permission). Every day, individuals and their dogs use the green space along Laurel, Euclid and along the back of the Site at Presidio. Individuals ignore the brick wall along Laurel and regularly use the green space behind the wall as a park for people and for their dogs. The use of the Site has not been permissive. For example, the owner of the Site has not posted permission to pass signs in accordance with Cal. Civil Code Sec. 1008. If such signs ever were posted, they have not been reposted at least once per year. Although it is counterintuitive, an owner typically posts such signs to protect against the public securing adverse rights. One might assume the owner of the Site has not posted such signs, as the owner is aware of the pre-existing and permanent recreational rights the general public has secured to the open space. Because the



public's rights to the open space were secured decades ago through implied dedication, it is not necessary for the general public to rely upon its prescriptive easement rights outlined in this paragraph; rather it is another means to the same end.

It is important that the Planning Department understand these legal issues as any project plan (or any future project description in an Environmental Impact Report ("EIR") for the Site) cannot include development of the open land over which the public has a secured permanent rights of recreational use. It would not be a concession by the owner/developer to leave the open space undeveloped and allow public recreational use as the general public holds permanent recreational rights to this space. It is important to note that even the open space behind the walls that has been used as park space is also included in this dedication to the public. According to well-established case law, a wall or fence is not effective in preventing the development of adverse property rights if individuals go around the wall, as is the case here.

In sum, the open space at the Site cannot be developed as the public secured such rights through implied dedication prior to 1972 (or, alternatively, by prescriptive easement). In reviewing the development plans for the Site, the City cannot decide to allow development of any of the open space as the recreational rights to the space are held by the public at large. Any project description in the future EIR for the Site that contemplates development of any of the open space would be an inadequate project description and would eviscerate any lower impact alternative presented in the EIR. One only need to look to the seminal land use case decided by the California Supreme Court regarding this very Site to see that an EIR will not be upheld if the project alternatives are legally inadequate. It would be misleading to the public to suggest that a lesser impact alternative is one that allows the public to use the space to which it already has permanent recreational use rights.

In sum, please be advised of the public's permanent recreational rights to all of the existing open space at the Site and please ensure that a copy of this letter is placed in the project file.

Sincerely,

Meg Fitzgerald

Margaret N. Fitzgerald

With copies to: Mark Farrell, Supervisor Dan Safir, Prado Group Kathy DiVicenzi, Laurel Heights Improvement Association Robert Charles Friese, Esq.

Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California, 47 Cal. 3rd 876 (1988).

Major, Erica (BOS)

From:

Christopher Joy-Webb <cjoywebb@icloud.com>

Sent:

Tuesday, November 12, 2019 9:47 AM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Brown,

Vallie (BOS); Fewer, Sandra (BOS); MandelmanStaff, [BOS]; Mar, Gordon (BOS); Ronen,

Hillary; Stefani, Catherine (BOS); Walton, Shamann (BOS); Yee, Norman (BOS)

Subject:

Save the trees! - 3333 California St

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

Today it came to my attention that 190 healthy trees around <u>3333 California Street</u> are in jeopardy of being cut down if a land use permit is granted to Prado Group. The lives of trees should not be tied to a developer's request for a permit. Our city must do everything it can to protect the limited urban canopy we have. Destroying it hurts the community and the environment and is NOT a sound decision. I therefore implore you to separate the Ordinance for Major Encroachment Permit Record Number: 2015-014028CUA/PCA/MAP/DUA from the other permit/development requests. It's obvious that our city needs to build more housing, but that should have no bearing on the lives of our city's trees. If anything, we need many more mature and healthy trees, not fewer.

We, the residents of San Francisco, are counting on you to do the right thing for our community and our futures.

Thank you in advance for your consideration, Christopher Joy-Webb

Nathalie Paven <npaven@earthlink.net>

Sent:

Sunday, November 10, 2019 5:06 PM

To:

Major, Erica (BOS)

Subject:

3333 California Street tree removal

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please deny permission to remove 190 mature trees from this site.

Give the fact of climate change, and the likelihood of continued reduced air quality from the fires it is vital that we retain the trees we have.

Thank you for your consideration,

Nathalie Paven 1534B Shrader St 94117

Mark Ryle <markaryle@gmail.com>

Sent:

Sunday, November 10, 2019 1:33 PM

To:

Safai, Ahsha (BOS); Stefani, Catherine (BOS); Peskin, Aaron (BOS); Major, Erica (BOS)

Subject:

save the trees at 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisor Stefani and Land Use Committee Members,

Please find a way to save the beautiful and mature trees at 3333 California. I live in D5 but am a member at the JCCSF at 3000 California Street. I did not know until today that 190 trees are going to be cut down as part of this development plan. There must be a way to save these trees and build housing.

I am also very alarmed that a city like ours would allow developers to remove the two healthy Monterey Cypress which were planted to remember the Laurel Hill Cemetery and are on a property that is designated a historic site by the Historic Preservation Commission of San Fransisco. We should be posting historic signs about these trees and their symbolism, not taking them down.

I cannot be at the hearing on Tuesday, Nov. 12th but would like my email entered into the record opposing the decision to cut down these trees.

Thank you,

Mark Ryle

Leela Gill <leelagill1@gmail.com>

Sent:

Sunday, November 10, 2019 12:21 PM

To:

Stefani, Catherine (BOS); Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS);

Haney, Matt (BOS)

Cc:

Brown, Vallie (BOS)

Subject:

Save the Trees at 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi Supervisor Stefani and Land Use Committee Members,

Please find a way to save the beautiful and mature trees at 3333 California. I live in D5 but am a member at the JCCSF at 3000 California Street. I did not know until today that 190 trees are going to be cut down as part of this development plan. There must be a way to save these trees and build housing.

I am also very alarmed that a city like ours would allow developers to remove the two healthy Monterey Cypress which were planted to remember the Laurel Hill Cemetery and are on a property that is designated a historic site by the Historic Preservation Commission of San Fransisco. We should be posting historic signs about these trees and their symbolism, not taking them down.

I cannot be at the hearing on Tuesday, Nov. 12th but would like my email entered into the record opposing the decision to cut down these trees.

Thank you, Leela Gill 850 Baker Street

Eunice Chee <eunice.chee@att.net>

Sent:

Tuesday, November 12, 2019 8:44 AM

To:

Major, Erica (BOS); Haney, Matt (BOS); Safai, Ahsha (BOS); Peskin, Aaron (BOS)

Subject:

Objection to ordinance included in Encroachment Permit (Record No.

2015-014028CUA/PCA/MAP/DUA)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

to: Staff and Members of the Land Use and Transportation Committee, San Francisco Board of Supervisors

fr: Eunice Chee

I have been a resident of San Francisco for almost 50 years, and I worked at Laurel Heights for almost 20 years. As a resident, I am an ardent supporter of increased affordable housing and also mixed housing and therefore was glad to see that the Laurel Heights project would include 186 units for affordable senior housing and would maintain a child care center on site. As someone who is familiar with the Laurel Heights campus, I know that the location has been an oasis in the neighborhood in terms of open space and trees, which we all now know contribute to the health of people and the environment and should be especially treasured in urban areas. I was therefore horrified to see signs that the healthy trees on the sidewalk would be demolished and that some historic and still healthy trees on the campus would also be demolished.

Please do not approve a permit that would allow this to happen.

You can do this by separating this ordinance from the permit request that has been submitted for your approval.

Keeping the trees on the sidewalk as well as the trees on campus that are historic and add to the area's biodiversity while reducing the amount of retail space would be a healthier option for people, for the environment, and for the neighboring shops, which are just a block away.

Planting new trees to replace the current treasures is not the answer. Construction is expected to last almost 15 years, so new trees would not be planted until perhaps 2015. And then, how long will it be until they are mature trees? Probably not in my lifetime.... and perhaps not even in yours.

Erica Major, Clerk Matt Haney, Member Ahsha Safai, Member Aaron Peskin, Member

Lauren Goldstein < laurengolds@gmail.com>

Sent:

Monday, November 11, 2019 9:03 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Brown,

Vallie (BOS); Fewer, Sandra (BOS); MandelmanStaff, [BOS]; Mar, Gordon (BOS); Ronen,

Hillary; Stefani, Catherine (BOS); Walton, Shamann (BOS); Yee, Norman (BOS)

Subject:

Save the trees around 3333 California St!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors and Clerk,

Today it came to my attention that 190 healthy trees around 3333 California Street are in jeopardy of being cut down if a land use permit is granted to Prado Group. The lives of trees should not be tied to a developer's request for a permit. Our city must do everything it can to protect the limited urban canopy we have. Destroying it hurts the community and the environment and is NOT a sound decision. I therefore implore you to separate the Ordinance for Major Encroachment Permit Record Number: 2015-014028CUA/PCA/MAP/DUA from the other permit/development requests. It's obvious that our city needs to build more housing, but that should have no bearing on the lives of our city's trees. If anything, we need many more mature and healthy trees, not fewer.

We, the residents of San Francisco, are counting on you to do the right thing for our community and our futures.

Thank you in advance for your consideration, Lauren Goldstein

MARY MCFADDEN <marycmcf@comcast.net>

Sent:

Wednesday, November 13, 2019 8:54 AM

To:

Haney, Matt (BOS); Safai, Ahsha (BOS); Peskin, Aaron (BOS); Major, Erica (BOS);

MandelmanStaff, [BOS]; Stefani, Catherine (BOS)

Subject:

3333 California Street file number 190-844-918-0846 DON"T LET THIS HAPPEN!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mr. Haney, Ms. Safai, Mr. Peskin, Ms. Major, Mr. Mandelman, and Ms. Stafani,

Property developer Prado Group wants to cut down 190 mature, healthy trees by using a special "Major Encroachment Permit." The fact that the Tree Removal Permit is being wrapped into all other permits for this development suggests a willful plan to hide the environmental and aesthetic consequences of this project. Adding housing, especially luxury housing is not dependent upon destroying trees and undermining the environment.

I urge you to reconsider the entire project and re-evaluate the entire permit to separate the Ordinance for Major Encroachment Permit Record Number: 2015-014028CUA/PCA/MAP/DUA from the other permit/development requests. In fact, in light of the fact that the tree removal was concealed from the general public and the building department should force the entire project to be redesigned.

Housing a a major issue, but so is climate change and securing the beauty of the city.

Mary McFadden



United Brotherhood of Carpenters and Joiners of America LOCAL UNION NO. 22

November 6, 2019

Dear President Yee and members of the San Francisco Board of Supervisors,

Re: Support for the proposed development at 3333 California Street in San Francisco

The members of Carpenters Local 22 in San Francisco and the surrounding Bay Area strongly support the proposed development at 3333 California Street, which will create hundreds of construction jobs for our community members and up to 744 additional homes in San Francisco without displacement. These jobs will pay living wages and be a gateway for new local apprentices, including women and minorities from our local community to begin or continue a career in construction.

San Francisco has become increasingly unaffordable to newcomers and long-time residents alike through a long-term trend of creating insufficient quantities of housing. Our crisis-level housing shortage has caused rents to skyrocket across the entire city while at the same time leaving even rent controlled tenants unable to move into safer, higher quality housing.

The development at 3333 California would create up to 744 units, allowing more people to remain in the city and bringing new homes to San Francisco's west side. Additionally, the proposed development will provide over 5 acres of open space where kids can play, neighbors can relax, and friends can spend time with one another in this part of the city. It will help create a community centric environment that is family –friendly and desperately needed in a city that has seen a family presence diminish in recent years.

This project has prioritized community input on design and use from the start. While 3333 California will not end our housing crisis overnight, this development is a part of the solution and a big step in the right direction.

Thank you for your service and consideration on this development. We ask that you deny the Laurel Heights Improvement Association's appeal of the 3333 California Street project in order to ensure residents of San Francisco and surrounding communities may begin to enjoy its many benefits.

Sincerely

Todd Williams

Senior Field Representative

c: Angela Calvillo, Clerk of the Board of Supervisors, <u>Angela.Calvillo@sfgov.org</u>

Wus

sko/opeiu29/afl-cio

BOS Legislation, (BOS)

Sent:

Thursday, November 07, 2019 12:27 PM

To: Cc: Major, Erica (BOS) BOS Legislation, (BOS)

Subject:

FW: 3333 California Street- Major Encroachment Permit

Attachments:

20191107153853.pdf; 20191107154101.pdf

File No. 190947

From: Kathy Devincenzi < krdevincenzi@gmail.com>

Sent: Thursday, November 7, 2019 12:12 PM

To: BOS Legislation, (BOS)

bos.legislation@sfgov.org>; Wong, Jocelyn (BOS) <jocelyn.wong@sfgov.org>; Jalipa, Brent

(BOS) brent.jalipa@sfgov.org

Subject: 3333 California Street- Major Encroachment Permit

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Re: 3333 California Street, San Francisco, CA

File No. 190947 - Ordinance Approving Major Encroachment Permit

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see attached letter and Exhibits A through F for official file and/or board agenda packet.

Kindly acknowledge receipt.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

415-221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY EMAIL

November 7, 2019

San Francisco Board of Supervisors c/o Clerk of the Board of Supervisors City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

Record Number: 2015-014028CUA/PCA/MAP/DUA

Major Encroachment Permit

Board of Supervisors File No: 190947

The Laurel Heights Improvement Association objects to the proposed ordinance approving a major encroachment permit on the grounds previously stated including those grounds set forth in the attached letter to the Director, San Francisco Department of Public Works dated September 18, 2019, a copy of which is attached hereto.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Attachment



Laurel Heights Improvement Association of San Francisco. Inc.

September 18, 2019

Director, San Francisco Department of Public Works By Hand and By Email to: dpw@sfdpw.org

Re: Public Works Hearing - Wednesday 9/18/2019, Room 400, City Hall Order No. 201764/ Accept Public Input for request for Major/Street Encroachment 3333 California Street Project

1. The Agenda Indicates that the Requested Encroachment is Not Scheduled to Be Approved, and the Matter Should Not Be Heard Until the Board of Supervisors Decides on the Rezoning.

The Department has not mailed notice of the time, place and purpose of a hearing to recommend the application to all owners of real property within 300 feet of the all exterior boundaries of the proposed encroachment.

2. The Director of Public Works Should Recommend Modification of the Application to Prohibit the New Proposed Street Trees Along Euclid Avenue and Laurel Street that Would Impair Public Vistas from the Historically Significant Green Space.

The newly proposed street trees that would impair public vistas from the historically significant green open space are circled in red in Exhibit A hereto. New trees should not be planted in this location. Payment of in lieu fees should be ordered for these proposed new trees.

3. The City Violated LHIA's Rights of Due Process and the Requirements of the Block Book Notice Filed Against this Property by Failing to Give LHIA 10 Days' Notice of the Planning Department's Review of the Requested Major Encroachment Permit.

Section 786.2 of the Public Works Code requires that the Public Works Director forward copies of the application for a street encroachment permit to the Director of Planning and that the Public Works Director shall request a report from that department concerning the effect of the proposed encroachment in relation to their duties and responsibilities. The completed report shall be returned to the Public Works Director within 60 days of the receipt of the copies of the application by the listed departments. *Ibid.*

Laurel Heights Improvement Association of SF, Inc. (LHIA) filed an Application to Request a Block Book Notice against this property on June 18, 2019, which is valid for one year. (Ex. B hereto) LHIA specifically requested to review any application reviewed by the Planning

Director, San Francisco Department of Public Works September 18, 2019 Page 2

Department as to 3333 California Street including the following:

- any and all applications for a permit to remove or replace street trees
- public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
- approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street
- approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening. (Ex. B, Attachment A, p. 1, Application for Block Book Notice)

The Planning Department failed to notify LHIA that Planning Department review was requested as to the request for major street encroachment and also failed to hold the request for 10 days so the BBN requestor may review it, as required by Planning Department procedures. (Ex. C, p. 2, San Francisco Planning Department Application to Request a Block Book Notice, explanations)

For the reasons stated herein, among others, and in comments submitted in the administrative record for the proposed Project, LHIA was prejudiced by being denied the opportunity to voice objections to the Planning Department's view of the proposed request for major encroachment at the time the Planning Department was reviewing the application. LHIA was further prejudiced by being denied the opportunity to obtain the report of the Director of Planning and the lack of adequate time to prepare and submit to SF Public Works and the SF Planning Department LHIA's objections to the request. These violations of LHIA's rights and the rights of its officers constitute unlawful and unconstitutional violations of the rights of due process afforded to LHIA and its officers under the United States Constitution and/or the State of California Constitution.

As a result of these violations, the request for major encroachment should be returned to the Planning Department so that it can give LHIA and its officers the required 10 days' notice of the Planning Department's review of the request for major encroachment permit.

Director, San Francisco Department of Public Works September 18, 2019 Page 3

4. The Requested Encroachment is Inconsistent with the General Plan.

The November 7, 2018 DEIR confirmed that the "proposed project or project variant would cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines." (DEIR p. 4.B.41)

The requested encroachment is inconsistent with the priority policy of Planning Code section 101.1 that "landmarks and historic buildings be preserved."

This site contains historically significant natural landscaping that is integrated with the main building so that there is a seamless connection between the interior and exterior spaces through the window walls. (Ex. D)

The proposed new street trees would block the public vistas from the existing green open space that has been used by the public for recreational purposes. (Ex. E, developer's rendering and plan sheet L1.03; Ex. F, photos of public vistas from green open space)

To mitigate the significant impact on the historic resource, the Director should recommend that the project be modified to eliminate new street trees along Euclid Avenue and Laurel Street and to require in lieu fees to be paid.

5. The Request Cannot Be Approved Because the Board of Supervisors Has Not Approved the Zoning Changes Required to Allow the Proposed Project to be Built and Has Not Yet Heard Appeal of Adequacy of the FEIR for the Proposed Project.

The Preliminary Project Assessment establishes 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) 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.

6. Consideration of the Request Should be Deferred Until After the Board of Supervisors Renders a Decision on the Proposed New Zoning Controls.

The Board of Supervisors could reject or modify the proposed Special Use District, overturn or modify the conditional use authorization, and overturn the certification of the Final EIR. Any such actions could change the nature of the project and location of proposed landscaping reflected in the request. Thus, consideration of the request should be continued to a

Director, San Francisco Department of Public Works September 18, 2019 Page 4

date that occurs after the Board of Supervisors renders a decision on the proposed new zoning controls.

7. The Request is Not Consistent with the San Francisco General Plan, and the FEIR Failed to Adequately Describe the Inconsistencies With Policies Calling For Preservation of Historical Resources.

"An EIR must discuss any inconsistencies between a proposed project and applicable general plans." 14 Cal.Code Regs. Section 15125(d). By doing so, a lead agency may be able to modify a project to avoid any inconsistency. *Orinda Association v. Board of Supervisors* (1986) 183 Cal.App.3d 1145, 1169. However, the Planning Commission's Resolution merely found that the proposed rezoning ordinance "is in general conformity with the General Plan as set forth in Planning Commission Resolution 20514." The finding of "general conformity" is ambiguous, as it is not the same as consistency with the General Plan.

Section 101.1(b) of the San Francisco General Plan, passed by the voters in Proposition M, codifies the General Plan Priority Policies that "shall be the basis upon which inconsistencies in the General Plan are resolved." They include the following Priority Policies:

That landmarks and historic buildings be preserved.

That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

That our parks and open space and their access to sunlight and vistas be protected from development. (Ex. BB to August 28, 2019 letter of LHIA to Planning Commission).

The FEIR is inadequate because it merely noted that the above policy to preserve historic resources exists, but failed to describe the inconsistency between the proposed Project and this General Plan Priority Policy. DEIR 4.B.34. Moreover, the DEIR used an erroneous legal standard, indicating that Planning Code section 101.1 merely allowed the City to balance the eight master plan priority policies, whereas CEQA requires that an EIR describe *any* inconsistency with a general plan policy. DEIR 4.B.34.

8. The Requested Encroachment Permit is Not Consistent With Urban Design Element Policies that Protect Public Vistas and the Visibility of Open Spaces, Especially Those on Hilltops.

The proposed request for new street trees along Euclid Avenue and Laurel Street is inconsistent with the following policies of the Urban Design Element, and the September 5, 2019

Planning Commission findings omitted the following policies and failed to analyze the inconsistencies of the Project with them, among others:

Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.

Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.

Objective 3: Moderation of major new development to complement the City pattern, the resources to be conserved and the neighborhood environment.

Policy 3.3: Promote efforts to achieve high quality design for buildings to be constructed at prominent locations.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5: Relate the height of buildings to important attributes of the city patterns and to the height and character of existing development.

Policy 3.6: Relate the bulk of the buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction....

When buildings reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area, especially at prominent and exposed locations, they can overwhelm other buildings, open spaces and the natural land forms, block views and disrupt the city's character. Such extremes in bulk should be avoided by establishment of maximum horizontal dimensions for new construction above the prevailing height of development in each area of the city...

Policy 3.7: Recognize the special urban design problems posed in development of large properties.

Policy 3.8: Discourage accumulation and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding area and upon the City.

Policy 3.9: Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

Policy 4.1: Protect residential areas from the noise, pollution and physical danger of excessive traffic.

Policy 4.2: Provide buffering for residential properties when heavy traffic cannot be avoided. (See Ex. V to June 8, 2018 Kathryn Devincenzi comments on 3333 California Street Initial Study, Urban Design Element of San Francisco General Plan, excerpts).

The Project proposes to install street trees along Euclid Avenue and Laurel Street that would impair the historically significant public hilltop views (See Ex. D, excerpts from approved nomination of Fireman's Fund Insurance Company Home Office in National Register of Historic Places stating that site was long recognized for its views including views "to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District;" Ex. E and Ex. F; see also Exhibit KK to September 5, 2019 LHIA submission to Planning Commission).

The project site is atop Laurel Hill and commands valued public vistas of the downtown and eastern portion of the City and also of the Golden Gate Bridge and other neighborhoods of the City to the northwest. (Ex. F) During my years living in the neighborhood, I have seen innumerable members of the public enjoy these views during daytime as well as during nighttime. I have seen jubilant crowds of people view lunar eclipses from the sidewalks atop Laurel Hill at the corner of Laurel Street and Euclid Avenue and from the landscaped green spaces surrounding the main office building. Some photographs I have taken which show the existing condition of some of these views are attached hereto. (Ex. F; see also Ex. B to January 1, 2019 comments of Devincenzi, photographs taken on October 24, 2017 and January 7, 2019) These photographs show that the portions of the Bank of America Building, Transamerica Pyramid, Salesforce Building and Golden Gate Bridge can be seen from the high ground at Laurel Street and Euclid Avenue, from the landscaped green spaces surrounding the main office building and from public sidewalks along Laurel Street and Euclid Avenue. Also, the historically significant architecture of the main building can be seen across the landscaping on the perimeter of the site, and the site was designed so that the building and landscaping would function as an integrated composition.

The Final EIR for the 2004 and 2009 Housing Element acknowledges that new residential housing could result in an impact related to scenic vistas if it would be developed in a manner that obstructs views from a scenic vista from a public area or introduces a visual element that would dominate or upset the quality of a view. (January 8, 2019 comments of Devincenzi, Ex. F. p. V.C-11) Figure V.C-1 of that Final EIR shows street views of an important building in the area of the 3333 California site. The FEIR failed to adequately analyze this potentially significant impact.

The Community Preservation Alternative/Variants would avoid this significant impact on public vistas because they would retain the existing landscaped areas largely in their present form and existing public vistas from sidewalks and open space used by the public. Also, DEIR Alternatives B and C would retain the existing landscaped areas largely in their present form and avoid this significant impact on public vistas. DEIR 6.35 and 6.67.

Under CEQA, the City may not approve the Proposed Project/Variant, because a feasible alternative is available that would avoid or substantially reduce the project's significant impact upon scenic resources.

Mitigation Measure: Approve an alternative that would preserve the existing landscaped areas surrounding the main building on the southern and western portions of the site in their present form and do not locate any new construction on these areas.

This Mitigation Measure is feasible and should be adopted.

9. The EIR Failed to Identify and Describe Feasible Mitigation Measures that Would Reduce or Avoid the Proposed Project's Significant Adverse Impact on the Historical Resource.

The EIR is defective because it failed to identify and describe modifications to the proposed site plan that would reduce or avoid the proposed project's significant adverse impact on the historical resource. Such modifications would, *inter alia*, avoid installing new street trees along Euclid Avenue and Laurel Street that would block public vistas from the historically significant landscaping.

The modifications proposed by LHIA would conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties. However, as previously stated in LHIA's August 28, 2019 submission to the Planning Commission, the City failed to apply the Secretary's Standards to the design of the project, even though City Preservation Bulletin No. 21 states that:

For both Article 10-designated historic resources and CEQA-identified historical resources, the *Standards* will be applied to any work involving new construction, exterior alteration (including removal or demolition of a structure), or any work involving a sign, awning, marquee, canopy or other appendage for which a City permit is required. (Ex. U to LHIA's August 28, 2019 submittal, excerpt)

An EIR must identify and describe mitigation measures to minimize the significant environmental effects identified in the EIR. Public Resources Code sections 21002.1(a), 21100(b)(3); 14 Cal. Code Regs. section 15126.4. The requirement that EIRs identify mitigation measures implements CEQA's policy that agencies adopt feasible measures when approving a project to reduce or avoid its significant environmental effects. Public Resources Code sections

Director, San Francisco Department of Public Works September 18, 2019 Page 8 21002, 21081(a).

Mitigation measures must be designed to minimize significant environmental impacts, not necessarily to eliminate them. Public Resources Code section 21100(b)(3); 14 Cal. Code Regs. section 15126(a)(1). Any action that is designed to minimize, reduce, or avoid a significant environmental impact or to rectify or compensate for the impact qualifies as a mitigation measure. 14 Cal. Code Regs. sections 15126(a)(1), 15370. The following specific requirements for mitigation measures are set forth in 14 Cal. Code Regs. section 15126.4:

Mitigation measures should be identified for each significant effect described in the EIR. If several measures are available to mitigate a significant adverse impact, the EIR should discuss each measure and identify the reason for selecting a particular measure.

The description must distinguish between mitigation measures that are included in the project as proposed and other measures that the lead agency determines could reasonably be expected to reduce significant effects if required as conditions of project approval.

Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means. CEB, *Practice Under the California Environmental Quality Act*, p. 14-4. An EIR should focus on mitigation measures that are feasible, practical, and effective. *Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 365.

A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely. 14 Cal.Code Regs. section 15370(b); see also Public Resources Code sections 21002.1(a), 21081(a)(1); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 239. The CEQA Guidelines provide a broad definition of mitigation, which also includes actions taken to rectify or compensate for a significant impact. Under 14 Cal.Code Regs. Section 15370, mitigation" includes the following:

Avoiding an impact altogether by not taking a certain action or part of an action;

Minimizing an impact by limiting the magnitude of a proposed action and its implementation;

Rectifying an impact by repairing, rehabilitating, or restoring the affected environmental resource. CEB, *Practice Under the California Environmental Quality Act*, p. 14-7.

An EIR's discussion of mitigation measures should distinguish between measures proposed by the project proponent and measures that the lead agency determines could reduce significant adverse impacts if imposed as conditions of project approval. 14 Cal.Code Regs. section 15126.4(a)(1)(A).

Some mitigation measures make a change in the proposed project, such as not taking a certain action or not building a certain part of the project, to avoid the identified significant impact entirely. 14 Cal.Code Regs. section 15370(a). Examples include:

Changing a project to avoid a wetland area on the project site;

Restricting demolition or alteration of significant historic structures or cultural sites; and

Prohibiting activities that produce significant noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8.

Some mitigation measures do not avoid an impact entirely but limit the scope or magnitude of a proposed activity or development. 14 Cal.Code Regs. Section 15370(b). Examples include:

Changing a project plan to reduce the amount of wetland fill;

Avoiding the most important habitat of a wildlife species; Establishing a buffer zone on a project site to reduce adverse effects on adjacent areas;

Preserving areas of native vegetation.

Shielding activities, or restricting the hours during which activities are conducted, to reduce noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8 to 14-9.

Some mitigation measures do not avoid an environmental impact but rectify or correct it by restoring the affected environment or resource. 14 Cal.Code Regs. section 15370(c). Examples include:

Repairing or reconstructing a wetland or habitat area after it has been affected by a project activity;

Replanting trees or native landscape;

Restoring a historical structure that is affected by a project; and restoring areas damaged during project construction. CEB, *Practice Under the California Environmental Quality Act*, p. 14-9.

With respect to historical resources, the CEQA Guidelines specify that modifications that conform with the Secretary's Standards generally mitigate an impact to below a level of significance:

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur. 14 Cal.Code Regs. section 15126.4(b)(1) and (2).

The DEIR considered only inadequate mitigation for the project's significant impact on historical resources consisting of documentation of the historical resource (M-CR-1a) and development of an interpretative program focused on the history of the project site (M-CR-1b). DEIR pp. 4.B.45-46. Neither of these measures would substantially reduce or avoid the significant impact upon the listed historical resource.

This Board of Supervisors has the authority to order modifications to the proposed project as a condition of approval, through the conditional use authorization procedure or by design modifications. Cities and counties are authorized to regulate land use by local planning law (Government Code sections 65100-65763), the zoning law (Government Code sections 65800-65912), and the Subdivision Map Act (Government Code sections 66410-66499.37).

Thus, Public Works should defer its decision on the request for major encroachment until the Board decides whether to approve the Project as proposed or modify it.

We will respectfully urge the Board of Supervisors to strike the appropriate balance, because the developer has stated "this is not a negotiation" and declined to make appropriate revisions in response to community input. Also, the developer paid only approximately \$192.35 per square foot for the property (\$88,600,000.00 for 99-year lease plus \$1,612,000 for the fee interest = \$90,212,000/469,000 = \$192.35) so can well afford to make some modifications to avoid significant adverse impact on this listed historical resource. (August 28, 2019 LHIA submission, Ex. D, deeds)

Public Resources Code section 21002 states:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant

environmental effects of such projects..... The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

Public Resources Code section § 21081 provides that:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless **both of the following occur:**

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. (Emphasis added; see also 14 Cal. Code Regs. § 15091)

This is a stand-down mandate. The developer's project is unnecessarily destructive and prolonged, and the Board of Supervisors may order it redesigned to preserve the historically significant natural green spaces and landscaping and its integrated Mid-Century modern main building. This resource is also significant for its association with the Fireman's Fund Insurance Company, a company established in San Francisco that grew due to its reputation for integrity and played an important role in the development of San Francisco, paying fire claims after the 1906 earthquake and other significant conflagrations. (August 28, 2019 LHIA submittal Ex. G, listing and excerpts from approved nomination)

Conclusion

For the reasons stated above, the request for major encroachment is not consistent with applicable general plans and the site is not physically suitable for the type of alterations proposed. Further information on inadequacies of the FEIR and findings will be submitted to the Board of Supervisors. Also, LHIA incorporates herein all comments it made or any of its

members made in the CEQA proceedings for 3333 California Street.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

KRDevincenzi@gmail.com

Attachments: Exhibits A-F

EXHIBIT A

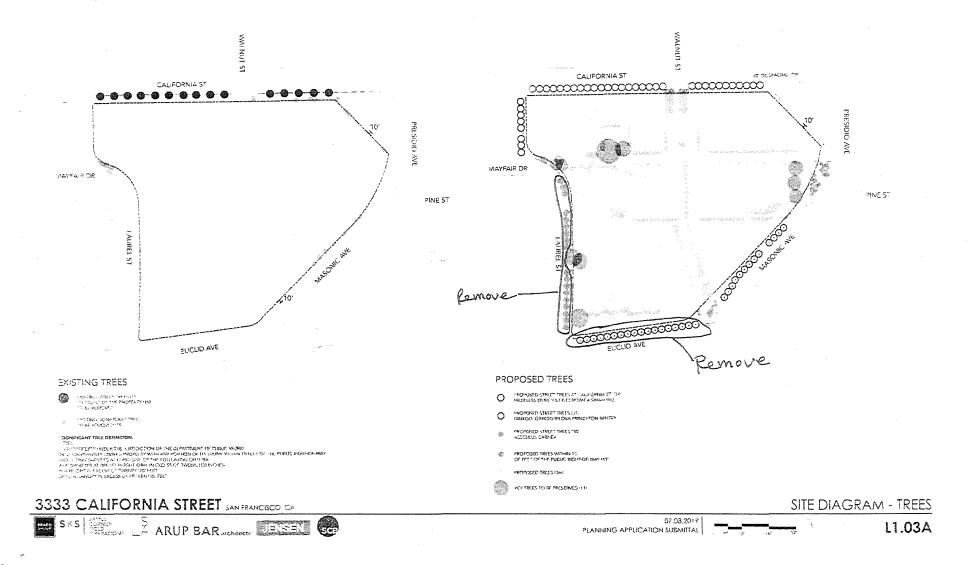


EXHIBIT B

APPLICATION TO REQUEST A **Block Book Notice**

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1. Applicant Information APPLICANTS NAME:

Laurel Heights Improvement Association of San Francisco, Inc.

MAILING ADDRESS:

22 Irls Avenue, San Francisco, CA 94118-2727

LaurelHeights2016@gmall.com

TELEPHONE: (415) 221-4700

2. BBN Property Location

SUBJECT PARCEL ADDRESS 3333 California Street

ADDITIONAL BLOCK/LOT(S):

ASSESSORS BLOCKALOT: Block 1032, Lot 003

3. Notification Preference

Please identify the type(s) of applications reviewed by the Planning Department for which you are interested in receiving notification (check all that apply):

- All Building Permit Applications (interior and exterior)
- Any Exterior Work (windows, garage doors, horizontal and vertical additions)
- Morizontal and / or Vertical Additions
- Changes of Use
- □ Conditional Use and Variance
- Other: See descriptions in Attachments A and B hereto.

4. Payment

First Assessor's Parcel: \$ 40.00

Additional Parcels: No. of Parcels

Total Enclosed: \$40.00

Laurel Heights Improvement Association of SF, Inc.

Requestor Signature: By: Kathuyu Devauenci, President Date: June 18, 2019

x \$

8 min 1/1/1/1

ATTACHMENT A (types of applications, continued)

Any application, request or proposal that may be reviewed by the San Francisco Planning Department and/or San Francisco Planning Commission, including without limitation relating to any of the following:

any conditional use application

any planned use development application

any large project authorization application

any authorization of any kind allowed under the San Francisco Planning Code or any applicable building code

any application for any change in, or waiver of, the terms of Resolution 4109 of the San Francisco Planning Commission that applies to this property

any inter-agency referral

any proposed subdivision map, including tentative and final maps

any and all applications for a permit to remove and replace street trees

any and all applications for a street space permit from the Bureau of Street Use and Mapping and/or a special traffic permit from the Sustainable Streets Division if sidewalk(s) are to be used for construction staging and/or pedestrian walkways are constructed in the curb lane(s)

any and all requests or applications for on-street commercial truck and/or passenger loading zones on Laurel Street, California Street, Masonic Avenue, and/or Euclid Avenue

any application for alteration, renovation, demolition, and/or construction

any application for revision(s) to any permit or site permit

any application relating to a change in the nonconforming use and/or structure on said property

any review of any matter relating to this property by the San Francisco Historic Preservation Commission

ATTACHMENT A (types of applications, continued)

any environmental review under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 et seq., of any application reviewed by the Planning Department, Planning Commission, Department of Building Inspection, Department of Public Works and/or for a building permit or a site permit relating to this property

any and all draft and/or proposed findings relating to any approval of a site permit, conditional use, planned unit development or other authorization relating to this property, including findings as to feasibility of alternatives under CEQA

any and all requests and/or applications for approval of placement of bicycle racks and/or stations on the perimeter sidewalks and/or within the project site

any and all drafts of and/or proposals for a proposed special use district for this property

any and all potential approvals described on Attachment B hereto

any and all proposed amendments to the Special Use District Map

any and all draft and/or proposed recommendations to the Board of Supervisors of a Special Use District

any and all draft and/or proposed conditional use and/or planned unit development authorization(s) relating to this property

any and all draft and/or proposed recommendations to the Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing to be developed as part of the proposed project or project variant, to develop and maintain privately owned, publicly accessible open space, to vest the project's entitlements for a period of time and/or to prohibit rezoning for a period of time relating to this property

any and all draft and/or proposed planning code and zoning map amendments, including for a Special Use District

any and all draft and/or proposed findings of consistency with the General Plan and priority policies of Planning Code section 101.1

any and all draft and/or proposed resolutions to modify and/or waive Planning Commission Resolution 4109 that pertains to this property

ATTACHMENT B

E. INTENDED USES OF THE EIR

An EIR is an informational document that is intended to inform the public and the decision-makers of the environmental consequences of a proposed project and to present information about measures and feasible alternatives to avoid or reduce the proposed project's identified significant environmental impacts. This is a project-level EIR that provides the environmental information and evaluation that is necessary for decision-makers to approve the proposed 3333 California Street Mixed-Use Project, prepared by the City and County of San Francisco pursuant to the California Environmental Quality Act (California Public Resources Code section 21000 et seq. and California Code of Regulations Title 14, sections 15000 et seq., "CEQA Guidelines"). It analyzes construction and operation of the proposed project and project variant at a project-specific level.

Before any discretionary project approvals may be granted for the proposed project or project variant, the San Francisco Planning Commission (Planning Commission) must certify the EIR as adequate, accurate, and objective. This Draft EIR will undergo a public comment period (from November 8, 2018 to Monday December 24, 2018) as noted on the cover of this EIR, during which time the Planning Commission will hold a public hearing on the Draft EIR. Following the close of the public comment period, the Planning Department will prepare and publish a Responses to Comments document, containing all comments received on the Draft EIR and the Planning Department's responses to substantive environmental comments. It may also contain specific changes to the Draft EIR text and/or figures. The Draft EIR, together with the Responses to Comments document, including revisions to the Draft EIR, if any, will be considered for certification by the Planning Commission at a public hearing and certified as a Final EIR if deemed adequate, accurate, and objective.

ANTICIPATED APPROVALS

Implementation of the proposed project or project variant would require changes to existing development controls for the project site through planning code, and zoning map amendments including changes to allow office and retail as permitted uses and changes to allow increased heights along California Street (increasing from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses), and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building. The project sponsor would seek to create a new Special Use District (SUD), which would require a recommendation by the Planning Commission and approval by the Board of Supervisors. The project sponsor would also seek approval of a conditional use authorization/planned unit development to permit development of buildings with heights in excess of 50 feet and to provide for minor deviations from the provisions for measurement of height, to allow for more residential units than principally permitted in the RM-1 Zoning District, and to allow certain planning code

2. Project Description

exceptions. It is anticipated that the project sponsor would seek approval of a development agreement between the City and the project sponsor (which requires recommendation for approval by the Planning Commission and approval by the Board of Supervisors) with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space, and would vest the project's entitlements for a 15-year period.

The following is a preliminary list of San Francisco agencies' anticipated approvals for the proposed project and the project variant and is subject to change. These approvals may be reviewed in conjunction with the required environmental review, but may not be granted until after the required environmental review is completed.

Actions by the City Planning Commission

- Certification of Environmental Impact Report (EIR) and adoption of findings under CEOA.
- Adoption of Findings of Consistency with the general plan and priority policies of Planning Code section 101.1.
- Recommendation to the Board of Supervisors of an amendment to the Height and Bulk Map to increase height limits along California Street from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses, and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building.
- Recommendation to the Board of Supervisors of an amendment to the Special Use District Map to designate the boundaries of the Special Use District.
- Recommendation to the Board of Supervisors of a Special Use District to reflect other
 planning code compliance issues, including to allow office and retail uses at the project
 site and to modify or waive the requirements of Resolution 4109.
- Conditional Use/Planned Unit Development authorization to permit development of buildings with height in excess of 50 feet and provide for minor deviations from the provisions for measurement of height, to provide for additional dwelling unit density under the project variant, and to provide other exceptions to the planning code requirements applicable to the project site.
- Approval of office allocation for up to 49,999 square feet (Planning Code section 321).
- Recommendation to Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space and vesting the project's entitlements for a 15-year period.
- Approval of a Transportation Demand Management Plan (Planning Code section 169).

November 7, 2018 Case No. 2015-014028ENV 3333 California Street Mixed-Use Project
Draft EIR

2,106

Actions by the San Francisco Board of Supervisors

- · Adoption of findings under CEQA
- Adoption of Findings of Consistency with the General Plan and priority policies of Planning Code section 101.1
- · Approval of planning code and zoning map amendments, including Special Use District
- Approval of Development Agreement
- · Approval of sidewalk widening legislation
- Adoption of resolution to modify or waive Planning Commission Resolution 4109

Actions by Other City Departments

- · San Francisco Public Works
 - o Approval of Subdivision Map
 - Public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
 - o Approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street (eight)
 - Approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the Masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening
 - Approval of a street space permit from the Bureau of Street Use and Mapping if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - o Recommendation to Board of Supervisors to approve legislation for sidewalk widening
- San Francisco Municipal Transportation Agency
 - Approval of request for on-street commercial truck (yellow) and passenger (white) loading zones on Laurel Street, California Street, Masonic Avenue, and Euclid Avenue
 - o Approval of a special traffic permit from the Sustainable Streets Division if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - O Approval of construction within the public right-of-way (e.g., bulbouts and sidewalk extensions) to ensure consistency with the Better Streets Plan
 - Approval of the placement of bicycle racks on the perimeter sidewalks and within the project site

2. Project Description

- San Francisco Department of Building Inspection
 - Review and approval of demolition, excavation, and site/building permits
 - o Review and approval of construction permit for non-potable water system
 - o Approval of a permit for nighttime construction if any night construction work is proposed that would result in noise greater than five dBA above ambient noise levels, as applicable.
 - o Review and approval of plumbing plans for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Public Utilities Commission
 - o Review and approval of Erosion and Sediment Control Plan, in accordance with article 4.1 of the public works code
 - Review and approval of any changes to sewer laterals (connections to the City sewer system)
 - o Review and approval of any changes to existing publicly-owned fire hydrants, water service laterals, water meters, and/or water mains
 - Review and approval of the size and location of new fire, standard, and/or irrigation water service laterals
 - o Review and approval of post-construction stormwater design guidelines including a Stormwater Control Plan, in accordance with City's 2016 Stormwater Management Requirements and Design Guidelines
 - o Review and approval of Landscape Plan per the Water Efficient Irrigation Ordinance
 - o Approval of the use of dewatering wells per article 12B of the health code (joint approval by the health department)
 - Review and approval of documentation for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Department of Public Health
 - o Review and approval of Site Mitigation Plan, in accordance with San Francisco Health Code article 22A (Maher Ordinance)
 - o Review and approval of a Construction Dust Control Plan, in accordance with San Francisco Health Code article 22B (Construction Dust Control Ordinance)
 - o Approval of the use of dewatering wells per article 12B of the health code (joint approval by the San Francisco Public Utilities Commission)
 - o Review and approval of design and engineering plans for non-potable water reuse system and testing prior to issuance of Permit to Operate

Actions by Other Government Agencies

- Bay Area Air Quality Management District
 - O Approval of any necessary air quality permits for installation, operation, and testing (e.g., Authority to Construct/Permit to Operate) for individual air pollution sources, such as boilers and emergency standby diesel generator
 - Approval of Asbestos Dust Mitigation Plan for construction and grading operations

EXHIBIT C



APPLICATION TO REQUEST A Block Book Notice

Planning Department 1650 Mission Street Suite 400 San Francisco, CA 94103-9425

T: 415.558.6378 F: 415.558.6409 A complete application is necessary for the Planning Department to process your application. The instructions for this application should be read carefully before the application form is completed to ensure a proper submission.

Planning Department staff are available to advise you in the preparation of this application. Call (415) 558-6377 for further information.

WHAT IS A BLOCK BOOK NOTICE?

A Block Book Notice (BBN) is a request made by a member of the public to be provided notice of permits on any property within the City and County of San Francisco that is subject to the San Francisco Planning Code. Applications that do not require San Francisco Planning Department Review WILL NOT be subject to a BBN (examples include applications for plumbing permits, electrical permits and building permits that do not require Planning Department review). BBNs are intended to provide the requestor notice of applications reviewed by the Planning Department that they may not otherwise receive.

WHEN CAN AN APPLICATION FOR A BLOCK BOOK NOTICE BE FILED?

An application for a BBN may be filed at any time. The Planning Department requires an annual fee for the first Assessor's Parcel, plus an additional fee for each additional parcel included in the same request. While legislation does not allow a fee exemption for any individual or groups, neighborhood organizations (defined as having been in existence for 24-months prior to the request and listed on the Planning Department's neighborhood organization notification list) require an annual fee for the first Assessor's Block, plus an additional fee for each additional block included in the same request. If you are an authorized representative of a neighborhood organization (as defined above), please also include the organization name and your title on this application form.

HOW DOES THE PROCESS WORK?

To file a request for BBN on properties within the City and County of San Francisco and subject to the San Francisco Planning Code please complete the attached Application to Request a Block Book Notice and submit a check in the appropriate amount payable to the San Francisco Planning Department. Those wishing more specific or more detailed information may call 558-6392.

Once an Application is filed on a property, a notice of the application that requires San Francisco Planning Department review is provided to the BBN Requestor. The Planning Department notifies a Requestor under a BBN, or if another notice is otherwise required, the Requestor is also included in the required notice. Please note that should a particular Planning Code Section (e.g. Sections 303, 305, 311, 312) require a notice, the BBN Requestor may not receive notice immediately following submittal of a permit to the Planning Department but rather through notice requirements in accordance with the specific Planning Code Section. The Department is required to hold a permit for 10 days so that the BBN Requestor may review it. The BBN procedure is a notification process only and any individual receiving notice has the options available to any citizen and no more. If the BBN Requestor has a concern regarding approval of the subject permit they may ultimately file a request for Discretionary Review.

If you are submitting a permit that requires
San Francisco Planning Department review and there
is a BBN filed on the subject property, you may ask
the Planning Department at the Planning Information
Center to call the BBN Requestor to determine if they
are willing to waive the notification requirement, in
which case the Planning Department may proceed
without sending a 10 day notice letter. The permit
applicant may also contact the BBN Requestor in
advance or during the 10 day notice period to obtain
their agreement to forego notice where the permit under
consideration is not of concern to them.

If the Requestor does not waive the notice requirement, the permit will be accepted for submittal and internally routed from the Building Department to the Planning Department for staff assignment. It may take a week or more for the routing, assignment and for the planner to be able to send out a notice, based upon their workload. The planner assigned to the case will send a notice to the Requestor indicating they have 10 days from the date of the Planning Department's letter to raise any concerns with the project and/or initiate Discretionary Review.

WHO MAY APPLY FOR A BBN?

Any member of the public may request a BBN on any lot within the City and County of San Francisco that is subject to the San Francisco Planning Code.

INSTRUCTIONS:

Please complete the attached Application to Request a Block Book Notice and submit your request with a check in the appropriate amount payable to the San Francisco Planning Department. Requests may be mailed or delivered to the San Francisco Planning Department, 1650 Mission Street, Ste. 400, San Francisco, CA 94103-2414. Please refer to the Planning Department Fee Schedule available at www.sfplanning.org or at the Planning Information Center (PIC) located at 1660 Mission Street, First Floor, San Francisco. For questions related to the Fee Schedule, please call the PIC at (415) 558-6377. Please note: All returned checks are subject to a \$50.00 bank fee.

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Central Reception 1650 Mission Street, Suite 400 San Francisco CA 94103-2479

TEL: 415.558.6378 FAX: 415.558.6409

WEB: http://www.sfplanning.org

Planning Information Center (PIC) 1660 Mission Street, First Floor

San Francisco CA 94103-2479

TEL: 415.558.6377

Planning staff are available by phone and at the PIC counter. No appointment is necessary

EXHIBIT D

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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

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Fireman's Fund Insurance Company	San Francisco, CA
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SETTING

The Fireman's Fund Home Office property is located in a central area of the north half of the City of San Francisco near the intersection of two principal streets, California and Presidio. The property occupies almost all of a large irregular block bound by California Street on the north, (continuing clockwise) Presidio Avenue on the east, Masonic Avenue on the southeast, Euclid Avenue on the south, and Laurel Street (in straight and curved sections) on the west. Fireman's Fund occupies about 10.2 acres – the entire block except for a small triangular parcel at the corner of California and Presidio. (See Map 1 and Map 4)

The site itself slopes down from about 300 feet in elevation in the southwest corner to about 225 feet in the northeast corner. It is part of a cluster of low hills associated with Lone Mountain whose several high points were developed as cemeteries in the nineteenth century. The Fireman's Fund site was previously a portion of the Laurel Hill Cemetery, and was long recognized for its views. Today there are distant views from the property to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District.

The property is surrounded on all sides by thoroughly developed parts of the City of San Francisco. The site itself is at a junction of several different historical developments. To the east and north, the streets are laid out in a modified extension of the original grid of the city. Across Presidio Avenue on the east the neighborhood is called the Western Addition, characterized by a mix of middle-class homes built in the nineteenth century, and by flats and apartments built in the years after the earthquake and fire of 1906. To the north, Presidio Avenue is the dividing line between two of San Francisco's wealthiest late-nineteenth- and early twentieth-century neighborhoods, Pacific Heights to the east and Presidio Heights to the west. To the west along California Street is Laurel Village, a post-World War II strip shopping center. To the west and south is Laurel Heights, a post-World War II residential development of houses and apartments. To the southeast across Masonic Avenue is Station 10 of the San Francisco Fire Department.

BUILDINGS

There are two buildings on the Fireman's Fund property. The Office Building, which is by far the larger of the two and is sometimes referred to as the main building, is located in the center of the property and is surrounded by lawns, gardens, and landscaped parking lots. The Service Building, referred to as the Annex since 1985 under a new owner, is a relatively small structure located at the northwest corner of the property. Although different in size and function, the two

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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.

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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

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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

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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).

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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 [}bid., 34]

¹⁰⁵ Ibid., 44

Fireman's Fund Insurance Company Name of Property San Francisco, CA County and State

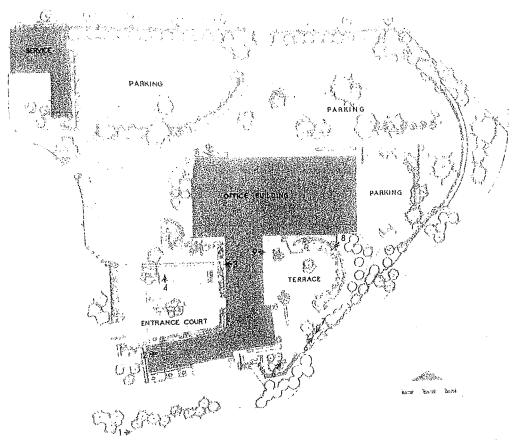
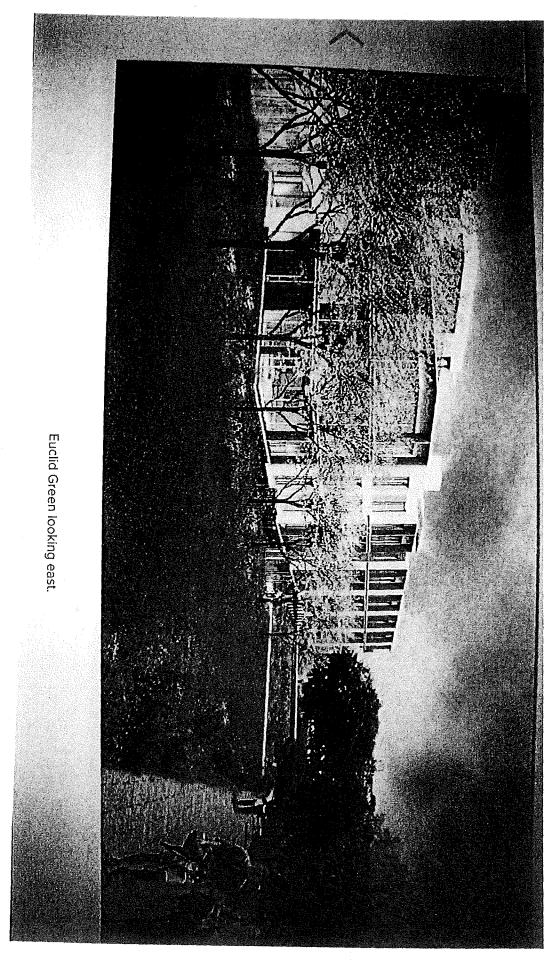
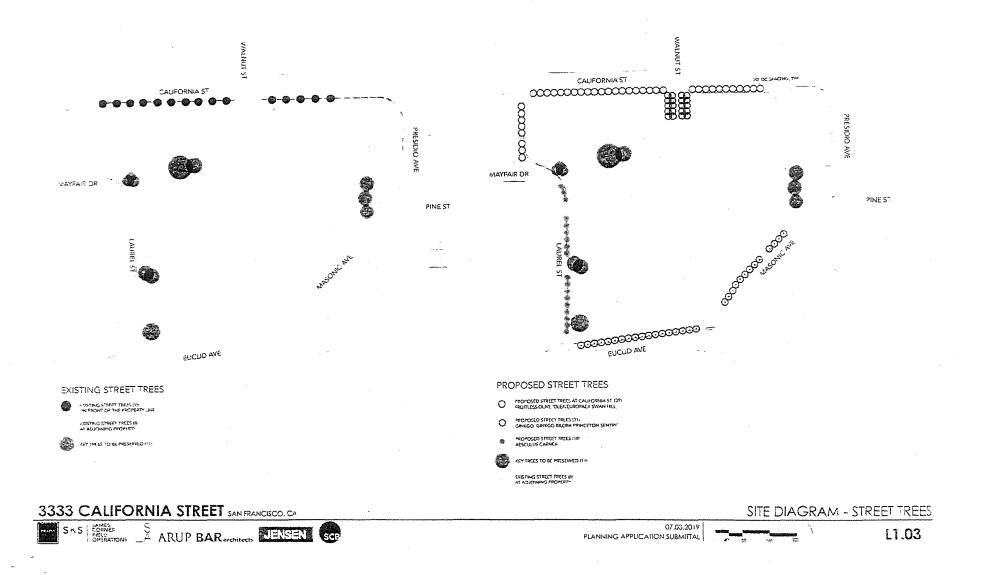


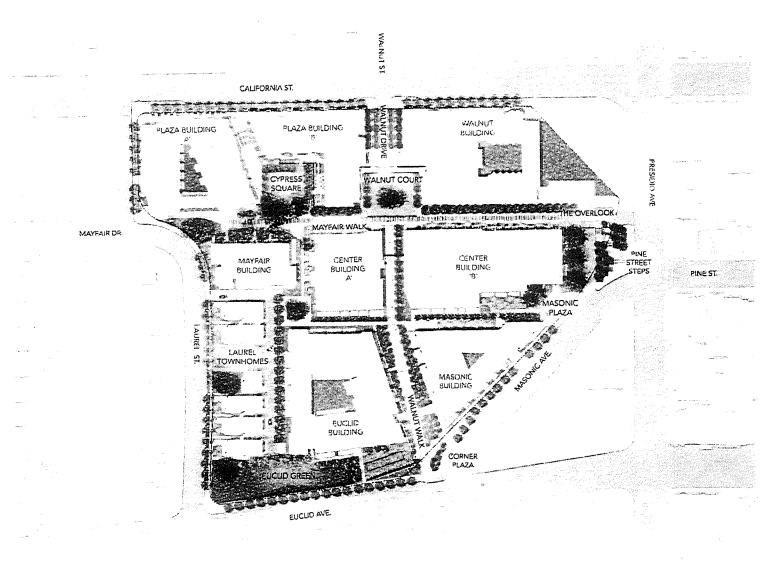
Figure 2. Site Plan showing features ca 1957-1963. Source: Garrett Eckbo, Urban Landscape Design, 1964

Sections 9 end page 87

EXHIBIT E







3333 CALIFORNIA STREET SAN FRANCISCO C.

LANDSCAPE SITE PLAN

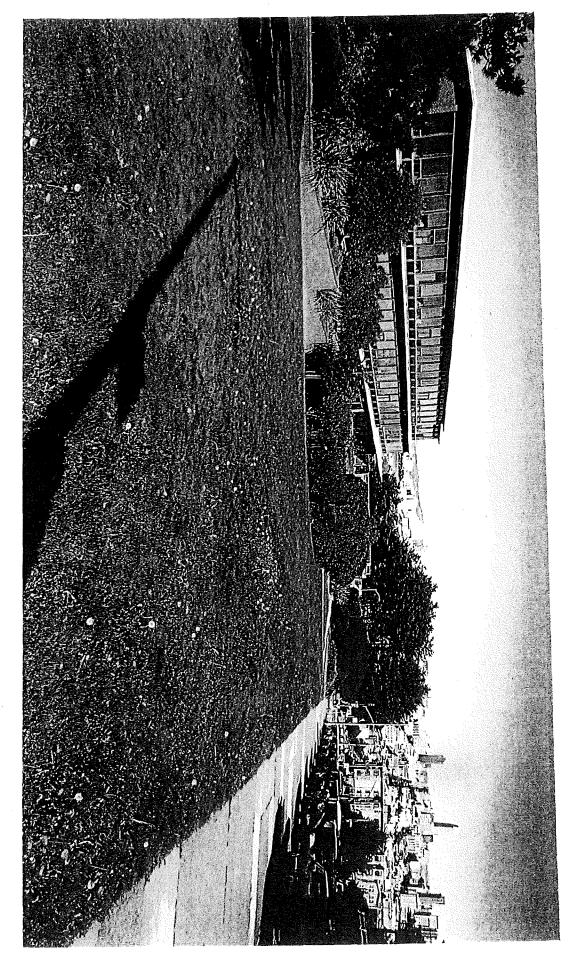
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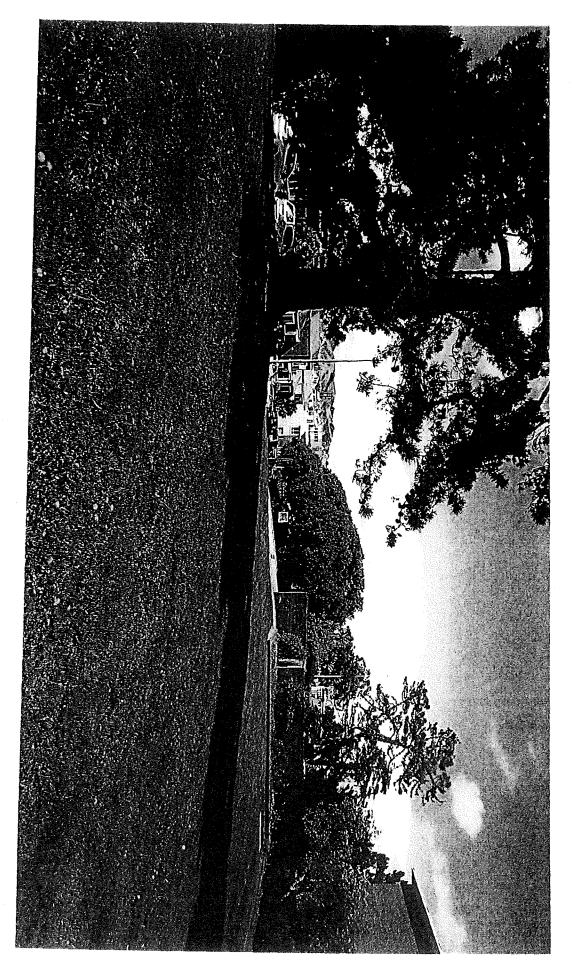


07 03:2014 PLANNING APPLICATION SUBMITTAL VAR.04

EXHIBIT F







victoria underwood <victoria.underwood@att.net>

Sent:

Thursday, November 07, 2019 2:14 PM

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,

Character (BOC), rewell, salidia (BOS), Brown, Valle (BOS),

Shamann (BOS); laurelheights2016@gmail.com

Subject:

3333 California Street - BOS Meeting 11-12-2019

Attachments:

3333 California - BOS Project Hearing 11-12-2019.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Letter attached. Thank you in advance for your time and consideration.

Victoria Underwood

November 7, 2019

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

Re: Laurel Heights Partners, LLC Developer neighborhood. Redevelopment Project - 3333 California Street

Hearing Date: 11.12.2019

Dear Supervisors:

The Developer's Project has never been a negotiation. It's never been about bringing much needed housing onto the market, nor has it been about providing much needed Affordable Housing. The Planning Commission and BOS has had the opportunity to push for Affordable Housing in any number of redevelopment projects in the neighborhood that have come before them. At a minimum, they've had the opportunity to approve these projects with the proviso that the Low-Income or Affordable Housing requirement be completed first or failing that, no Certificate of Occupancy will be issued. Instead, in lieu of fees which allows for developers and neighborhoods to renege on meeting that 20 or 25% housing requirement keeps the cycle of not having enough Affordable Housing in the City of San Francisco a reality. The argument that the City will have these buildings or projects built ultimately puts an already vulnerable and economically challenged number of people out in areas the average San Franciscan would never want to live.

Proposition A should help the City with \$150 Million for Public Housing, \$220 Million for Low-Income Housing, \$60 Million for Middle-Income Housing, \$150 Million for Senior Housing, and \$20 Million for Educator Housing but it won't solve developers being able to pay an in-lieu of fee so they don't have to build in in high-end market neighborhoods. It is building Affordable Housing in these areas and exposing them to more service jobs opportunities and higher public education that helps to lift people up to a higher standard of living and opportunity for a better life. In some neighborhoods where for some reason supermarkets aren't allowed at all, perish the thought, it will raise their expectations of what a healthy life can be rather than the hardship of what it is now.

With all this in mind, the idea that the City wouldn't entertain converting the main building at 3333 California Street into needed housing and building two additional buildings on California Street and preserve the rest of the property (including the trees on California Street) and get those up and ready for occupancy in 3-5 years rather than in 13-15 years is beyond comprehension. The original 552 residences seemed to be enough housing units but, the community fully supported the additional housing to bring the number of "must-have" housing units at this site to 755.

The TMG-CPMC California-Sacramento 5-acre, Conversion Project will have 250 at-market rate residential units built in 37 buildings. At the beginning of this year, the highest median sales price for condominiums per unit was \$1.3 Million. We can only imagine how much they will cost when the development has been completed and the units come to market. No Affordable Housing Units were required for that site. Additionally, adequate parking was designed to be provided below grade within the site and no street parking is to be lost.

There are several other additional projects due to start in our immediate neighborhood at approximately the same time as the 3333 California and the CPMC California/Sacramento Street Conversion projects in 2021-2022. These are the additional project we are currently aware of:

2670 Geary Street/Former Copper Penny Restaurant at Masonic and Geary/95-residential units 3641 California Street/between Spruce and Parker/Mixed use residential and Retail/7 condos 3637-3657 Sacramento Street/demo of two bldgs. and a garage/Mixed use residential (18 units) and retail

The building of 1,125 residential units in our neighborhood will be overwhelming. So, it is important that 3333 California Street project, as the largest of the projects at 10.25 acres, be delivered in a thoughtful, balanced and timely manner without burdening the neighborhoods that surround it and, at the same time, preserve as much of the existing historical site as possible.

The neighbor groups who have been rallying to preserve the building and the site have been up against monumental forces. We have been painted and personally attacked during this process as anti-growth and unrealistic but, we stand strong. Fifteen years of redevelopment of this site is needless, burdensome and unjustified.

I personally have written so many letters to respective city departments addressing my concerns about the Developer's Plans. I've gone into great detail about traffic issues that will undoubtedly occur as a result of adding driveways and a crosswalk where there are none now, the removal of slip lanes that help to keep traffic moving through our neighborhoods that will be gone and clog traffic on all six intersections of this site. I've written about the unnecessary destruction of the mature trees on the site and in the sidewalk. The birds that migrate to the site and the bees which will potentially be lost. The impact to the environment is measurable as we face global warming and the threat of higher carbon dioxide into our environment. Greenhouse gases that have been dismissed with in lieu of fees. The introduction of zoning changes after the FEIR was approved, and an inadequate CEQA review, and Conditional Use and Subdivision Map and total disregard to the historical resources of the building and the landscaping. This process has been run like a locomotive running through and over the community without due process and without adhering to the full and complete processes as required. The design changes described in the Community Preservation Alternative were dismissed as not being viable. The design changes are feasible and don't adversely impact the site or the neighborhood to the degree of the Developer's Plans. For all these reasons and more, Appeals have been filed against the Planning Commission's incomplete actions and incomplete processes.

The impact of 15 years of needless construction when we know it's unnecessary and destructive to the site, the environment and the people who live across the street and throughout the neighborhoods that adjoin this 10-acre site certainly warrants that the process be transparent, and made without prejudice..

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:

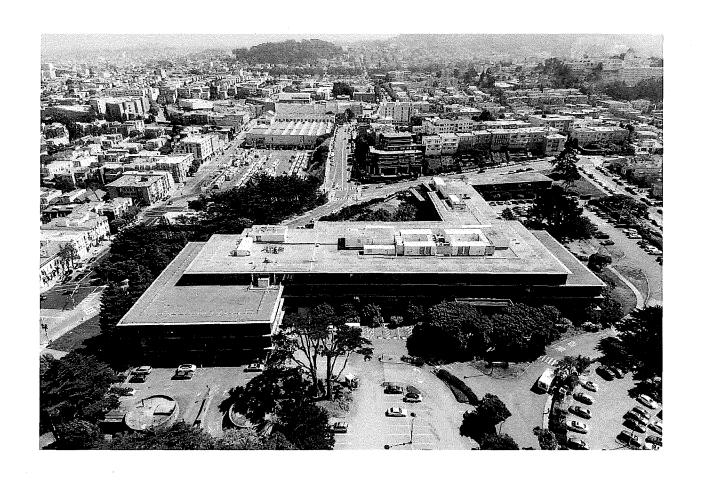
Erica.major@sfgov.org
Aaron.Peskin@sfgov.org
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Sandra.Fewer@sfgov.org
Vallie.Brown@sfgov.org
Catherine.Stefani@sfgov.org
Shamann.Walton@sfgov.org
laurelheights2016@gmail.com

The first attached photo was taken from the 7th story of a building at Divisadero & Geary. I've similarly taken a photograph from the 7th floor of 3838 California next to the CPMC site on California and, there too, the massive UCSF Campus ascends above the neighborhoods as it sits on Laurel Hill.

The Developer's renderings and photographs of the site show it as sitting low and at grade level with surrounding areas to justify their need for height changes as also shown in The Chronicle's support for the Developer as seen by the second photo attached.

For as big and spread out as the site is now, it's not the skyline albatross it will be if additional floors are to be added to its current height. The trees on the site help obscure some of it now. Even so, its massive. It's the exposed air-conditioning units that have been a massive eye sore.





Board of Supervisors, (BOS)

Sent:

Monday, November 04, 2019 6:23 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Comments on 3333 California St for BOS Mtg 11052019 or 11122019

Attachments:

BOS Comments 11122019.docx

From: johnmburns48@yahoo.com <johnmburns48@yahoo.com>

Sent: Monday, November 4, 2019 8:30 AM

Cc: BOS Legislation, (BOS)

| Sos.legislation@sfgov.org>; frfbeagle@gmail.com; kdesby@sandhill.com;

laurelheights2016@gmail.com

Subject: Comments on 3333 California St for BOS Mtg 11052019 or 11122019

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add the following letter to the agenda for the upcoming BOS meeting.

Thank you, John and Usha Burns 3616-18 Sacramento St SF 94118

RE: 3333 California St Proposed Development (2015-014028CUA/PCA/MAP/DUA)

Dear Members of the Board of Supervisors,

My wife and I live in Presidio Heights at 3616-18 Sacramento St at Locust about 3 blocks away from the subject property and have been following this proposed development closely.

Although we recognize that the City is in great need of middle- and lower-income housing, we do not support the developer's plans as currently proposed. We do 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 specific areas of the proposed development that are most concerning and need modification are:

- We oppose adding retail uses to the site as there is adequate retail in Laurel Village and surrounding areas with many vacancies for plenty of growth.
- The prolonged 15-year construction period would jeopardize the survival of Laurel Village merchants, such as the independent quality groceries of Cal-Mart and Bryan's.
- The project phasing over the 15-year period is not definite and the BOS has no guarantee that the developer will complete the senior affordable housing on a definite schedule.
- Flexible Retail uses, which were not evaluated by the EIR, should not be allowed at all in this project (they are not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts) as they will bring adverse uses to our otherwise well planned neighborhoods.

We urge this BOS to require the project be redesigned according to one of the well planned Community Alternatives. These alternatives do not remove the significant trees along California Street and retain more on-site Redwoods and trees on the historically significant Eckbo Terrace.

Sincerely,

John and Usha Burns 3616-3618 Sacramento St. San Francisco 94118

Board of Supervisors, (BOS)

Sent:

Tuesday, November 05, 2019 10:49 AM

To:

Major, Erica (BOS)

Subject:

FW: Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019 Dear Board of

Supervisors, Letter Kathy Peck Denny

Attachments:

Comment to Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019

.pdf

From: HEAR <hear@hearnet.com>

Sent: Friday, November 1, 2019 6:29 PM

To: Board of Supervisors, (BOS) <bookstandard.of.supervisors@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Walton, Shamann (BOS)

<shamann.walton@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>

Cc: Yee, Norman (BOS) <norman.yee@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Ronen, Hillary hillary.ronen@sfgov.org; Stefani, Catherine (BOS) catherine.stefani@sfgov.org; Haney, Matt (BOS) <matt.haney@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>

Subject: Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019 Dear Board of Supervisors, Letter Kathy **Peck Denny**

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Kathy Peck, ED H.E.A.R.® nonprofit org est. 1988 1405 Lyon St San Francisco, CA 94115 hear@hearnet.com www.hearnet.com

cell: 415-517-7170

email: hear@hearnet.com

H.E.A.R. office is located at 1405 Lyon St at Post st. off of Geary Blvd. We're the white Victorian with black doors.

Board.of.Supervisors@sfgov.org, Aaron.Peskin@sfgov.org, Ahsha.Safai@sfgov.org, Catherine.Stefani@sfgov.org, Gordon.Mar@sfgov.org, Hillary.Ronen@sfgov.org, Matt.Haney@sfgov.org, Norman.Yee@sfgov.org, Rafael.Mandelman@sfgov.org, Sandra.Fewer@sfgov.org, Vallie.Brown@sfgov.org, Shamann.Walton@sfgov.org

Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019

Dear Board of Supervisors

"One of the early gifts our city fathers gave us was to build Golden Gate Park. Our green space, the clean air we breathe, the shade, the calm, the peace instead of dark, concrete blocks and smog that are looming today." Recently, I was told by a young man that they are now selling oxygen in a bottle in San Francisco. San Francisco has been downgraded and rated as one of the worst cities in America for its pollution and congestion.

I recently read Planning Department Case Number 2015-014928ENV of The San Francisco Ethics Commission Disclosure Report of Major City Projects SFEC FORM 3500 (S.F. Campaign and Governmental Conduct Coe§ 3.500 et.seq.) 10/4/2019. A public document that developer Laurel Heights Partners LLC and its affiliates Prado Group Inc, SKS Partners LLC, PSKS LH Development LLC gave thousands of dollars to the various groups who attended the SF Planning Commission meeting in opposition to our neighborhood plan that included Yimby Action and others who were strategically opposed to our neighborhood variant plan and loudly complained we were blocking housing especially affordable housing. However this is not the case.

Our Community Full Preservation Residential Alternative does fully support "Affordable Housing", especially for "Seniors" "unlike" the Developers whose plans cuts down our beautiful Laurel Hill with its majestic sky views of the City and green space and old growth tree groves to build spot zoned Luxury Housing Twin Towers not affordable housing and worse with an opt out to sell the property back to the City that would be left to deal with that tragedy as discussed at the last SF Planning Commission meeting. Now to find out that its even worse the Developer has an option stated which allows to fail to transfer any land to the City and merely pay the City the value of the small piece of land burdened with the affordable housing requirement, which would be less that market rates. The developer could get around building affordable housing by paying a pittance to the City. We have been treated as if this is already a done deal and that our neighborhood concerns is the enemy and not a voice to be heard—even though we are a strong voice of reason and care for our community and our new neighbors, affordable housing, housing for seniors, and the beauty and nature that is San Francisco that we all truly love. Please soften your hearts to hear our voices.

Our Community Full Preservation Alternative Lookalike Variant 2 Plan

- 1.Dose not include chopping down 200-plus magnificent trees inside and outside the property and paving over the green space (Paradise). In this era of climate change, removing mature trees that take up carbon and filter the air, providing a large 32.5 canopy and historical green space only matched by the Presidio. 3333 California is the home to families of ravens, sparrows, black birds, warblers, doves, humming birds, woodpeckers, crows and owls. Trees offer a buffer against the noise of the very busy city corridors along the entire perimeter, having such a large green space should be preserved, not paved over as a parking lot.
- 2. Our Community Variant Plan provides 558 or (744 in Variant housing units) with senior and affordable housing and parking, day care center and cafeteria.
- 3. Builds housing approx. 5 years+, less time than the developers 15 yrs +
- 4. Our Community Variant Plan does not include adding an overwhelming amount of commercial and retail space with flexible retail spot zoned, allowing businesses to run from 6 am to 2 am that the Developer continues to insist upon and that will harm our neighborhood community business in Laurel Village.

5. Our plan does not generate approximately 15,000 tons of greenhouse gases while in construction with over 15+ years of construction that will ruin the businesses nearby, especially Laurel Village, and add considerable noise, air pollution and congestion.

Please help. We need your leadership and dedicated voices to be heard.

Sincerely Kathy Peck 1405 Lyon St San Francisco, CA 94115 cell: 415-517-7170 email: hear@hearnet.com

Board of Supervisors, (BOS)

Sent:

Tuesday, November 05, 2019 10:52 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019 Comments

Kathy Peck Denny

From: HEAR <hear@hearnet.com>

Sent: Friday, November 1, 2019 2:06 PM

To: Board of Supervisors, (BOS) <box>

Soard.of.supervisors@sfgov.org>

Subject: Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019 Comments Kathy Peck Denny

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Full Board of Supervisors Hearing on 3333 California St. Nov 12, 2019

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- 5. Our plan does not generate approximately 15,000 tons of greenhouse gases while in construction with over 15+ years of construction that will ruin the businesses nearby, especially Laurel Village, and add considerable noise, air pollution and congestion.

Please help. We need your leadership and dedicated voices to be heard.

Sincerely Kathy Peck 1405 Lyon St San Francisco, CA 94115 cell: 415-517-7170 email: hear@hearnet.com

Kathy Peck, ED H.E.A.R.® nonprofit org est. 1988 1405 Lyon St San Francisco, CA 94115 hear@hearnet.com www.hearnet.com

cell: 415-517-7170

email: hear@hearnet.com

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Board of Supervisors, (BOS)

Sent:

Tuesday, November 05, 2019 10:14 AM BOS-Supervisors; Major, Erica (BOS)

To: Subject:

FW: 3333 California Street

From: Victoria Stone <victoria@futureperfectliving.com>

Sent: Tuesday, November 5, 2019 8:06 AM

Subject: 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors,

I am writing as a senior housing professional with over 25 years of community development experience that includes time spent as a member of the Committee for an Aging and Disability Friendly San Francisco as well as the Board of the Institute on Aging. In all my work and engagement on behalf of older adults, I am often struck by the low priority placed on meeting the housing needs of this large and growing segment of our city. I am pleased to say that the project at 3333 California takes meaningful steps to change that.

In 2017, while affordable housing in San Francisco increased 83%, only 3% was developed for seniors. Longevity has resulted in a 30+ year older adulthood and by 2030 1 in 5 Americans will be 65 and older. It is clear we must address the significant affordable housing shortage facing older adults in San Francisco. I have been impressed with the thoughtful approach taken at 3333 California.

There are two housing challenges that are particularly acute in San Francisco and affect the health and well-being of older adults. These are housing affordability and accessibility, both of which would be positively impacted by the 3333 California project. First, this project is dedicating a quarter of their proposed new homes, 186 units, to affordable senior housing. This will provide much needed housing for San Francisco older adults on fixed incomes struggling with rising housing costs.

In terms of accessibility, this project provides older adults, both affordable and market-rate, with walkable access to neighborhood amenities, public transportation and a multi-generational neighborhood experience. Many older adults in San Francisco, regardless of income level, have a need for greater accessibility in their homes and around their neighborhoods. Without it they are at high risk for social isolation which is associated with significant physical, mental and emotional health issues. The project at 3333 California has shown remarkable sensitivity to the accessibility challenges of both older adults and the disabled. Examples include: the addition of elevators in townhome designs; locating the senior living development on the most level side of the site, and co-locating childcare with senior housing to enhance opportunities for multi-generational engagement.

As a senior housing professional, and a homeowner in San Francisco, I am proud to support the 3333 project and hope to see many more follow their lead.

Sincerely,

Victoria Stone

Victoria Stone, MPH

Principal, FuturePerfect Livinig

www.futureperfectliving.com

From: Sent:	Board of Supervisors, (BOS) Tuesday, November 05, 2019 2:08 PM	
То:	BOS-Supervisors; Major, Erica (BOS)	
Subject: Attachments:	FW: 3333 CA	
Attacnments:	Regarding 3333 CA.pdf	
From: Jack Ryder < jack@	rvderre com>	
Sent: Tuesday, Novemb		ŀ
To: Board of Supervisors Subject: 3333 CA	(BOS) <box> sord.of.supervisors@sfgov.org></box>	
This message is from	outside the City email system. Do not open links or attachments from untrusted sour	rces.
Please see attached.		
 .		
Jack Ryder Residential Agent I +1 415 867 4356 jacks		
Schedule a Meeting October Market Report		
<u>LinkedIn</u> <u>Instagram</u> <u>F</u>	<u>/derRE</u>	
1699 Van Ness Avenue,	an Francisco, CA 94109	

Dear Board of Supervisors,

I wholeheartedly support the proposed development at 3333 California Street. This project has been thoughtfully developed with input from the community, and marks a critical step forward in addressing San Francisco's housing crisis. Additionally, the proposal will connect the existing site to the greater Laurel Heights community, creating open spaces, community amenities, and homes.

The project has prioritized community input on design and use from the start. Throughout the design process, the developer held community meetings, engaged with community groups, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while providing much needed new housing. Based on community feedback, the development team changed the design multiple times to continue to improve the project.

The project includes retail space in the hopes of reducing the need to drive outside of the neighborhood. The proposed retail will be designed to fill-in where goods and services are lacking, complementing the existing retail establishments and helping to stitch the neighborhood together. After collaboration with stakeholders, the designs were updated to fit with the neighborhood's 'classic San Francisco' feel so that the development fits into the neighborhood's character. Additionally, to keep the Laurel Heights community family-friendly, the project includes a mix of apartments and townhomes. Importantly, it will include an on-site childcare space to serve young families.

Having lived in the area for 17 years, I look forward to this project contributing to the character of the neighborhood while also creating much needed new housing opportunities.

Sincerely, Jack Ryder

jackdryder@gmail.com

415.867.4356

Jess Maron < jessmaron@gmail.com>

Sent:

Wednesday, November 06, 2019 8:44 AM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Subject:

Save the Trees at 3333 California Street, San Francisco

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Land Use Committee Members and Clerk:

Please take whatever action is possible to prevent the removal of almost 200 trees at this proposed development site. Money will come and go, but trees provide life for many years. This developer is attempting to remove these trees by burying their Major Encroachment Permit within many others, Record Number: 2015-014028CUA/PCA/MAP/DUA. It should be noted that this property is a designated historic site by the Historic Preservation Commission of San Fransisco. These trees are all healthy and thriving, and there's no cause for safety concerns.

San Francisco currently has the poorest urban canopy of any major US city. According to the 2019 Urban Forest Council Annual Report, last year, SF agencies and departments planted 2,781 trees, and removed 5,288. We can do better. Please do what you can to help save these trees, and keep San Francisco beautiful.

Thank you kindly,

Jess Maron

Major, Erica (BOS)

From:

Board of Supervisors, (BOS)

Sent:

Wednesday, November 06, 2019 3:09 PM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: For 11/12 BOS meeting: SPUR supports 3333 California

Attachments:

SPUR Endorsement of 3333 California.pdf

From: Kristy Wang < kwang@spur.org>

Sent: Wednesday, November 6, 2019 2:47 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Cc: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>

Subject: For 11/12 BOS meeting: SPUR supports 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors:

SPUR is generally focused on policies, plans and codes rather than on individual projects. In order to make infill development easier, we prefer to help set good rules around zoning, fees, housing affordability, sustainability, etc. However, on occasion, SPUR's Project Review Advisory Board will review and endorse development proposals of citywide or regional importance, evaluating their potential to enhance the vitality of the city and region according to the policy priorities and principles of good placemaking supported by SPUR.

3333 California in Laurel Heights is one such project. This is a key opportunity to transform a site from a corporate campus into a mixed-use neighborhood in a part of the city that has potential to accommodate more residents close to amenities and transit.

Attached please find SPUR's letter to the Planning Commission in June. We encourage you to support this proposal, with hundreds of homes, space for retail and a well-designed public realm plan.

Best, Kristy Wang

Kristy Wang, LEED AP
Community Planning Policy Director
SPUR • Ideas + Action for a Better City
(415) 644-4884
(415) 425-8460 m
kwang@spur.org

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San Francisco | San Jose | Oakland

June 3, 2019

Supervisor Catherine Stefani 1 Dr. Carlton B. Goodlett Place City Hall, Room 244 San Francisco, CA 94102-4689

San Francisco Planning Commission 1650 Mission Street, Suite 400 San Francisco, CA 94103

RE: SPUR Endorsement of 3333 California Street

Dear Supervisor Stefani and Planning Commissioners:

Laurel Heights Partners, LLC presented the 3333 California Street project in Laurel Heights to SPUR's Project Review Advisory Board at our May 2019 meeting for review and consideration. The SPUR Project Review Advisory Board finds this development to be an appropriate and welcome use for this site and endorses 3333 California Street.

SPUR is generally focused on policies, plans and codes rather than on individual projects. In order to make infill development easier, we prefer to help set good rules around zoning, fees, housing affordability, sustainability, etc. However, on occasion, SPUR's Project Review Advisory Board will review and endorse development proposals of citywide or regional importance, evaluating their potential to enhance the vitality of the city and region according to the policy priorities and principles of good placemaking supported by SPUR.

3333 California Street is a major mixed-use development project planned for a 10.25-acre parcel in the Presidio Heights neighborhood. The site is currently occupied by UCSF's Laurel Heights campus. The proposed project will transform the site from a corporate campus with office, research, child care and parking uses into an mixed-use neighborhood with residential, retail, office, child care and parking uses.

3333 California Street will include 13 new buildings and the adaptive reuse of the existing office building, which would be split into two residential buildings.

Laurel Heights Partners is considering two variations on the project, one of which includes more housing units instead of office space. The project will include between 558 and 743 residential units, up to 49,999 square feet of office space, 34,000 to 40,000 square feet of retail and 13,000-15,000 square feet of child

care space. The SPUR Project Review Advisory Board prefers the proposal with higher residential density.

3333 California Street in Laurel Heights:

- ✓ Is located at an appropriate location for development, near transit and infrastructure and not on a greenfield site. This site is located near the future Geary bus rapid transit (BRT) line and several other good bus lines that run frequently. The site has been underutilized to date, with buildings on only 3 of its 10 acres, in spite of being located at the intersection of many neighborhoods and close to many amenities.
- ✓ Provides an appropriate mix of land uses of residential and retail, contributing to diverse stock of housing, fostering economic development, providing amenities and services to the surrounding community. The proposed project would bring new housing to a part of the city that has seen little new residential development, and it includes a significant retail component that ties into the existing Laurel Village corridor.
- ✓ **Provides sufficient density at the site** at 54 to 72 dwelling units per acre, supporting adjacent transit and prevents underutilization of land, serving the future needs of Bay Area residents. This project makes good use of this key site, which has been until now a suburban campus walled off from the adjacent neighborhoods.
- ✓ Creates a good place for people and contributes to a walkable environment with active ground floor uses. The plan for the site integrates the proposed buildings into the neighborhood, connecting to cross streets and breaking up the superblock into more appropriately scaled street blocks. The retail uses along California Street connect visually and functionally to the existing Laurel Village retail corridor, and the other street frontages have designed to be porous and pedestrian-friendly. The public realm plan, which includes several different kinds of public and open spaces, brings the public into and across the project site.

The SPUR Project Review Advisory Board finds this development to be an appropriate and welcome use for this site and endorses 3333 California Street. The urban design and site plan are particularly thoughtful, especially in dealing with the major grade changes at this location. The quantity, quality and variety of open space are excellent, and we appreciate the project team's decision to protect some of the older trees onsite as well as adapt the existing building to a new use. We also appreciate that the project team includes several different architects and landscape architects, helping to foster the feeling of a neighborhood built over time rather than a single master-planned project.

The potential partnership with the Jewish Community Center is an excellent idea that could help fill retail spaces if there is not sufficient retail demand in the neighborhood. We are also impressed with the neighborhood outreach given the sensitivity and location of this site.

Our only concern with this plan is the amount of parking. While we appreciate that all parking will be tucked out of sight in underground parking garages in order to maximize the useable open space, we feel that the project parking could be further reduced. Given the project's transit-oriented location near many bus lines, the Geary BRT line currently underway, and our city's evolving transportation options, SPUR recommends that the project sponsor consider reducing the number of parking spaces.

Please do not hesitate to contact us or Kristy Wang, SPUR's Community Planning Policy Director, with any questions or clarifications.

Sincerely,

Charmaine Curtis

Diane Filippi

Co-Chairs, SPUR Project Review Advisory Board

cc: SPUR Board of Directors

marsha nonn <mwnonnsf@gmail.com>

Sent:

Wednesday, November 06, 2019 8:32 PM

To:

Brown, Vallie (BOS); Fewer, Sandra (BOS); Haney, Matt (BOS); Mandelman, Rafael (BOS);

Mar, Gordon (BOS); Peskin, Aaron (BOS); Ronen, Hillary; Safai, Ahsha (BOS); Stefani,

Catherine (BOS); Walton, Shamann (BOS); Yee, Norman (BOS)

Cc:

Major, Erica (BOS)

Subject:

3333 California Street, San Francisco, CA

Attachments:

SFBOS--3333 CA St-Nov 5, 2019 Let.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please see attached correspondence.

Marsha and Wolfgang Nonn

November 5, 2019

San Francisco Board of Supervisors c/o Clerk of the Board of Supervisors City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA

Record Number 2015-014028CUA/PCA/MAP/DVA

Appeal of Certification of Final Environmental Impact Report

Appeal of Planning Commission's Approval of Conditional Use/Planned Unit Development

Dear Members of the Board:

We live in Laurel Heights.

We strongly oppose the Developer's plans for this project as approved by the San Francisco Planning Commission.

Our concerns include but are not limited to the following:

- The Developer's plans do not preserve this San Francisco historical landmark site with its lovely green space, and needlessly destroys beautiful, mature trees..
- The Developer's plans add retail and commercial uses to the site, including flexible retail with hours of operation from 6:00 AM to 2:00 AM. This will have significant adverse impacts on traffic, congestion, parking, noise and air quality, and will affect not only those of us who live in Laurel Heights,, but all San Franciscans. We already have enough retail in Laurel Village, and on Sacramento, Masonic and Geary Streets.

We support the Community Alternative Plans and respectfully request the Board overturn or modify (1) the Planning Commission's certification of the Final EIR, and (2) the Planning Commission's Conditional Use/Planned Unit Development authorization.

Very truly yours,

Marsha and Wolfgang Nonn

aprato_otr@yahoo.com

Sent:

Wednesday, November 06, 2019 10:08 PM

To:

Major, Erica (BOS)

Cc:

Stefani, Catherine (BOS)

Subject:

Reference - 3333 California Street Project. Record number

2015-01428CUA/PCA/MAP/DUA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am a longtime resident of Laurel Heights.

The Board Of Supervisors should not approve the Developer's current Project because the plan adds an additional 15 buildings to the site filling the entire site edge to edge resulting in a high-rise, congested, inhospitable environment with limited opportunity for the future residents to the outdoors. The alternative plan allows much more opportunity for open space.

The Board Of Supervisors should not approve the Developer's current Project because the NC-S zoning classification with Flexible Retail and Social Services or philanthropic facilities are not permitted in this Supervisorial District 2. Therefore, the Special Use District should not be approved for this project. NC-1 District would be more appropriate and intended to serve local neighborhood shopping districts.

The Board Of Supervisors should not approve the Developer's current project because the 15 year length of time for construction is unconscionable and unsustainable by the neighborhood and community. Consider the noise, congestion, traffic, pollution and severe inconvenience for that amount of time. The alternative plan is 5-7 years.

The Board Of Supervisors should overturn or modify the Developer's current Project for the above stated reasons.

Thank you for your consideration.
Ann Prato

Sent from my iPad

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:36 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW:

From: Abby Gritter <abbygritter8@gmail.com> Sent: Tuesday, November 5, 2019 3:50 PM

Subject:

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors:

To ensure San Francisco can be a home for all people, our city needs more housing for everyone. That's why, as a resident of the nearby neighborhood, I am writing to you in support of the proposed mixed-use development at 3333 California Street. I'm proud to have lived in San Francisco for almost 1 year. But, it pains me to live in the city with America's most expensive housing costs, and makes me wonder if this is a place I can afford to call home. When I moved here from Santa Barbara, my income increased by 50%, but my rent increased by 90%. I now make more money than both of my parents ever have for an annual salary - but in SF, I'm still considered "low-income." Our housing crisis stems from a shortage of housing. One proven strategy to address the cost of housing is to build more of it. The proposed 3333 California mixed-use development in Laurel Heights answers the city's needs by providing 744 new housing units. These units aren't just studios—approx. 58% of total homes are family friendly: two, three, and four-bedroom homes.

The City has set an important goal of producing 5,000 new housing units annually for the next 20-years. The 3333 California project alone can help the city meet almost 20% of that important annual goal. The 3333 California project has been guided by strong public policy and is balanced by community input. Throughout the development process, the Prado Group held over one hundred and sixty community meetings, engaged with the community, city leaders, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while providing much needed new housing. In the long term, 3333 California represents the types of solutions our city needs. In the short term, it's an opportunity for more families to stay and thrive in our incredible city. I urge you to support this project.

Sincerely,

Abby Gritter

David Levine <dml3221@gmail.com>

Sent:

Saturday, May 18, 2019 3:22 PM

To:

Stefani, Catherine (BOS)

Cc:

Zushi, Kei (CPC); richhillissf@gmail.com; Melgar, Myrna (CPC); Johnson, Milicent (CPC); Koppel, Joel

(CPC); Moore, Kathrin (CPC); Richards, Dennis (CPC)

Subject:

In support of 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Stefani,

My name is David Levine and I live on the 3200 block of Washington. I would like you to know I am a neighbor who would love to see more high quality, well designed, family housing in our neighborhood. 3333 California appears to be just that. The planned open space, low-density design works well with the aesthetic of our neighborhood. The unit mix will attract and retain more families in San Francisco.

We are facing a housing crisis and this proposed community will add much needed supply. We are losing too many families because there are simply not enough housing options. I hope you can find a way to make 3333 California a reality. Thank you.

If there is anything I can do as a concerned San Francisco Resident and neighbor to this project, please do not hesitate to let me know what that is.

Thank you.

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:35 AM

To: Subject: BOS-Supervisors; Major, Erica (BOS) FW: Support for 3333 California Street Project Before Board of Supervisors on

November 12th

Attachments:

Daniel Lurie.pdf

From: Daniel Lurie <dlurie@tippingpoint.org> Sent: Thursday, November 7, 2019 10:05 AM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Support for 3333 California Street Project Before Board of Supervisors on November 12th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors, I write in support of the project at 3333 California Street . Please see attached.

-Daniel Lurie

Daniel Lurie <dlurie@tippingpoint.org>

Sent:

Thursday, August 29, 2019 10:02 AM

To:

Catherine.Stefani@sfgov.org; myrna.melgar@sfgov.org; joel.koppel@sfgov.org;

frank.fung@sfgov.org; richhillissf@gmail.com; milicent.johnson@sfgov.org;

kathrin.moore@sfgov.org; dennis.richards@sfgov.org; kei.zushi@sfgov.org

Subject:

3333 California Support Letter

Dear Supervisor and Planning Commissioners:

To ensure San Francisco can be a home for all people, our city needs more housing for everyone. That's why, as a resident of the neighborhood, I am writing to you in support of the proposed mixed-use development at 3333 California Street.

I'm proud to have been born and raised in San Francisco. But it pains me to live in the city with America's most expensive housing costs. Our housing crisis stems from a shortage of housing. One proven strategy to address the cost of housing is to build more of it. The proposed 3333 California mixed-use development in Laurel Heights answers the city's needs by providing 744 new housing units. These units aren't just studios—approx. 58% of total homes are family friendly: two, three, and four-bedroom homes.

The City has set an important goal of producing 5,000 new housing units annually for the next 20-years. The 3333 California project alone can help the city meet almost 20% of that important annual goal.

The 3333 California project has been guided by strong public policy and is balanced by community input. Throughout the development process, the Prado Group held over one hundred and sixty community meetings, engaged with the community, city leaders, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while providing much needed new housing.

Based on Community and District Supervisor's feedback, the development team changed the design multiple times and has now added 186 new, on-site affordable housing units, a quarter of all the project's housing, for low-income seniors.

In the long term, 3333 California represents the types of solutions our city needs. In the short term, it's an opportunity for more families to stay and thrive in our incredible city. I urge you to support this project.

Sincerely,

Daniel Lurie

Daniel Lurie CEO + Founder

TIPPING POINT COMMUNITY 220 Montgomery Street, Suite 850 San Francisco, CA 94104 o: 415 348 1240 f: 415 348 1237

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Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:25 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support for 3333 California Street Project Before Board

Attachments:

Richard Leider Support Letter.pdf

From: Richard Leider < rleider@leidergroup.com > Sent: Wednesday, November 6, 2019 2:23 PM

To: Board of Supervisors, (BOS) <box>

Subject: Support for 3333 California Street Project Before Board

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Whom May It Concern,

Attached please find a copy of a letter in support for the 333 California Street project in San Francisco.

Regards,

Richard J. Leider

D) 415-947-7230

O) 415-285-5000

C) 415-672-2160

RLeider@Leidergroup.com

Jane & Richard Leider 1523 Baker Street San Francisco, CA 94115

August 29, 2019

San Francisco Planning Department 1650 Mission Street Suite 400 San Francisco, CA 94103

RE: Support for Project on 3333 California Street

Dear Supervisor and/or Planning Commissioners:

I am writing this letter in support of the park-like community housing project to be developed at 3333 California Street. My family and I have been homeowners since 1981 in the immediate neighborhood. We now live in the Western Addition Neighborhood near the intersection of Bush and Baker Streets with our daughters.

As a member of the Board of Directors of the San Francisco Chamber of Commerce, I have been impressed the extensive outreach the Prado Group and SKS have engaged in. This development will be an exciting and positive addition to the neighborhood.

The housing crisis in our City affects us all. This strategic development will help alleviate this shortage. My hope is that all developers are as conscientious of the surrounding community as the Prado Group and SKS. Please provide your unanimous support for 3333 California Street!

Thank you!

Sincerely,

Richard J. Leider

RLeider@leidergroup.com

415-285-5000

From: Board of Supervisors, (BOS)

Sent: Thursday, November 07, 2019 11:25 AM **To:** BOS-Supervisors; Major, Erica (BOS)

Subject: FW: Comments on 3333 California St. Record No. 2015-014028CUA/PCA/MAP/DUA **Attachments:** COMMUNITY PRESERVATION LOOKALIKE VARIANT NARRATIVE w Drawing Table Bldg

Summary.docx; EIR Inadequacies.docx; Cal Mart Bryan's Letter001.pdf

From: Richard Frisbie <frfbeagle@gmail.com> **Sent:** Wednesday, November 6, 2019 3:43 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Brown, Vallie (BOS) <vallie.brown@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Wong, Jocelyn (BOS) <jocelyn.wong@sfgov.org>

Subject: Comments on 3333 California St. Record No. 2015-014028CUA/PCA/MAP/DUA

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I would ask that the Board of Supervisors take a serious look at both new Variants presented by the Community, something the Planning Department has studiously avoided doing as it clearly recognizes that the issues raised are serious and pertinent.

Both the Community Preservation Lookalike Variant (CPLV) and the Community Full Preservation Alternative Variant 2 (CFPAV2) are deserving of a detailed review. To date the Planning Department has totally ignored the former (attached) so any conclusions/comments as to the feasibility of the Community's alternatives are without merit. Hard to comment thoughtfully on something you haven't studied.

We believe the two latest Variants, particularly the Community Preservation Lookalike, are the basis for a credible and effective compromise between the Community and the developer. These two plans offer an opportunity to bring all the Stakeholders together.

I would ask that the Board of Supervisors address the inadequacies, inaccuracies and misleading conclusions contained within the EIR-see attached. This is by no means a complete list but it highlights the sleight of hand used to avoid addressing any inconvenient truths.

I would ask that: the 7-15 year entitlement period be scaled back to something a little more human and compassionate. 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-see attached letter from Cal Mart and Bryan's. 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.

And Flexible Retail is the least desirable. The types of businesses that could be allowed are totally inappropriate for a development that extols its neighborhood friendliness, family orientation, senior housing, etc.

The Law of Unintended Consequences states that "if it can happen, it will happen." What prevents a future unscrupulous landlord opening an internet gambling site, or a massage parlor that exceeds the term, or a marijuana dispensary, or......under the guise of Flexible Retail?

It has happened in a San Francisco neighborhood already. Internet gambling was touted as a "computer learning center"; the massage parlor "branched out";and then it became a Public Safety problem involving SFPD.

Are these potential businesses appropriate sitting side-by-side with a senior housing project AND a childcare center? Potentially sharing the very same building. And right across the street from the JCC?

If adult oriented businesses such as massage parlors, tattoo parlors, bars, internet gaming centers, etc. (and lets be clear-these are adult businesses by any credible definition) are never intended it would seem to be very straightforward to use the Development Agreement as a means to specifically exclude them from any potential presence at 3333 California St. Failure to do so is a tacit agreement by both the City, the Board of Supervisors and the developer that these type businesses are in play in the future. Very hard to explain away a failure to address their exclusion in the Development Agreement. These businesses, however credible, have no place in a family-oriented neighborhood. If you believe these businesses are inappropriate for this location simply write that exclusion down-this is not rocket science.

I look forward to the hearing November 12th.

Respectfully,

F. Richard Frisbie

COMMUNITY PRESERVATION LOOKALIKE VARIANT

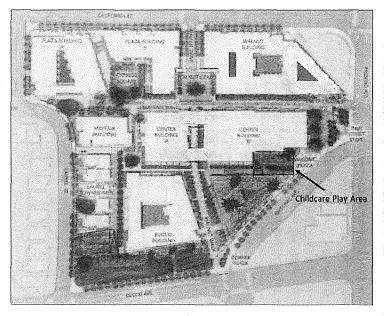
OVERVIEW

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



	OEVELOPER VARIANT 7/3/2019	COMMUNITY PRESERVATION VARIANT "Developer Lookalike"
BUILDING	Residential GSF	Residential GSF
Masonic	83,505	N/A
Euclid	184,170	144,870
Laurel Townhomes	55,300	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	231,667	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.
- 2. 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

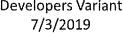
architectural design, unit configuration layouts, sizes, elevations, topography etc. except for the Masonic Building (which is not constructed) and the expanded Walnut Building.

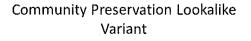
The Community Preservation Lookalike Variant preserves both the historic Eckbo Terrace and the existing green spaces along Euclid and Masonic Avenues (by eliminating the Masonic Building) and partly along Laurel Street.

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.

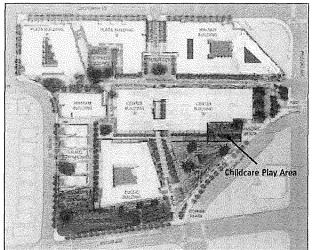
Analysis of Buildings:

Developers Variant









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), A8.05(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:

10

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.

EIR INADEQUACIES

The EIR is inadequate for failing to examine any mitigation measures for an historic listed resource. the EIR failed to identify and describe feasible mitigation measures that would reduce or avoid the proposed project's significant adverse impact on the historical resource.

The EIR is further inadequate and incomplete by failing to adequately analyze alternatives to the proposed project, the community proposed two alternatives and the planning department willfully chose to totally ignore the community preservation lookalike variant(attached). Any conclusions drawn as to the adequacy of the community's alternatives are therefore invalid due to the failure to even analyze one of the alternatives, and one based exclusively on the developers proposed plans.

The objectives of the proposed project stated in the EIR were deliberately crafted to be overly narrow and intended to preclude consideration of mitigation measures and alternatives to the proposed project.

The EIR failed to analyze the project's significant shadow impacts on existing open spaces that have been used by the public for recreational purposes, on sidewalks on the east side of Laurel Street, the west side of Presidio Ave. and on publicly accessible open space proposed by the project.

The EIR failed to analyze and address the proposed project's inconsistency with:

San Francisco's General Plan as to Preservation of Historical Resources and neighborhood character.

The Housing Element of the General Plan and related applicable land use plans or regulations and would have a substantial impact upon the existing character of the vicinity.

The General Plan Policies stated in the Urban Design

Element.

The proposed project would expose people or structures to potential substantial adverse effects including the risk of loss, and/or would be located on a geologic unit or soil that is unstable or would become unstable as a result of the project and potentially result in on-site or off- site landslide, lateral spreading, subsidence, liquefaction or collapse.

The EIR is incomplete and inaccurate as it failed to analyze whether the proposed project could have a significant hazard and hazardous materials impact.

The EIR lacks substantial evidence to support its conclusion that reducing the project's retail parking supply would mitigate the project's significant impact on VMT to a less than significant level and furthermore is inadequate because it used inaccurate models to forecast vehicle- trips and the EIR's traffic demand analysis is

inadequate because it omits substantial traffic that would be attracted to five new loading zones proposed to be installed on the streets surrounding the property, including VMT from transportation network companies such as Uber and Lyft, the TNCs.

The EIR failed to adequately analyze the significant project and cumulative impacts on greenhouse gas emissions that the project/variant could generate.

IMPACT OF PSKS 3333 DEVELOPMENT PLAN ON LAUREL VILLAGE

- 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.
- 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 Hismpsoli	
T 20 mg	

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:26 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: 3333 California Street

From: Linda L. Day lindalday1@gmail.com> Sent: Wednesday, November 6, 2019 10:21 AM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Cc: kroth@pradogroup.com Subject: 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Supervisors,

I own and live in a one-bedroom apartment on Masonic Avenue -- 500 Masonic Ave, #9, San Francisco, CA 94117 -- in a building that was the focus of neighborhood resistance when in the planning stage. I attended a NOPA meeting and met with owners of little houses who told me how vigorously they opposed my building and the Petrini Place building above the Lucky's on Fulton. Who can afford little houses like the ones they inhabit and bought decades ago? A speculator bought one on the 2000 block McAllister for 1.5 million 2 years ago, added 2,000 square feet, and just sold it for 4.2 million.

The wealthy residents of this part of town are worried that people like me -- a retired CSU professor -- will bring down the neighborhood. I attended one of the meetings to oppose 3333 California St. They insist that they are not against housing -- just the aspects of the project that will make it economically feasible. One specious argument has to do with protecting Laurel Village merchants from competition. This is ridiculous. Most of us shop at Target and Trader Joe's.

Further, the project adjacencies for the commercial segments are heavily trafficked streets. The one edge facing detached homes will be developed with town homes.

Please do not allow NIMBYs to rule just because they have money and time to engage in opposition.

Linda L. Day, M.Arch., Ph.D.

, _...a (DO3)

From:

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:26 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support Letter for 3333 California Street Project

Attachments:

Kerim Algul.pdf

From: Kerim Algul <kalgul@webcor.com>
Sent: Wednesday, November 6, 2019 8:06 AM

To: Board of Supervisors, (BOS) <box>

Soard.of.supervisors@sfgov.org>

Subject: Support Letter for 3333 California Street Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Board of Supervisors,

Please see attached my support letter of the 3333 California Street project.

Thank you,

Kerim Algul

Senior Project Engineer | Drywall



UCSF - Block 33 | 490 Illinois St, San Francisco, CA 94107

M (510) 496-1320 www.webcor.com

·--

From:

Kerim Algul <kalgul@webcor.com>

Sent:

Wednesday, September 04, 2019 1:46 PM

To:

Stefani, Catherine (BOS); Melgar, Myrna (CPC); Koppel, Joel (CPC); Fung, Frank (CPC);

richhillissf@gmail.com; Johnson, Milicent (CPC); Moore, Kathrin (CPC); Richards, Dennis (CPC); Zushi,

Kei (CPC)

Subject:

Support for 3333 California St Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor and Planning Commissioners,

Building more housing in San Francisco is essential to creating a more equitable and vibrant city. New housing in San Francisco must also be sustainable. The 3333 California development in Laurel Heights is not only adding more housing—it's adding sustainable housing. That's why, as a proud Noe Valley neighborhood resident, I support 3333 California.

The 3333 California development team intends to meet or exceed the requirements of the San Francisco Green Building Ordinance by achieving a minimum of LEED Gold for Neighborhood Development Plan certification. The project will also serve as a net positive development for the community and the environment, exceeding code requirements for energy and water. 3333 California also adds density in a smart way. When our cities increase density with in-fill development, we reduce greenhouse gas emissions, and people utilize public transit more. Dense urban environments make a positive impact on community wellness, material and waste management, and our urban ecosystems.

3333 California will be constructed using natural, top-quality materials without sacrificing important view corridors. Efficient and renewable energy systems and waste management will minimize the project's carbon footprint, and the use of green roofs, storm-water capture, and solar panels will improve the eco-friendliness of 3333 California.

The development provides unprecedented sustainability features without compromising San Francisco's natural beauty. Landscaping throughout the site celebrates California's indigenous biodiversity, inspired by a Cypress grove, flowering gardens, a verdant ravine, Oak trees, Walnut trees, Redwood trees and other old-growth trees. A large green park is perched on the southwest corner of the site above the neighborhood to take in scenic vistas, including the Golden Gate Bridge and downtown city views.

3333 California isn't simply just providing 15 new residential buildings with 744 new homes. It's an asset uplifting our community's health today and into the future. I hope you support this critical project.

Sincerely,

Kerim Algul

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:26 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support of 3333 California Street for meeting on November 12th

Attachments:

Abiah Karthauser.pdf

From: Abiah Karthauser <abiahkarthauser@gmail.com>

Sent: Wednesday, November 6, 2019 7:11 AM

To: Board of Supervisors, (BOS) <box>

Soard.of.supervisors@sfgov.org>

Subject: Support of 3333 California Street for meeting on November 12th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please find the attached letter of support of the project at 3333 California St. for your hearing on November 12th. Please let me know if you have any follow up questions, I can be reached at 415-699-9675.

Thank you,

Abiah Karthauser

Abiah Karthauser <abiahkarthauser@gmail.com>

Sent:

Friday, August 30, 2019 4:24 PM

To:

Stefani, Catherine (BOS); Melgar, Myrna (CPC); Koppel, Joel (CPC); Fung, Frank (CPC);

richhillissf@gmail.com; Johnson, Milicent (CPC); Moore, Kathrin (CPC); Richards, Dennis (CPC); Zushi,

Kei (CPC); Lisa Congdon

Subject:

3333 California Support Letter

Attachments:

Dear Supervisor

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor, Planning Commissioner et al,

As a resident who grew up in the neighborhood and now returned as an adult with my own family, I am writing to express my support for the proposed development at 3333 California Street.

Our family often walks to the Presidio, along Sacramento Street, and Laurel Village, frequenting the various merchants and restaurants. We would welcome this family-friendly community including the new stores especially the proposed smaller non-traditional "big box" variety. I feel theproposal will connect the existing site to the greater Laurel Heights community, creating open spaces, community amenities, and homes.

The proposed development will provide over 5 acres of open space where kids can play, neighbors can relax, and it will help create anenvironment that is desperately needed in a city that has seen a rapid flight of families leaving San Francisco. The proposed pedestrian walkways through the site will connect neighbors in the Laurel Village and surrounding neighborhoods by reimagining the currently walled-off space on the UCSF campus. And with most units designed for two or more bedrooms, the project will be a fantastic place to raise a family and a great amenity for existing residents and neighbors.

I urge you to support this project that is thoughtfully developed and will create an opportunity for families to stay and thrive in our city.

Sincerely,

Abiah Karthauser

Dear Supervisor, Planning Commissioner et al,

As a resident who grew up in the neighborhood and now returned as an adult with my own family, I am writing to express my support for the proposed development at 3333 California Street.

Our family often walks to the Presidio, along Sacramento Street, and Laurel Village, frequenting the various merchants and restaurants. We would welcome this family-friendly community including the new stores especially the proposed smaller non-traditional "big box" variety. I feel the proposal will connect the existing site to the greater Laurel Heights community, creating open spaces, community amenities, and homes.

The proposed development will provide over 5 acres of open space where kids can play, neighbors can relax, and it will help create an environment that is desperately needed in a city that has seen a rapid flight of families leaving San Francisco. The proposed pedestrian walkways through the site will connect neighbors in the Laurel Village and surrounding neighborhoods by reimagining the currently walled-off space on the UCSF campus. And with most units designed for two or more bedrooms, the project will be a fantastic place to raise a family and a great amenity for existing residents and neighbors.

I urge you to support this project that is thoughtfully developed and will create an opportunity for families to stay and thrive in our city.

Sincerely,

Abiah Karthauser

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:26 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support letter for 3333 California Street project

From: Ignacio Barandiaran < ignacio.barandiaran@gmail.com>

Sent: Tuesday, November 5, 2019 4:57 PM

To: Board of Supervisors, (BOS) <box>

Subject: Fwd: Support letter for 3333 California Street project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I want to reiterate my support for this project in advance of the upcoming hearing, per my earlier letter copied below.

Best regards,

Ignacio Barandiaran c 415.606.6584

Begin forwarded message:

From: Ignacio Barandiaran < ignacio.barandiaran@gmail.com >

Date: September 6, 2019 at 6:23:55 PM PDT

To: Catherine.Stefani@sfgov.org, myrna.melgar@sfgov.org, joel.koppel@sfgov.org,

frank.fung@sfgov.org, richhillissf@gmail.com, milicent.johnson@sfgov.org, kathrin.moore@sfgov.org,

dennis.richards@sfgov.org, kei.zushi@sfgov.org

Subject: Support letter for 3333 California Street project

Dear Supervisor and Planning Commissioners:

I support the proposed development at 3333 California Street. This project has been thoughtfully developed with input from the community, and marks a critical step forward in addressing San Francisco's housing crisis. Additionally, the proposal will connect the existing site to the greater Laurel Heights community, creating open spaces, community amenities, and homes.

The project has prioritized community input on design and use from the start. Throughout the design process, the developer held community meetings, engaged with community groups, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while

providing much needed new housing. Based on community feedback, the development team changed the design multiple times to continue to improve the project.

The project includes retail space in the hopes of reducing the need to drive outside of the neighborhood. The proposed retail will be designed to fill-in where goods and services are lacking, complementing the existing retail establishments and helping to stitch the neighborhood together. After collaboration with stakeholders, the designs were updated to fit with the neighborhood's 'classic San Francisco' feel so that the development fits into the neighborhood's character. Additionally, to keep the Laurel Heights community family-friendly, the project includes a mix of apartments and townhomes. Importantly, it will include an on-site childcare space to serve young families.

As a passionate supporter of making San Francisco a better a more inclusive place to live, I look forward to this project contributing to the character of the neighborhood while also creating much needed new housing opportunities.

Sincerely, Ignacio Barandiaran.

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:27 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support Letter 3333 California St., November 12th

Attachments:

Jeff Schlarb (3).pdf

From: Jeff Schlarb <jeff@jeffschlarb.com> Sent: Tuesday, November 5, 2019 5:18 PM

Subject: Support Letter 3333 California St., November 12th

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Board of Supervisors,

I know some of you and support what you are all doing in our fine city of San Francisco. I am a resident of San Francisco, in Presidio Heights/Laurel Heights more specifically. I run an Interior Design business in San Francisco and in the same neighborhood as well. Please see my attached letter in support of this development that I think will help create density, housing, bridge a neighborhood together and be a welcome addition to our community. I support the project fully.

Healthy Regards,

js

jeff schlarb | principal.designer M. 415.336.3550 T. 415.295.4567 www.jeffschlarb.com

3525 Sacramento St. san francisco, ca 94118

Dear Supervisor Catherine Stefani and Planning Commissioners:

My name is Jeff Schlarb and I have been a resident and small business owner in San Francisco for nearly 20 years. I am writing to express my support for the proposed development at 3333 California Street. I have met with a few of the project managers and developers of this project and I strongly believe this project marks a critical step forward in addressing San Francisco's housing crisis. The development at 3333 California would create 558 or 744 units, allowing more people to remain in the city and bringing new homes to San Francisco's west side. Additionally, the proposed development will provide over 5 acres of open space where kids can play, neighbors can relax, and friends can spend time with one another in this part of the city. It will help create a family-friendly community environment that is desperately needed in a city that has seen a rapid flight of families leaving San Francisco. Furthermore, it will create an environment for employees that work in the neighborhood to frequent and enjoy.

I am glad to see the City government put forward a goal of producing 5,000 residential units annually for the next 20 years. In order to help realize this goal, I hope that you will support the 3333 California project and bring new homes to San Francisco's west side, where very little new housing has been built over the past 40 years. Additionally, this new project will also include affordable housing that will help preserve the diversity of our city and the vibrancy of our neighborhoods. San Francisco is an innovative city that values inclusion, diversity, and community. In this moment of crisis, we hope that you will support this project and ensure that the residents of San Francisco have access to housing.

The development at 3333 has the support of my family, as well as my business Green Couch Staging and Design Inc. which has seen first-hand the impact the housing crisis has had on my employees.

Sincerely,

Jeff Schlarb

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:27 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: 3333 California Street Project

From: Adam Martin <amart650@yahoo.com> Sent: Tuesday, November 5, 2019 7:04 PM

Subject: 3333 California Street Project

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor and/or Planning Commissioners:

To ensure San Francisco can be a home for all people, our city needs more housing for everyone. That's why, as a resident of Cow Hollow, I am writing to you in support of the proposed mixed-use development at 3333 California Street.

I'm proud to have been born in San Francisco, raised on the Peninsula, high school educated in the Sunset, and returned as a resident since graduating college in 2011. But, it pains me to live in the city with America's most expensive housing costs. Our housing crisis stems from a shortage of housing. One proven strategy to address the cost of housing is to build more of it. The proposed 3333 California mixed-use development in Laurel Heights answers the city's needs by providing 744 new housing units. These units aren't just studios—approx. 58% of total homes are family friendly: two, three, and four-bedroom homes.

The City has set an important goal of producing 5,000 new housing units annually for the next 20-years. The 3333 California project alone can help the city meet almost 20% of that important annual goal.

The 3333 California project has been guided by strong public policy and is balanced by community input. Throughout the development process, the Prado Group held over one hundred and sixty community meetings, engaged with the community, city leaders, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while providing much needed new housing.

Based on Community and District Supervisor's feedback, the development team changed the design multiple times and has now added 186 new, on-site affordable housing units, a quarter of all the project's housing, for low-income seniors.

In the long term, 3333 California represents the types of solutions our city needs. In the short term, it's an opportunity for more families to stay and thrive in our incredible city. I urge you to support this project.

Sincerely,

Adam Martin 3055 Steiner Street

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:27 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: 3333 California - Letter of strong support!

Attachments:

Diarmuid MacNeill.pdf

From: Diarmuid MacNeill < diarmuid@dolmen-engineers.net>

Sent: Tuesday, November 5, 2019 4:42 PM

To: Board of Supervisors, (BOS) <box>

Soard.of.supervisors@sfgov.org>

Cc: Kroth@pradogroup.com

Subject: 3333 California - Letter of strong support!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Diarmuid Mac Neill

Dolmen Consulting Engineers Inc. 2595 Mission St., Suite 200 San Francisco CA 94110 (415) 409-9200 xt. 101

Dear Supervisor and/or Planning Commissioners:

To ensure San Francisco can be a home for all people, our city needs more housing for everyone. That's why, as a resident of the Inner Richmond neighborhood, I am writing to you in support of the proposed mixed-use development at 3333 California Street.

I'm proud to have lived in San Francisco for thirty years. It pains me to live in the city with America's most expensive housing costs. Our housing crisis stems from a shortage of housing. One proven strategy to address the cost of housing is to build more of it. The proposed 3333 California mixed-use development in Laurel Heights answers the city's needs by providing 744 new housing units. These units aren't just studios—approximately 58% of total homes are family friendly: two, three, and four-bedroom homes.

The City has set an important goal of producing 5,000 new housing units annually for the next 20-years. The 3333 California project alone can help the city meet almost 20% of that important annual goal.

The 3333 California project has been guided by strong public policy and is balanced by community input. Throughout the development process, the Prado Group held over one hundred and sixty community meetings, engaged with the community, city leaders, and collaborated with two design-focused community advisory groups. These community leaders all provided helpful suggestions that will improve the project and enhance the neighborhood while providing much needed new housing.

Based on Community and District Supervisor's feedback, the development team changed the design multiple times and has now added 186 new, on-site affordable housing units, a quarter of all the project's housing, for low-income seniors.

In the long term, 3333 California represents the types of solutions our city needs. In the short term, it's an opportunity for more families to stay and thrive in our incredible city. I urge you to support this project.

Sincerely,

Diarmuid Mac Neill 530 8th Avenue. #6

San Francisco CA 94118

(415) 260-4814

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:29 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Record No. 2015-014028CUA/PCA/MAP/DVA (BOS) File Nos. 190844/45

From: Marvis Phillips <marvisphillips@gmail.com> Sent: Wednesday, November 6, 2019 12:39 AM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Subject: Re: Record No. 2015-014028CUA/PCA/MAP/DVA (BOS) File Nos. 190844/45

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Clerk of the Board, If you could send this email to all the Supervisors, for the Upcoming Hearing on 3333 California Project, I would be appreciated, thank you. Marvis

On Tue, Aug 27, 2019 at 4:06 AM Marvis Phillips marvisphillips@gmail.com wrote:

Dear Supervisor Stefani,

The District 6 Community Planners is in support of this project 3333 California Street for the following reasons: 1). It provides for 185 'Affordable Senior Housing Units', some of which we hope will be reserved for 'Homeless' Seniors. 2). 559 other units of which we are hoping will also be classified as 'Affordable' especially to the Disabled Community, 3). The project provides 127,126 square feet of privately owned, publicly accessible open space. 4). It is close to a Major Shopping Area. & 5). Has several MTA Wheelchair Accessible Lines.

There is also recreation and exercise facilities nearby.

We hope both the San Francisco Planning Commission and the Board of Supervisors approve this project.

Sincerely,

Marvis J. Phillips Board Chair District 6 Community Planners

Marvis J. Phillips
Board Chair
District 6 Community Planners

Marvis J. Phillips Board Chair District 6 Community Planners

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:32 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Build more housing; please start with 3333 California

Attachments:

Adam McMichael.pdf

From: Adam McMichael <adam.mcmichael@gmail.com>

Sent: Wednesday, November 6, 2019 2:05 PM

Subject: Build more housing; please start with 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi,

I have been following this project very closely. My family and I live nearby, we shop in this area and we have long been proponents of more housing and greater density in SF. As you'll find in our letter we are a more fortunate family in the Bay Area and we love to call SF home. However, we've seen less fortunate friends who have chosen to raise their young families elsewhere due to affordability issues. This city needs housing supply and this site is a perfect opportunity for adding density to our community.

I am so thankful for the increase in density that has been developed in this plan. Please approve this project as presented and help streamline construction from here so that the development can impact our community as soon as possible.

Best,

Adam

Adam McMichael 415-770-1742

May 13, 2019

Ms. Catherine Stefani, District 2 Supervisor Mr. Rich Hill, SF Planning Commission SF City Hall 400 City Hall San Francisco, CA

RE: 3333 California Street Project

Dear Ms Stephani and Mr Hill:

I am writing you as a concerned citizen of San Francisco to urge you to support the proposed development at 3333 California Street, in its current form or with increased density. This project site is an incredible opportunity for the City to mitigate the housing supply issue that our region faces, by providing much-needed housing for families in a transit-friendly neighborhood. Especially in an area (District 2) that has done so little to affect the crisis the city collectively endures.

As a longtime resident of this neighborhood, I've seen neighbors and friends move out of the city due to the housing shortage and housing affordability challenges. The combined effects of job creation and slow housing production have created difficult situations for families in San Francisco.

This under used parcel offers an awesome opportunity to build more housing, and this project is exactly what the city needs at this time. The proposed project creates a family-friendly community in a city that has seen a rapid flight of young families, like mine.

The west side of San Francisco needs more housing. The residents in this area have benefited from the city's job creation as their property values have soared, but we deepen city's housing crisis by maintaining the current local zoning. This must change for the long-term sustainability of the City.

San Francisco is an innovative City that values inclusion, diversity, and community. In this moment of crisis, we hope that you will support this project and ensure that the residents of San Francisco have access to housing.

I hope that you will support the 3333 California project and create 744 new homes to help more people remain in this great city.

Sincerely,

Adam McMichael 550 Lake St, SF, CA

Board of Supervisors, (BOS)

Sent:

Thursday, November 07, 2019 11:33 AM

To:

BOS-Supervisors; Major, Erica (BOS)

Subject:

FW: Support of 3333Cal

From: Sandra Shorenstein <sshorenstein@shorenstein.com>

Sent: Wednesday, November 6, 2019 10:05 PM

To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>

Cc: Cindy Park <cpark@pradogroup.com>; Kaitlin Roth <kroth@pradogroup.com>

Subject: Support of 3333Cal

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear board of Supervisors,

I am writing in support of the proposed development at 3333 California Street. As a nearby neighbor and native San Franciscan, I would love to see the underutilized site redeveloped to accommodate housing, retail and beautiful open spaces. Many of my peers are starting to leave the City due to the lack of affordable housing. Our housing crisis stems from a shortage of housing. The proposed 3333 California mixed-use development in Laurel Heights answers the City's needs and will allow families to remain in the neighborhood by providing 744 new housing units.

As a JCC member and Laurel Village shopper, I look forward to five acres of new open space where I can eat lunch, visit with friends, shop and relax. The community is in desperate need for better neighborhood-serving retail. Most of my neighbors travel to Pacific Heights or the Marina for shopping and dining. I love the idea of pedestrian walkways that connect the site with the neighboring communities. Allowing for better neighborhood retail will encourage people to stay within our hood and walk to local shops, rather than drive to other neighborhoods.

I truly believe 3333 California will help create a family-friendly community environment that is desperately needed in a city that has seen a rapid flight of families leaving SF.

I respect the Prado group and think they've done a good job of listening to the communities feedback and creating a project that will be used and appreciated by the entire community.

I urge you to support this project as well.

Best,

Sandra Shorenstein

This message, together with any attachments, may contain material that is confidential and/or privileged for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.



October 21, 2019

Catherine Stefani Supervisor District 2 1 Dr. Carlton B. Goodlett Place Room 244 San Francisco, CA 94102

Re: Letter of Intent: Laurel Heights Partners LLC and Laurel Village Merchants Association

Dear Supervisor Stefani:

As you know, Laurel Heights Partners, LLC ("LHP") and the Laurel Village Merchants Association ("LVMA") have met a number of times over the last few years to discuss the proposed redevelopment of 3333 California Street, San Francisco, California (the "Property"). LHP's goal is for the proposed project to complement the existing retail businesses at Laurel Village Shopping Center (3400 block of California Street), enhancing the existing vibrant, well-loved neighborhood shopping street with some additional community-serving retailers. LHP is issuing this letter outlining our commitments to LVMA pursuant to your guidance and recommendation.

LHP's proposed re-development concept for the Property at 3333 California includes 744 residential units, 34,496 square feet of retail and 14,665 square feet of childcare uses, along with associated parking and a significant amount of publicly accessible open space (the "Project"). LHP and LVMA have been engaged in ongoing discussions regarding the Project and the opportunities to work together which have been outlined below:

1. <u>Co-Branding and Marketing Partnership.</u> LHP would like to partner with LVMA on a cross-marketing and branding strategy to increase the visibility of the Laurel Village Shopping Center for local residents, specifically highlighting the new retail mix, walk-ability and convenience. LHP has initiated work on a website and marketing materials that would bring a fresh new exposure for the Laurel Village merchants and the district.

2. Restrictions on Future Grocery Store Tenants. LHP agrees that if the two existing grocery stores in Laurel Village (Cal Mart and Bryan's) are in operation that no retail space contained in the 3333 California Property shall be leased to a General Grocery Store (as defined in Section 102 of the Planning Code), except with the prior written consent of the LVMA, whose consent may be granted, withheld or conditioned in their sole and absolute discretion under the then-existing voting protocols of the LVMA.

3. Public Parking Management Plan. LVMA currently manages and maintains the surface parking area at the rear of the Laurel Village Shopping Center. LVMA is concerned that customer parking demand from the retail shops at 3333 California could create burdens on the LVMA parking lot. LHP will work with LVMA (and potentially MTA) to create a parking program that would include parking validation for 90 minutes in the 3333 California Street garage for merchants of the 3333 California Street project AND merchants of the Laurel Village Shopping Center, effectively providing free validated parking for customers of the Laurel Village Shopping Center in the 3333 California project. Although LHP believes the parking program can be implemented under the currently pending entitlements for the Project, any parking program will be subject to the final entitlements for the Project and applicable laws, including the Project's CEQA clearance, mitigation measures, and conditions of approval, and in no event will LHP be required to undertake additional environmental review or obtain additional discretionary approvals in order to implement the program.

Kind Regards,

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:

Daniel J. Safier, Its Manager



Laurel Heights Improvement Association of San Francisco. Inc.

BY HAND and E-MAIL

October 21, 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 and File No. 190845 - Proposed Development Agreement

File No. 190947 - Proposed Ordinance for Major Encroachment Permit

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

Please consider the following further amendments to the captioned matters and relevant information.

Amendment to Development Agreement

As to provision 11.1 of the proposed Development Agreement, the Committee should recommend deletion of the **Planning Director's discretion** to determine "whether a proposed change constitutes a Material Change," and substitution of terms similar to those used in the Pier 70 development agreement:

This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56 [of the San Francisco Administrative Code.]

The Pier 70, 5M and Trinity Plaza development agreements do not grant such discretion to the Planning Director. (Ex. B, Pier 70, 5M and Trinity Plaza development agreement excerpts)

The proposed terms of the development agreement that would grant such discretion to the Director are unreasonable and fail to specify that the determination must be made under the definition of "Material Change" in the agreement. (Ex. A, excerpts from 3333 California

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 2

Development Agreement).

Amendment to Special Use District

Second, provision (c)(7) of the Special Use District should be changed to allow discretionary review for Material Changes to the project, but it proposes to omit them for "projects within the SUD." It would be unreasonable to grant less rights to residents near this project than residents of other areas would have. The Committee should recommend the following amendment:

(7) Discretionary Review: No requests for discretionary review shall be accepted or heard for projects within the SUD, except that any proposed Material Change, as defined in section 1.62 of the Development Agreement, shall be subject to rights of discretionary review and Planning Code section 311 notice within the SUD. (New language italicized)

Amendment to Development Agreement

Supervisor Stefani has introduced an SUD amendment in BOS File No. 191002 (p. 3) that would allow the Lucky Penny developer to pay the full in lieu fee under Planning Code section 415.5 instead of build 23% affordable housing as was specified in his SUD. (Ex. C, p. 3) The Lucky Penny developer told me he cannot afford to build the affordable housing. Given these circumstances, the existence of the 2 other options in the 3333 agreement indicates that the possibility of building 25% affordable housing is being raised as a red herring to draw attention away from undesirable aspects of the project.

Thus, the committee should recommend that the development agreement be changed to make the developer pay the full in lieu fee required by Planning Code section 415.5 to the City if the developer does not build the affordable housing and omit the option of granting the Walnut Land to the City or paying the City the value of the Walnut Land.

Developer's Disclosure Report

The Disclosure Report for Developers of Major City Projects filed by Laurel Heights Partners LLC on October 4, 2019, discloses \$118,450 donated to SPUR, \$23,350 to SFHAC, \$6,032.19 to YIMBY Action and others. (Ex. D)

Major Encroachment Permit

There is no need to widen the sidewalk along California Street because it is now 19 feet wide or remove the 15 mature street trees that run along it. The Better Streets Plan only recommends sidewalks to be between 12 and 15 feet wide. (Ex. E) Older trees sequester more

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 3

carbon emissions than younger trees. (Ex. F)

Conclusion

The Committee should recommend the amendments set forth herein.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathupe R. Deviccenze

Attachments: A through F

EXHIBIT A

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

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.

- 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</u>, <u>7.3</u>, <u>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

EXHIBIT B

RECORDING REQUESTED BY 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 under Government Code § 27383.

Recorder's Stamp

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY
RELATING TO DEVELOPMENT OF CITY LAND
UNDER THE JURISDICTION OF
THE PORT COMMISSION OF SAN FRANCISCO

[Insert Reference Date]

(c) <u>City's Rights and Obligations</u>.

- (i) The City's obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.
- (ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to a Mortgage.
- (iii) No breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by a Mortgage will defeat or otherwise impair the Parties' rights or obligations under this Development Agreement.
- (d) Successor by Foreclosure. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower's rights and obligations.

10.4. Requests for Notice.

- (a) <u>Lender Request</u>. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender's behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender's address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.
- (b) <u>City Request</u>. This provision is the City's request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Mortgage be delivered to City at the address shown on the cover page of this Development Agreement.
- 10.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights at the FC Project Area and to the extent of any Interested Person's rights, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons. More specifically, this Development Agreement has no unspecified third-party beneficiaries.

11. AMENDMENT OR TERMINATION

- 11.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the FC Project Area to which the rights and obligations were assigned without affecting other portions of the FC Project Area or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the approval of any City Agency that would be affected by the amendment.
- 11.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56; or (b) by termination of the DDA as provided by Section 2.2 (DA Term).

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND 5M PROJECT, LLC

10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by 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 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided 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, 5.6.4, 7.4.3, 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).

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. 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;

Trinity F	Plaza Develo	opment.	Agreement	Amendment;	Property	at 1167	Market :	Street,
670-693	Stevenson	Street,	and 1164 N	Aission Street				

Ordinance amending a development agreement between the City and County of
San Francisco and 1169 Market Street, L.P. for certain real property located at
1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's
Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052),
1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former
Jessie Street between 7 th and 8 th Streets, altogether consisting of approximately
177,295 square feet (4.07 acres) and commonly known as Trinity Plaza, entered into or
June 15, 2007, pursuant to Ordinance No. 92-07 adopted by the Board of Supervisors
on April 17, 2007 (File No. 061217), to add 5 years to the term, to permit the
construction of the entirety of a parking garage, to amend the definition of Existing
Tenants, to identify the BMR Units for Building A, to modify the location and selection
process for the Replacement Units, and to permit a Project-wide art component for the
Project; and adopting environmental, General Plan and Planning Code Section 101.1(I
findings.

Note:

Additions are <u>single-underline italics Times New Roman</u>; deletions are <u>strikethrough italics Times New Roman</u>. Board amendment additions are <u>double underlined</u>. Board amendment deletions are <u>strikethrough normal</u>.

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

Section 1. Findings. The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction or the city, county, or city and county.

Planning Department BOARD OF SUPERVISORS

Page 1 6/10/2009 9.3 Review Procedure. In conducting the required initial and annual reviews of the Developer's compliance with this Agreement, the Director shall follow the process set forth in Section 56.17 of the Administrative Code as of the Effective Date.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 10.1 Amendment or Termination. Except as provided in Section 2.5 (Changes in State and Federal Rules and Regulations) or Section 12.5 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56 of the Administrative Code as of the Effective Date.
- 10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Subsequent Approval, or the approval of a Subsequent Approval, shall require an amendment to this Agreement. Upon 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 Subsequent Approval). Notwithstanding the foregoing, the in event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Basic Approval or Subsequent Approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 10.1 above.

10.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

- 10.2.1 If any litigation affecting the Project Site is filed challenging this Agreement, the Basic Approvals or any Subsequent Approvals (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement, any Basic Approvals, or any Subject Approvals are suspended pending the outcome of an electoral vote on a referendum, the Term shall be extended pursuant to the provisions of this Section 10.2
- 10.2.2 In the event of changed conditions, changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, or other circumstances beyond the control of the Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the Project or any portion thereof or with the ability of Developer to perform its obligations or to perform overall under this Agreement ("Excusable Delay"), the Parties agree to: (i) extend the time periods for performance of Developer's obligations; and (ii) extend the term of this Agreement. In the event that an Excusable Delay occurs, the Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of the Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, Developer shall have first notified City of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) Developer cannot, through commercially reasonable and diligent efforts, make up for the delay within the time period remaining prior to the applicable completion date. Notwithstanding anything to the contrary in this Section, (A) the lack of credit or financing shall not be considered to be a matter beyond Developer's control and therefore no lack of such financing shall be deemed an Excusable Delay, and (B) in no event shall an Excusable Delay last for more than twenty-four (24) months.

EXHIBIT C

1	[Planning Code - Geary-Masonic Special Use District]				
2					
3	Ordinance amending the Planning Code to modify the Geary-Masonic Special Use				
4	District regarding minimum parking requirements, ground floor celling heights, and to				
5	allow payment of an inclusionary housing fee; affirming the Planning Department's				
6	determination under the California Environmental Quality Act; making findings of				
7	consistency with the General Plan, and the eight priority policies of Planning Code,				
8	Section 101.1; and adopting findings of public convenience, necessity, and welfare				
9	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 double-underlined Arial font. 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					
17	Section 1.				
18	(a) The Planning Department has determined that the actions contemplated in this				
19	ordinance comply with the California Environmental Quality Act (California Public Resources				
20	Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of				
21	Supervisors in File No and is incorporated herein by reference. The Board affirms				
22	this determination.				
23	(b) On, the Planning Commission, in Resolution No, adopted				
24	findings that the actions contemplated in this ordinance are consistent, on balance, with the				
25	City's General Plan and eight priority policies of Planning Code Section 101.1. The Board				

adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the 1 Board of Supervisors in File No. , and is incorporated herein by reference. 2 (c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will 3 serve the public necessity, convenience, and welfare for the reasons set forth in Planning 4 5 Commission Resolution No. _____, and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. _____ is on file with the Clerk of 6 the Board of Supervisors in File No. . . 7 8 Section 2. The Planning Code is hereby amended by revising Section 249.20, to read 9 as follows: 10 Sec. 249.20 GEARY-MASONIC SPECIAL USE DISTRICT 11 (a) General. A Special Use District entitled the Geary-Masonic Special Use District 12 ("District"), the boundaries of which are shown on Sectional Map SU03 of the Zoning Maps of 13 the City and County of San Francisco, is hereby established for the purpose set out below. 14 (b) Purpose. In order to provide for a mixed use development project with ground floor 15 retail, and a combination of very low income, low-income, moderate-income, middle-income, 16 and market rate residential units, at densities higher than what otherwise would be permitted 17 in the NC-3 zoning district and 80 foot height district, in an area well-served by transit, there 18 shall be a Geary-Masonic Special Use District consisting of Assessor's Block 1071, Lot 003 19 as designated on Sectional Map SU03 of the Zoning Maps of the City and County of San 20 21 Francisco. (c) Development Controls. Applicable provisions of the Planning Code for NCT-3 22 Districts as set forth in Section 752 shall apply within this Special Use District, except for the 23 24 following:

25

1	(1) Use Size. Non-residential uses 3000 square feet and above shall require a
2	conditional use under Section 121.2. Uses more than 6000 square feet in size are not
3	permitted.
4	(2) Accessory Vehicle Parking. No minimum off-street parking shall be required for
5	any use in this Special Use District. No parking shall be permitted above .5 cars for each
6	Dwelling Unit.
7	(3) Car-sharing. Notwithstanding the provisions of section 166, no less than
8	25% of parking spaces provided shall be an off-street car-share parking space and shall be
9	provided on the building site. Except as expressly provided herein, all other provisions of
10	section 166 shall apply.
11	(4) Parking and Loading Access. Parking and Loading access from Masonic
12	Avenue is not permitted.
13	(5) Dwelling Unit Mix. The project shall provide a minimum dwelling unit mix of
14	(A) at least 40% two and three bedroom units, including at least 10% three bedroom units; or
15	(B) any unit mix which includes some three bedroom or larger units such that 50% of all
16	bedrooms within the project are provided in units with more than one bedroom.
17	(6) Ground Floor Non-Residential Height. Notwithstanding Section 145.1(c)(4), non-
18	residential uses on the ground floor shall have a minimum floor-to-floor height of 12 feet, measured
19	from the ground floor slab.
20	(d) Inclusionary Housing. In order to allow for the increased residential densities provided
21	by this Special Use District, on-site inclusionary units pursuant to Planning Code Section 415.6 shall
22	be required and required in the following amounts and income levels. Compliance with Section 415 et
23	seq. shall be by payment of the affordable housing fee, or provision of on-site units, as follows:
24	(1) Affordable Housing Fee. Payment of the Affordable Housing Fee pursuant to
25	Section 415.5 and subject to the following provisions:

1	(A) For a project providing Owned Units, the applicable percentage shall be
2	33% of the Gross Floor Area of residential use.
3	(B) For a project providing Rental Units, the applicable percentage shall be
4	30% of the Gross Floor Area of residential use.
5	(2) On-Site Inclusionary Units. On-site Units pursuant to Section 415.6 in the following
6	amounts and income levels:
7	(1)(A) In a rental project, at least 10% of units must be affordable to very
8	low-income households, at least 4% must be affordable to low-income households, at least
9	4% must be affordable to moderate-income households and at least 5% must be affordable to
10	middle-income households. For purposes of this section, rental units for very low-income
11	households shall have an affordable rent set at 55% of Area Median Income or less, with
12	households earning up to 65% of Area Median Income eligible to apply for very low-income
13	units. For purposes of this section, rental units for low-income households shall have an
14	affordable rent set at 80% of Area Median Income or less, with households earning up from
15	65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of
16	this section, rental units for moderate-income households shall have an affordable rent set at
17	110% of Area Median Income or less, with households earning from 90% to 120% of Area
18	Median Income eligible to apply for moderate-income units. For purposes of this section,
19	rental units for middle-income households shall have an affordable rent set at 120% of Area
20	Median Income or less, with households earning from 120% to 140% of Area Median Income
21	eligible to apply for middle-income units. For any affordable units with rental rates set at 110%
22	of Area Median Income or above, the units shall have a minimum occupancy of two persons.
23	$\frac{(2)}{(B)}$ In an ownership project, at least 11% of units must be affordable to
24	very low-income households, at least 5% must be affordable to low-income households, at
25	least 5% must be affordable to moderate income households and at least 5% must be

affordable 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 3. 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 4. 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

1	Code that are explicitly shown in this ordinance as additions, deletions, Board amendment				
2	additions, and Board amendment deletions in accordance with the "Note" that appears under				
3	the official title of the ordinance.				
4					
5	APPROVED AS TO FORM:				
6	DENNIS J. HERRERA, City Attorney				
7	Ву:				
8	Audrey Williams Pearson Deputy City Attorney				
9	n:\legana\as2019\2000039\01396521.docx				
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24					
25					

EXHIBIT D



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102 Phone: 415.252.3100 , Fax: 415.252.3112 ethics.commission@sfgov.org . www.sfethics.org

Received on:

10-04-2019 | 09:33:49 PDT

Disclosure Report for Developers of Major City Projects

SFEC Form 3500 (S.F. Campaign and Governmental Conduct Code § 3.500 et seq.) A Public Document

1. FILING INFORMATION				
TYPE OF FILING		DATE OF ORIGINAL FILING (for amendment only)		
Original				
REPORT NUMBER	PERIOD COVER	ED		
First Report	1 year prio	or to EEA to present	(First Report)	

2. DEVELOPER INFORMATION NAME OF DEVELOPER		
Laurel Heights Partners LLC		
BUSINESS ADDRESS		
c/o PSKS 150 Post Street, Suite 320 San Francisco, CA 94108		
BUSINESS TELEPHONE	BUSINESS EMAIL ADDRESS	
415-395-0880	lcongdon@pradogroup.com	
NAME OF PERSON COMPLETING THIS REPORT	TELEPHONE NUMBER OF PERSON COMPLETING THIS REPORT	
Lisa Congdon	415-395-0880	

3. MAJOR PROJECT INFORMATION				
PLANNING DEPARTMENT CASE NUMBER				
2015-014928ENV				
DESCRIPTION OF PROJECT:				
Construction of 15 buildings comprised of 744 units, 34,496 SF retail and 14,665 SF childcare				
DATE OF ENVIRONMENTAL EVALUATION APPLICATION DATE EIR CERTIFIED OR FINAL ENVIRONMENTAL DETERMINATIO ADOPTED				
3/29/2016	09/05/2019			

4. [DONATIONS TO NONPROFIT ORGANIZATIONS				
to v don has	Enter the information below for each nonprofit organization (including charities, social welfare organizations, trade associations, etc.): (1) to which the developer and/or its affiliates have made donations during the reporting period which, when considered with all other donations to the nonprofit since one year prior to the filing of the major project's EEA, cumulatively total \$5,000 or more; and (2) which has had one or more contacts with a City officer, or has provided public comment at any hearing before any City board or commission, in order to influence the City officer with regard to the developer's major project. Attach supplemental sheets if more space is needed.				
	Check the box if donations were disclosed on any prior report filed with respect to the project listed on this report.				
TOT	AL DONATIONS TO NONPROFITS DURING THE REPORTING PERIOD				
\$	337632.19				

#	ITEMIZED NONPROFIT DONATION RECIPIENTS DURING THE REPORTING PERIOD			
	NAME OF NONPROFIT			
	SPUR			
	BUSINESS ADDRESS OF NONPROFIT			
	654 Mission Street SF, CA 94105			
	WEBSITE OF NONPROFIT			
1 www.spur.org				
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT		
	info@spur.org	415-781-8726		
	AMOUNT OF DONATION	DATE OF DONATION		
	\$ 118450			
NAME OF NONPROFIT				
	JCCSF			
	BUSINESS ADDRESS OF NONPROFIT			
	3200 California Street SF, CA 94118			
WEBSITE OF NONPROFIT www.jccsf.org				
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT		
		415-292-1200		
	AMOUNT OF DONATION	DATE OF DONATION		

	NAME OF NONPROFIT		
	Mercy Housing		
	BUSINESS ADDRESS OF NONPROFIT		
	1256 Market Street SF, CA 94102		
2	WEBSITE OF NONPROFIT		
3	wwww.mercyhousing.org		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
		415-355-7100	
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 6200		
	NAME OF NONPROFIT		
	SFHAC		
	BUSINESS ADDRESS OF NONPROFIT		
	95 Brady Street SF, CA 94103		
	WEBSITE OF NONPROFIT		
4	www.sfhac.org		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
	todd@sfhac.org	415-541-9001	
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 23350		
	NAME OF NONPROFIT		
	YIMBY Acgtion		
	BUSINESS ADDRESS OF NONPROFIT		
	661 Natoma Street SF, CA 94103		
	WEBSITE OF NONPROFIT		
5	www.yimbyaction.com		
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT	
	hello@yimbyaction.org		
	AMOUNT OF DONATION	DATE OF DONATION	
	\$ 6032.19		
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED		
	Attach additional sheets to this statement to disclose additional nonprofit donations.		

5. AFFILIATES DONATING TO NONPROFIT ORGANIZATIONS Enter the information below for each affiliate of the developer which made a donation that was reported in Part 4. An "affiliate" is any individual or entity that directly or indirectly controls, is controlled by or is under common control with, the developer. In this regard, the term "control" means the power to direct the affairs or management of another entity, whether by contract, operation of law or otherwise. Attach supplemental sheets if more space is needed. TOTAL NUMBER OF AFFILIATES DURING THE REPORTING PERIOD

#	ITEMIZED AFFILIATES OF THE DEVELOPER WHICH MADE A DONATION DURING THE REPORTING PERIOD			
	NAME OF AFFILIATE			
	PSKS LH Development LLC			
	BUSINESS ADDRESS OF AFFILIATE			
1	c/o PSKS 150 Post Street Suite 320 SF, CA 94108			
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	dsafier@pradogroup.com	415-395-0880		
	NAME OF AFFILIATE			
	Prado Group Inc.			
	BUSINESS ADDRESS OF AFFILIATE			
2	150 Post Street Suite 320 SF, CA 94108			
Ì	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
1	dsafier@pradogroup.com	415-395-0880		
	NAME OF AFFILIATE			
	SKS Partners LLC			
	BUSINESS ADDRESS OF AFFILIATE			
3	601 California Street SF, CA 94108			
ļ	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	DKingsley@sksre.com	415-421-8200		
	NAME OF AFFILIATE			
-				
f	BUSINESS ADDRESS OF AFFILIATE			
4				
-	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED			
	Attach additional sheets to this statement to disclose additional affiliates.			

6. VERIFICATION						
I have used all reasonable diligence in preparing this state	ment. I have reviewed this statement and to the best of my					
knowledge the information I have provided here is true ar	nd complete.					
certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.						
NAME AND SIGNATURE OF PERSON FILING REPORT	DATE SIGNED					
DocuSigned by:						
DC812E1C4A49445						
DC012E104A46443						
Dan Safier	10-04-2019 09:33:49 PDT					

EXHIBIT E



Guide to the San Francisco Better Streets Plan

& RELATED AMENDMENTS
TO SAN FRANCISCO'S MUNICIPAL CODES

ADOPTED DECEMBER 2010



Rendering by Allan B. Jacobs

Streetscape Requirements







Street trees

Site furnishings

Stormwater management facilities

SUMMARY

The Better Streets
Plan legislation
requires property
owners and
developers making
certain changes to
their property to
provide streetscape
elements consistent
with the Better Streets
Plan.

The Better Streets Plan legislation, adopted December 7, 2010, establishes new requirements for streetscape improvements, building on existing requirements. All streetscape requirements for new development are now located in Section 138.1 of the Planning Code.

STREET TREES

In all zoning districts, property owners making certain changes are required to install street trees every 20 feet on center, as previously required.

The legislation made minor changes to street tree requirements in commercial and mixed-use districts – requirements for minimum tree caliper, branching height, basin size, and tree basin edging treatment were expanded to apply to all RC, C, NC, and MU zoning districts, in addition to C-3 and DTR districts.

The legislation also expands the requirement for trees to be planted in a continuous soil-filled trench: this requirement now applies to projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

As previously, street tree requirements may be waived or modified by the Zoning Administrator, and an in-lieu fee may be assessed or sidewalk landscaping provided.



Sidewalk landscaping



Sidewalk widening

STORMWATER MANAGEMENT FACILITIES

The legislation does not change existing requirements in the Public Works Code and Building Code regarding stormwater management. As before this legislation, projects that will disturb greater than 5,000 square feet of the ground surface, measured cumulatively over time, are required to manage the quantity and quality of stormwater runoff to meet or exceed either LEED sustainable sites 6.1 or 6.2 guidelines.

Projects may meet this requirement either on their site or by making improvements in the public right-of-way. Any development project that meets the thresholds above is required to submit a Stormwater Control Plan.

OTHER STREETSCAPE ELEMENTS

The legislation creates new requirements for projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

In any zoning district, for projects that meet these thresholds, the City may require standard streetscape elements per the appropriate Better Streets Plan street type.

Any development project that meets the thresholds above must submit a streetscape plan to the Planning Department for review. The streetscape plan will be reviewed as part of overall project approvals.

SIDEWALK WIDENING

For the thresholds listed in the previous section, the City may also require sidewalk widening so that the resulting sidewalk meets or exceeds the *recommended* sidewalk width for the relevant street type from the Better Streets Plan.

Where development projects would create new streets, sidewalks must meed or exceed the recommended sidewalk width. This width may be decreased if a consistent front setback is provided.

Sidewalk widths

	STREET TYPE	MINIMUM WILLIE	RECOMMENDED WIDTH
COMMERCIAL	Downtown commercial	Per Downtown Streetscape Plan	
	Commercial throughway	12'	15'
	Neighborhood commercial	12'	15'
RESIDENTIAL	Downtown residential	12'	15'
and the second	Residential throughway	12'	15'
	Neighborhood residential	10'	12'
OTHER	Industrial	8'	10'
	Mixed-use	12'	15'
SPECIAL	Parkway	12'	17'
	Park edge	12'	24'
	Multi-way boulevard	12'	15'
	Ceremonial	varies	varies
	Alley	6'	9'
	Shared public way	NA	NA
	Paseo	varies	varies



SIDEWALK WIDTH (4.2)

The Plan identifies a minimum and recommended sidewalk width for each street type. Sidewalks below the minimum width for the relevant street type should be widened as opportunities allow. Recommended sidewalk widths allow the provision of all features and elements necessary to create a gracious, usable pedestrian environment. The City should strive to meet recommended sidewalk widths wherever possible.

SIDEWALK ZONES (4.2)

In order to function for all users, sidewalks should allow sufficient clear width for through travel while providing amenities to serve passers-by. To that end, the Plan identifies a set of sidewalk "zones" to organize elements on the sidewalk. Each zone should meet guidelines for width, use, and appropriate elements.

The five sidewalk zones are:

Frontage zone: The area adjacent to the property line that transitions between the sidewalk and building uses

Throughway zone: The portion of the sidewalk for pedestrian travel along the street

Furnishing Zone: The portion of the sidewalk used for various streetscape amenities and functional elements, including plantings, street lights, furnishings, and surface utilities

Edge zone: The area of the sidewalk used by people getting in and out of parked vehicles

Extension zone: The area where pedestrian space may be extended into the roadway, via features such as curb extensions, landscaping, or paving treatments

SAN FRANCISCO











FINAL PLAN

Interactions With Adjacent Parcels

The Better Streets Plan focuses primarily on improvements to the public right-of-way. However, fronting properties also exert a strong influence on the quality and character of the pedestrian realm that go beyond the scope of this plan. Specific ways in which properties can enhance or detract from the public realm include:

- Parking lot edges: opportunities for landscaping and screening of surface lots
- Building setbacks: balancing the desire for a consistent street wall with opportunities for wider sidewalks or fronting plazas
- Ground-floor uses and building design that creates activity at street level
- Overhead projections, such as awnings, marquees, signs, and balconies, that can add character to a streetscape, but may also interfere with tree plantings or accessibility

Minimum Sidewalk Width

All sidewalks should meet the minimum widths described in Figure 4.3, as measured from the face of the curb. Existing sidewalks may be narrower than the minimum widths for a variety of reasons, from physical constraints to historical context. Sidewalks that are below these widths should be considered deficient; when funding allows or the street is otherwise being reconstructed, they should be considered for widening as feasible given right-of-way constraints.

Where it is not possible to achieve minimum widths within existing rights-of-way, requiring consistent building setbacks may be considered as a way to provide extra space.

FIGURE 4.3
MINIMUM AND RECOMMENDED SIDEWALK WIDTH BY STREET TYPE

	STREET TYPE	MINIMUM WIDTH	RECOMMENDED WIDTH
COMMERCIAL	Downtown commercial	Per Downtown Streetscape Plan	
	Commercial throughway	12'	15'
	Neighborhood commercial	12'	15′
RESIDENTIAL	Downtown residential	12'	15'
	Residential throughway	12'	15'
	Neighborhood residential	10'	12'
OTHER	Industrial	8′	10′
	Mixed-use	12'	15'
SPECIAL	Parkway	12'	17'
	Park edge	12'	24'
	Multi-way boulevard	12'	15'
	Ceremonial	varies	varies
	Alley	6'	9'
	Shared public way	NA	NA
	Paseo	varies	varies

Recommended Sidewalk Width

Sidewalks should strive to meet or exceed the recommended sidewalk widths, as measured from the face of the curb, shown in Figure 4.3. These widths allow for the provision of all desired streetscape elements on the sidewalk. Major new development or redevelopment areas that create new streets must meet or exceed recommended sidewalk widths.

On new streets, where continuous building setbacks are proposed, minimum sidewalk width may be narrowed by the width of the applicable frontage zone, as determined on a case-by-case basis.

Streetscape improvement projects should evaluate opportunities to widen sidewalks to the recommended minimums as conditions allow. However, most street improvements in San Francisco take place within existing constrained rights-of-way (as opposed to entirely new streets), and trade-offs among various travel modes are often necessary.

Sidewalk and Median Width

Though medians can add aesthetic value and safety benefits, roadway space is often more valuable to pedestrians as part of sidewalks rather than as part of a median, particularly where sidewalks are less than the recommended sidewalk width for the appropriate street type. On the other hand, due to the difficulty and cost of moving curbs, utilities, driveways, site furnishings and plantings (especially if trees are mature), widening sidewalks by a small amount may be a less cost-effective manner of improving a street than adding median space. This determination should be made on a case-by-case basis.

SIDEWALK ZONES

This section includes dimensions and guidelines for each sidewalk zone. The dimensions for sidewalk zones are meant as a general guide, within overall sidewalk width as described above. Appropriate widths for each sidewalk zone vary based on numerous conditions, such as overall sidewalk width, pedestrian volumes, adjacent land uses, presence of driveways, etc. Dimensions include the width of the curb.

Considerations for width of individual sidewalk zones will differ for constrained sidewalks; that is, sidewalks that are below the recommended widths shown in Figure 4.3. Constrained sidewalks are discussed in the following section.

Frontage zone

Use: Adjacent uses may occupy this zone for outdoor displays, café or restaurant seating, and plantings, with appropriate permits.

Architectural elements that encroach into the street such as awnings, canopies, and marquees may also occupy this zone.

On sidewalks not wide enough to accommodate a large furnishing zone, elements that would normally be sited there such as benches, newsracks, trash cans and poles may occupy the frontage zone to keep the throughway zone clear.

Width: On all street types, the frontage zone should be 18 inches to provide a comfortable shy distance for pedestrians or to allow adjacent uses to utilize the space.

On commercial street types, the frontage zone should be a minimum of 2 feet in width to allow for café tables and seating, benches, planting, merchandise displays, and other amenities, and higher volumes of window shopping and entering and exiting of doors. In many cases, the frontage zone should be wider to create a generous seating area. Where there is relatively little pedestrian traffic, or where there are continuous building serbacks, the Frontage Zone may be decreased, or climinated altogether, as determined on a case-by-case basis.

Throughway Zone

Use: The throughway zone is intended for accessible pedestrian travel only and should be clear of obstacles, including driveway aprons or other changes to cross-slope. The walking surface may be constructed of any walkable, accessible material.

In limited circumstances on narrow sidewalks, ADA-compliant tree grates may be counted toward the minimum clear path of travel; however, as they are difficult to maintain to an accessible standard, this is not a preferred solution.

Overhanging elements such as awnings, store signage, and bay windows may occupy this zone as long as there is a clear distance under them of at least 80 inches, as required by accessibility standards.

Width: Accessibility regulations require a clear path of travel of minimum 4 feet in width, widening to a minimum of 5 feet at least every 200 feet.

Alleys should maintain a minimum 4 feet clear path of travel; all other street types should maintain a minimum 6 feet of clear. In very limited circumstances (such as neighborhood residential streets with very low pedestrian volumes), this may be reduced to 4 feet minimum. Where adjacent frontage or furnishing zones are kept clear of obstacles and are paved with an accessible surface, this width may be included in the minimum required clear width.

For streets with higher pedestrian volumes, such as commercial and downtown streets, additional width should be provided to accommodate large numbers of pedestrians.

Furnishing zone

Use: The furnishing zone acts as a buffer between the active pedestrian walking area (throughway zone) and street traffic. Street trees and other landscaping, streetlights, site furnishings, traffic and parking poles and equipment, utility poles and boxes, fire hydrants, and other site furnishings should be consolidated in this zone. See Chapter 6 for specific guidelines for each of these elements.

The furnishing zone may be differentiated from the throughway zone through paving scoring, materials, or edge treatments to indicate that the furnishing zone is a place for lingering as opposed to moving.

Width: Where street trees or sidewalk landscaping is provided, the furnishing zone should be a minimum of 3 feet in width. (See Section 6.1)



As the furnishing zone acts as a buffer between pedestrians and the roadway, the width of the furnishing zone should be based upon traffic speeds and volumes and whether on-street parking is provided. If no on-street parking is provided and traffic speeds are 25 mph or less, the furnishing zone dimension should be a minimum of 4 feet in width. For speeds of 30 mph or above, the furnishing zone should be one foot wider for every 5 mph increment in posted speed above 30 mph.

In many circumstances, the furnishing zone may be considerably wider than this, to incorporate significant planting, seating, or stormwater facilities, and give the sense of the furnishing zone as a public space.

Where there is a continuous landscape treatment, a minimum 3 foot walkable path should be provided from the edge zone to the throughway zone every 20 feet, aligned with the mid-point of the parking space. See also the City's Sidewalk Landscape Permit guidelines.

Edge zone

Use: The edge zone is the interface between the roadway and the sidewalk, and is intended for use by people accessing parked cars. To allow people to get into and out of parked vehicles, the edge zone should have a walkable surface.

The edge zone may have some vertical elements, such as street lights, utility poles, parking meters, or traffic and parking signs, as long as these elements are non-continuous and allow space between for car doors to swing open and for people to access parked vehicles.

Street tree basins may also intrude into the edge zone, with the same requirements. Continuous sidewalk plantings are not generally allowed in the edge zone; however, where there is no adjacent parking lane, the edge zone may contain continuous sidewalk plantings or site furnishings.

See also the City's Sidewalk Landscape Permit guidelines.

Width: On streets with no parking lane, the edge zone may be omitted.

On streets with parallel parking, where there is a continuous planting strip or other continuous raised element (such as a raised planter, or stormwater planter with lip), the Edge Zone must be a minimum of 2 feet wide to allow access to parked vehicles.

Regularly-spaced non-continuous elements, such as parking meters, poles and street trees and basins, may encroach to within 18 inches of the face of the curb so long as elements allow space for open car doors and for people to get in and out of cars.

On streets with angled or perpendicular parking, the edge zone must be a minimum of 30 inches.

All dimensions are given from face of curb.

Extension zone

Use: The extension zone refers to specific conditions where the sidewalk extends into the parking lane. Specific examples include curb extensions, flexible use of parking lanes, and bicycle parking, tree planting, and stormwater features in the parking lane.

The extension zone may house elements such as landscaping, seating, stormwater facilities, and other site furnishings. Elements such as newsracks, traffic and parking signs, and kiosks may be consolidated in the extension zone (on curb extensions) to free up sidewalk space for through travel.

Width: Where the pedestrian realm is expanded into the extension zone, it should take up the full width of the curb extension or parking lane. Curb extensions should follow the guidance in Section 5.3. Parking lane treatments should follow the guidance in Section 5.6.

FIGURE 4.4
SUMMARY OF SIDEWALK ZONE GUIDELINES

ZONE	EXTENSION	, FDGE	FURNISHINGS	THROUGHWAY	FRONTAGE
Width	Width of parking lane	O' (where no parking lane, or no continuous planting) ('where parking lane and continuous planting) 2'6" (where angled or perpendicular parking)	3' (where trees or landscaping are provided) 4' (+ 1' for every 5 mph increment over 25 mph) Wider (as needed for site furnishings/ public space)	4' minimum per ADA and on alleys; widening to 5' every 200'. 6' on other street types Wider (to accommodate expected pedestrian volumes)	18" 2'+ (commercial and mixed-use streets) Less (where continuous setback is provided)
Use	All site furnishings, trees and land- scaping, street lighting, and utilities Flexible use of parking lane	Walkable surface Non-continuous vertical elements such as street lights, utility poles, parking meters, etc. with 18" clearance to curb Street trees and basins, with non-continuous planting	All site furnishings, trees and landscaping	Clear of obstacles; accessible walking surface Overhanging elements (>80") Tree grates (not preferred)	 Displays, cafe seating Furnishings aligned with frontage Planters (surface or above-ground) Overhanging elements

CONSTRAINED SIDEWALKS

This section describes how sidewalk zones should be divided in situations where the sidewalk width is constrained; that is, where sidewalks are below the recommended overall width shown in Figure 4.3. On constrained sidewalks, individual sidewalk zones must be correspondingly smaller as well, necessitating trade-offs. Some sidewalk zone dimensions are fixed as discussed in the previous section (such as minimum required through width for accessibility, or edge zone width where there is a continuous sidewalk planter), while others are variable depending on conditions.

Where a constrained sidewalk width does not allow for the recommended dimensions for each zone, the design of the street should meet the following criteria (in order of priority):

- → Accommodate required access for people with disabilities and access to adjacent uses and transit stops.
- → Accommodate expected levels of pedestrian activity.
- Provide necessary buffering between the active area of the sidewalk and adjacent traffic.

→ Integrate design elements to enhance the public realm, and provide space for adjacent businesses to use the sidewalk for seating and displays.

In many cases, individual sidewalk zones should be greater than the minimum depending upon the context. For example:

- → On streets with significant pedestrian volumes, the throughway zone should be proportionally wider.
- → Where there is significant high-speed vehicle traffic and a need for buffering pedestrians, or a desire to create a public space character or significant planting area, the furnishing zone should be proportionally wider.
- → On commercial streets with larger numbers of restaurants where there is a desire to encourage outdoor seating, the frontage zone should be proportionally wider.

Sidewalk dimensions are given from face of curb.

6 Foot Sidewalk (Alleys)

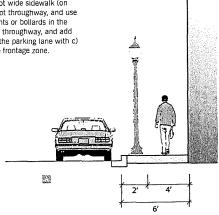
Six foot sidewalks (typically found on alleys) do not have enough room for a furnishing zone with tree plantings. Alternatively, the frontage zone may have a building-adjacent planter, leaving 4 to 5 feet for through travel. Curb extensions may allow for additional plantings, trees, or site furnishings. Converting the alley to a shared public way is preferable, to allow more comfortable pedestrian space.

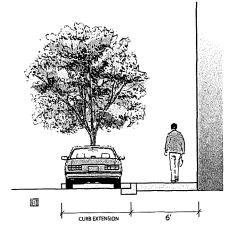
7 to 8 Foot Sidewalk

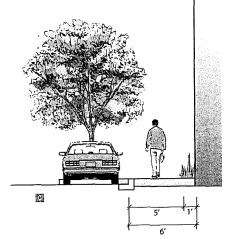
On 7 to 8 foot sidewalks, a 3 foot furnishing zone with street trees would leave 4 to 5 feet of through width. This width is sufficient on alleys and on some neighborhood residential streets with low pedestrian volumes; however, on most streets, a 6 foot throughway zone should be provided, meaning there is not enough space for a row of street trees. The designer should consider narrower design elements in the edge zone, such as street lights or bollards. Curb extensions may allow for additional plantings, trees, or site furnishings.

Constrained Sidewalks: 6 Feet

Three options for designing a 6 foot wide sidewalk (on alleys): a) Retain a minimum 4 foot throughway, and use narrow elements such as streetlights or bollards in the edge zone; b) Retain a 5 to 6 foot throughway, and add street trees on curb extensions in the parking lane with c) optional 1 foot wide planter in the frontage zone.



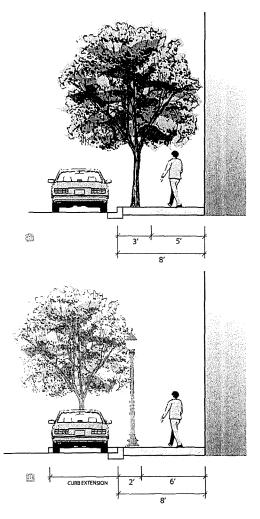


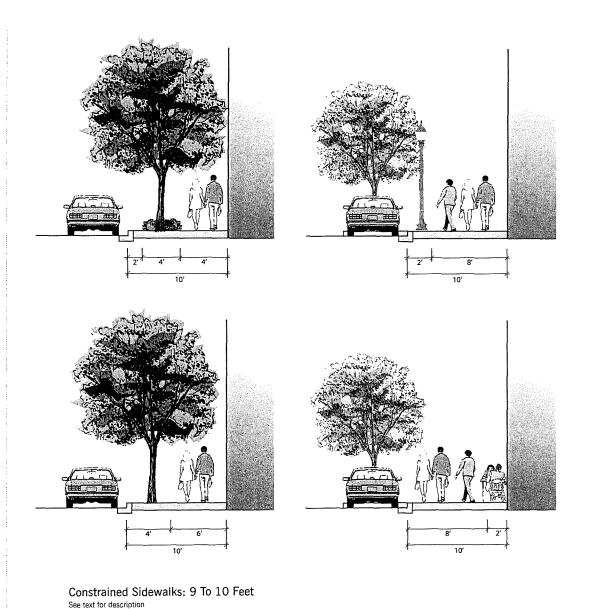


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Constrained Sidewalks: 7 To 8 Feet

Two options for dividing an 8 foot wide sidewalk: a) On alleys or some neighborhood residential streets, retain a minimum 4 foot throughway, and plant trees in the furnishings zone (min. 3 feet); b) On other street types, retain a 6 foot throughway, use narrow elements such as streetlights or bollards in the Edge Zone, and add optional curb extensions with street trees.





BETTER STREETS PLAN 103

9 to 10 Foot Sidewalk

A 9 or 10 foot sidewalk allows a few options for dividing the sidewalk space:

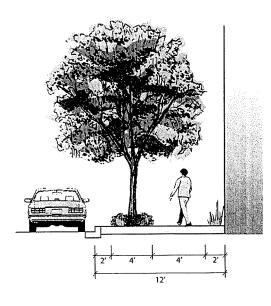
- → On alleys or some neighborhood residential streets, use a 4 to 5 foot throughway zone, 3 to 4 foot furnishing zone with street trees and landscaping, and 2 foot edge zone. The presence of the edge zone allows for a planting strip;
- → Where a 6 foot clear path is required, the sidewalk could be divided into a 6 foot throughway zone and a 3 to 4 foot furnishing zone, with street trees but no planting strip; or
- → On downtown or commercial streets with congested sidewalks (such as on Stockton Street), there should be a 6 foot or greater throughway zone, with either or both a 2 foot frontage zone (for merchandise displays or outdoor seating) or edge zone (with narrow design elements such as street lights or bollards).

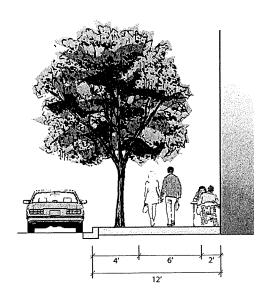
11 to 12 Foot Sidewalk

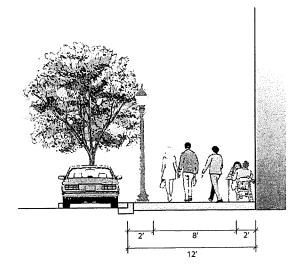
11 to 12 foot sidewalks meet the minimum overall sidewalk widths described in Figure 4.3. However, they still may not be wide enough to achieve all the desirable amenities that create a quality streetscape. Eleven to twelve foot sidewalks may be divided in numerous ways, including:

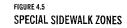
- → On residential streets, an optional 2 foot frontage zone (with plantings), a 4 to 6 foot throughway zone, a 4 foot furnishing zone with optional planting strip, and 2 foot edge zone;
- → On commercial, downtown, or mixed-use streets, a 2 foot frontage zone (for displays or seating), a 6 foot throughway zone, and a 4 foot furnishing zone; or
- → On downtown or commercial streets with congested sidewalks, an 8 foot or greater throughway zone, with a 2 foot frontage zone (for merchandise displays or outdoor seating) and/or edge zone (with narrow design elements such as street lights or bollards).

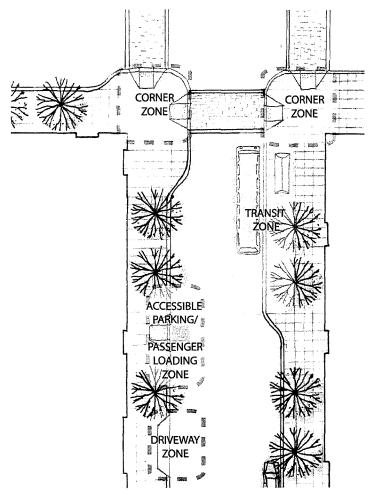
Constrained Sidewalks: 11 To 12 Feet See text for description











SPECIAL SIDEWALK ZONES

Certain portions of the streetscape require special consideration in terms of the spacing and placement of streetscape elements. The following guidelines offer specific guidelines for these areas.

Corners

Corners (as defined by an extension of the property line to the curb) should be kept clear of obstructions. They should maintain drivers' and pedestrians' clear views of each other. Amenities should be clustered adjacent to corners but not within the corner zone itself.

The following streetscape elements are appropriate for corners:

- → Corners should include curb ramps and detectable warning surfaces per accessibility regulations.
- → Pre-existing utility poles and sub-surface vaults may be prohibitively expensive to move, and may remain in place. However, they should be relocated as funding and opportunities allow.
- → On residential streets, corners may include a corner planter to the width of the furnishing zone on the adjacent sidewalks, so long as sufficient clear width for curb ramps is maintained.

Transit Stops

Transit stops require special layout guidelines due to the high number of people often waiting near them and the need to board and alight from transit vehicles. Transit stops require special layout guidelines to accommodate passengers who are waiting, boarding or alighting, and the need for vehicles to deploy lifts. See Section 5.5.

Accessible Parking and Passenger Loading Zones Accessible parking and passenger loading zones require special streetscape considerations to ensure that passengers may safely get into and out of vehicles. Specific guidelines

include: → Street trees, furnishings and other obstructions should allow a minimum of 8 feet of clear sidewalk width

→ Special paving treatments and sub-surface utilities may be located within this zone, as long as they provide an accessible surface.

Driveways

adjacent to the curb.

Driveways present special challenges to the pedestrian due to changes in cross-slope and the presence of vehicles crossing the sidewalk. See Section 6.6.

Medians

Medians can add substantial greenery to the streetscape, decrease impermeable surface, offer opportunities for pedestrian refuges, and offer locations for lighting and some utilities.

Wide medians on some streets offer opportunities for lines of trees that are otherwise difficult to achieve along sidewalks.

Sufficiently wide medians (12 feet or more) generally can be designed to include seating and gathering areas and other pedestrian amenities.

Medians also create opportunities for pedestrian refuges at busy intersections. See Section 5.4.

EXHIBIT F



When It Comes to the Climate, Older Trees Do It Better

Scientists long assumed that as trees got older, they grew slower—just like us. But a new study underscores the climate benefits of the oldest, biggest trees

By Bryan Walsh @bryanrwalsh Jan. 15, 2014

Lika 13K

weet

916

Read Later

The giant coastal redwoods of northern California are breathtaking—literally. They are the tallest trees on Earth, growing to more than 350 ft. (106 m), with trunks that can be more than 25 ft. (7.6 m) across. The oldest redwoods date back to the time of the Roman Empire, though few of that age still remain, since more than 95% of the original old-growth forest has been lost, mostly for lumber. And the trees are unparalleled living carbon banks—a large redwood can sequester a ton of carbon from the air in its trunk and roots.

Despite the redwoods' beauty, though, scientists have long assumed that very old trees like them absorb less and less carbon as they age, slowing down like the rest of us as we get older. That idea has

keep absorbing an increasing amount of carbon as it aged.

important implications for global warming: climate scientists assume that younger trees will take up carbon more rapidly than their older counterparts, which means youth is valued when it comes to using trees as carbon stores.

Harald Sund via Getty Images

Old, big trees like the giant redwood sequester carbon faster than young trees

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But according to a new study published in *Nature*, it turns out that the oldest trees are actually still growing rapidly, and storing increasing amounts of carbon as they age. An international research group led by Nate Stephenson of the U.S. Geological Survey Western Ecological Research Center reviewed records from forest studies on six continents, involving 673,046 individual trees and more than 400 species, going back as far as 80 years ago. For 97% of the species surveyed, the mass growth rate—literally, the amount of tree in the tree—kept increasing even as the individual tree got older and taller. Even though trees tended to lose leaf density as they aged—which, as a victim of male pattern baldness, I can sympathize with—the total amount of leaf cover kept increasing as the tree itself got bigger and older. In other words, the number of leaves per cubic foot fell off but the leafy surface area grew and grew. That enabled the tree to

(MORE: That Thing About Money Not Growing on Trees Just Got More Complicated)

For some species of trees, that increase could be enormous. A single big tree could sequester the same amount of new carbon in a year as might be contained in an entire mid-sized tree. For sports fans, it would be as if Jamie Moyer, a baseball pitcher who was a record 49 years old when he recorded his last win, could best Jose Fernandez, a Miami Marlins pitcher who won the National League Rookie of the Year in 2013 at the age of 21.

Of course, human beings don't age like trees—except maybe for Peyton Manning—and that's probably a good thing. "In human terms, it's as if our growth just kept accelerating after adolescence, instead of slowing down,"

Stephenson said in a statement. "By that measure, humans could weigh half a ton by middle age, and well over a ton by retirement."

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some of them will die, leaving older and bigger trees but fewer of them, sort of like the way a high school class will begin to thin out as the reunions pile up over the years. But on a tree by tree basis, elderly trees are carbon vacuums.That's one more reason to appreciate—and conserve—these ancient, majestic forests.

(MORE: Woody Harrelson, Sustainable Paper Salesman)

Bryan Walsh @bryanrwalsh

Bryan Walsh is a senior editor at TIME.

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From: Sent: Barbara Cohrssen <sfbarb@mcn.org> Wednesday, October 16, 2019 4:11 PM

To:

Board of Supervisors, (BOS)

Subject:

3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Folks

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

From: Lawrence Lai <laitroop@gmail.com>

Sent: Wednesday, October 16, 2019 4:10 PM

To: Board of Supervisors, (BOS); Stefani, Catherine (BOS); Mar, Gordon (BOS); Ronen,

Hillary; Yee, Norman (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS); Walton, Shamann

(BOS); Mandelman, Rafael (BOS)

Subject: 3333 California Street, Record Number: 2015-014028CUA/PCA/MAP/DVA

Attachments: 3333CalifBOS.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:

Ruth Marks <RMarks@mercyhousing.org> on behalf of Doug Shoemaker

<DShoemaker@mercyhousing.org>

Sent:

Wednesday, October 16, 2019 2:59 PM

To:

Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haneystaff (BOS)

Cc:

Stefani, Catherine (BOS); Board of Supervisors, (BOS)

Subject:

Letters of Support for 3333 Bryant

Attachments:

Support for Mercy.pdf; 20190903035751.pdf; 2019 Mercy Housing Support Letter.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Board of Supervisors,

Please find attached three letters of support for 3333 Bryant from Executive Director at Openhouse Karyn Skultety, President and CEO at Institute on Aging J. Thomas Briody, and President and CEO at Self-Help for the Elderly Anni Chung.

Doug Shoemaker President

mercy HOUSING
Mercy Housing California

1256 Market Street San Francisco, CA 94102 t|415.355.7151| mercyhousing.org/california



65 Laguna Street San Francisco, CA 94102 phone 415.296,8995 fax 415.296,8008 www.oponhouse-sf.org

September 3, 2019

San Francisco Planning Commissioners San Francisco Board of Supervisors

RE: 3333 California

I am writing to express support for 3333 California Street, a 744 unit a mixed-use development that will include 186 units of affordable senior housing on the UCSF Laurel Heights Campus. The need for affordable senior housing in the City is extreme and growing as the senior population is expected to be 26% of the City population by 2030. The new senior housing proposed will have affordable rents for a broad spectrum of seniors including units with rents affordable to extremely low-income seniors. In addition, it will include important accessibility features in the design, open space and generous community spaces to provide a high quality living environment.

For more than twenty years, Openhouse has been the only non-profit uniquely committed to serving San Francisco's lesbian, gay, bisexual transgender and queer (LGBTQ) seniors. The mission of Openhouse is to enable LGBTQ seniors the opportunity to overcome the unique challenges they face as they age by providing affordable housing, services and community programs. In 2016, along with co-general partner, Mercy Housing California, Openhouse opened 55 Laguna and the Bob Ross LGBT Senior Center at 65 Laguna. These, combined with 75 and 95 Laguna, currently under construction, will provide 119 units of LGBT-welcoming affordable senior housing and over 10,000 square feet of program and office space. We have been proud to partner with Mercy Housing- not just because of their expertise and leadership in building affordable housing in San Francisco, but because they have demonstrated a deep commitment to our community and to other marginalized seniors at risk of losing their housing or moving out of the city they love.

We are pleased to know that Mercy Housing is the affordable senior housing developer working with PRADO GROUP and SKS, the Ower/Developer team for the Campus, and Mercy will be the long-term owner and property manager of the senior housing. 3333 California will include resident services staffing focused on working with residents in the areas of Health and Wellness, Housing Stability, Education and Community Life. Mercy Housing currently owns and manages 18 senior housing developments with 1,500 units in San Francisco and has a long history of providing quality, service enriched housing. We believe that they will build not just housing, but a community that seniors will call home.

We are thrilled at the prospect of much needed housing coming to the Laurel Heights Campus.

Sincerely,

Karyn Skultety, PhD

Range Alan

Executive Director, Openhouse



September 3, 2019

San Francisco Planning Commissioners San Francisco Board of Supervisors

RE: 3333 California

We are writing to express support for 3333 California Street, a 744-unit mixed-use development that will include 186 units of affordable senior housing on the UCSF Laurel Heights Campus. The need for affordable senior housing in the City is extreme and growing as the senior population is expected to be 26% of the City population by 2030. The proposed senior development will have affordable rents for a broad spectrum of seniors including units with rents affordable to extremely low-income seniors and will include important accessibility features in the design, open space and generous community spaces to provide a high-quality living environment.

We are pleased to know that Mercy Housing is the affordable senior housing developer working with PRADO GROUP and SKS, the Owner/Developer team for the Campus, and Mercy will be the long-term owner and property manager of the senior housing. 3333 California will include resident services staffing focused on working with residents in the areas of Health and Wellness, Housing Stability, Education and Community Life. Mercy Housing currently owns and manages 18 senior housing developments with 1,500 units in San Francisco and has a long history of providing quality, service-enriched housing.

The Institute on Aging has a standing partnership with Mercy Housing to help support this vision, and to ensure that residents can age-in-place as long as possible. IOA currently contracts with Mercy to provide Wellness Nurses at seven of its senior properties. Given the proximity of this location to IOA's main campus, and the new Presidio location, we continue to look forward to expanding on this partnership by ensuring the residents of 3333 California will have access, through Mercy's direct linkages and referrals, to IOA's services and programming.

We are enthusiastic about the prospect of much needed low-income senior housing coming to the Laurel Heights Campus.

J. Thomas Briody

President and Chief Executive Officer



731 Sansome Street, Suite 100 | San Francisco, California 94111-1725 (415) 677-7600 | www.selfhelpelderly.org

Providing strength, hope and empowerment to seniors since 1966

September 4, 2019

San Francisco Planning Commissioners San Francisco Board of Supervisors

RE:

3333 California

Dear Commissioners:

We are writing to express support for 3333 California Street, a 744 unit a mixed-use development that will include 186 units of affordable senior housing on the UCSF Laurel Heights Campus. The need for affordable senior housing in the City is extreme and growing as the senior population is expected to be 26% of the City population by 2030. The senior housing will have affordable rents for a broad spectrum of seniors including units with rents affordable to extremely low-income seniors and will include important accessibility features in the design, open space and generous community spaces to provide a high quality living environment.

Self-Help for the Elderly is a strong advocate and eldercare provider for over 40,000 seniors in the Bay Area since 1966. Affordable housing is our seniors' top priority, but thousands are still waiting to move into safe, viable and affordable housing in the city.

We are pleased to know that Mercy Housing is the affordable senior housing developer working with PRADO GROUP and SKS, the Owner/Developer team for the Campus, and Mercy will be the long-term owner and property manager of the senior housing.

3333 California will include resident services staffing focused on working with residents in the areas of Health and Wellness, Housing Stability, Education and Community Life. Mercy Housing currently owns and manages 18 senior housing developments with 1,500 units in San Francisco and has a long history of providing quality, service enriched housing.

We are thrilled at the prospect of much needed housing coming to the Laurel Heights Campus.

Sincerely,

Anni Chung

President and CEO

From:

Board of Supervisors, (BOS)

Sent:

Tuesday, October 29, 2019 6:13 PM

To:

Major, Erica (BOS)

Subject:

FW: Concerns about file number 190-844-918-0846

From: Jennifer Weidman < jenn weidman@yahoo.com>

Sent: Tuesday, October 29, 2019 6:00 PM

Subject: Concerns about file number 190-844-918-0846

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

I am a resident of Laurel Heights and just today heard about the proposal to remove numerous trees from the 3333 California Street property. I am writing to plead that you not approve this proposal. That section of California Street and in fact, that entire block (California-Laurel-Euclid-Presidio streets), is one of my favorite places to walk/run in the neighborhood because of those beautiful trees. It is hard to find mature trees in the city (outside of parks). Our city neighborhoods need the emotional proof of nature that trees provide. This, along with the environmental advantages and historical significance, should be seriously considered as reasons to keep the trees. In addition, the neighborhood just recently finished a beautification project along California Street at Laurel Village. How can we then turn around and ruin the existing beauty that has graced this neighborhood for decades?

In my 13 years of living in San Francisco, I have never written the board of supervisors, so please take that as evidence of the strength of my conviction that we should not remove those trees. I unfortunately cannot attend the November 12 meeting, but I wanted to put my opinion on the record. I believe that removing these trees would be a huge detriment to the success of Laurel Heights.

Thank you very much for your consideration and time,

Jennifer Weidman

85 Heather Ave Apt 7

(415) 264-5717

From:

John Burns < johnmburns48@yahoo.com>

Sent:

Monday, October 21, 2019 9:17 AM

To:

Board of Supervisors, (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Stefani, Catherine

(BOS); Mar, Gordon (BOS); Ronen, Hillary; Haney, Matt (BOS); Yee, Norman (BOS); Mandelman, Rafael (BOS); Fewer, Sandra (BOS); Brown, Vallie (BOS); Walton, Shamann

(BOS)

Cc:

BOS Legislation, (BOS); frfbeagle@gmail.com; kdesby@sandhill.com

Subject:

Comments on 3333 California St for Land Use Committee meeting 10-21-2019

Attachments:

BOS Comments 11052019.docx

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add the following letter to the agenda for today's meeting.

Thank you, John and Usha Burns 3616-18 Sacramento St SF 94118

RE: 3333 California St Proposed Development

Dear Members of the Board of Supervisors,

My wife and I live in Presidio Heights at 3616-18 Sacramento St at Locust about 3 blocks away from the subject property and have been following this proposed development closely.

Although we recognize that the City is in great need of middle- and lower-income housing, we do not support the developer's plans as currently proposed. We do 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 specific areas of the proposed development that are most concerning and need modification are:

- We oppose adding retail uses to the site as there is adequate retail in Laurel Village and surrounding areas with many vacancies for plenty of growth.
- The prolonged 15-year construction period would jeopardize the survival of Laurel Village merchants, such as the independent quality groceries of Cal-Mart and Bryan's.
- The project phasing over the 15-year period is not definite and the BOS has no guarantee that the developer will complete the senior affordable housing on a definite schedule.
- Flexible Retail uses, which were not evaluated by the EIR, should not be allowed at all in this project (they are not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts) as they will bring adverse uses to our otherwise well planned neighborhoods.

We urge this BOS to require the project be redesigned according to one of the well planned Community Alternatives. These alternatives do not remove the significant trees along California Street and retain more on-site Redwoods and trees on the historically significant Eckbo Terrace.

Sincerely,

John and Usha Burns 3616-3618 Sacramento St. San Francisco 94118

From:

Sarah Corr <sal.corr@gmail.com>

Sent:

Monday, October 21, 2019 8:21 AM

To:

Board of Supervisors, (BOS)

Subject:

The trees of 3333 California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

We live in an era of rapid climate change. We cannot afford to sacrifice healthy, mature trees: they sequester carbon, they reduce atmospheric carbon dioxide, they suck up storm waters. Plus, they look nice and provide habitat for songbirds. They are part of why I love San Francisco. Losing trees is killing the spirit of this great city, and it's terrible for the environment.

I am asking you to REJECT any permit that calls for the removal of any tree, whether on private property or on the street, even if there is a plan for replacement. Climate change is accelerating, and we can't afford to wait for replacement trees to grow up. We need these large, healthy trees in our city.

Even if you don't care about the soul of this city, please at least consider the cost to the environment. Mature trees are, at this point in our human history, irreplaceable and essential.

Thank you,

Sarah Corr 1526 Anza Street San Francisco, CA 94118

From:

aprato_otr@yahoo.com

Sent:

Tuesday, October 15, 2019 1:57 PM

To:

Major, Erica (BOS)

Cc: Subject: Peskin, Aaron (BOS) Land Use Committee

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Reference - 3333 California Street record number 2015-01428CUA/PCA/MAP/DVA

I am a longtime resident of Laurel Heights. I support the Full Preservation Alternate Variant 2 redesign plan which will incorporate some/all of the community needs. The plan will save the historic, much loved green space, will be built in a shorter time and will also include the same number of units (744 units including 185 affordable senior housing units) as the developer's plan.

I oppose the removal of the healthy trees from the site as they help to clean the air and add to the natural environment.

I oppose the flexible retail uses on the site as this is not allowed elsewhere in District 2 and would increase traffic, noise and pollution. Prohibited activities should include: massage and tattoo places, nighttime adult business, motel, outdoor amplified sound, homeless navigation center and operation hours until 2 am.

I oppose the loopholes in the development agreement that allows the developer to build 386 market rate units while not building the planned affordable senior housing allowing transfer of the land to the city.

The developer should incorporate the community's Full Preservation Alternate Variant 2 with his plans for a more attractive, pleasing, livable and less congested housing environment.

Sincerely, Ann Prato

Sent from my iPad

From:

C Brady <cbrady615@gmail.com>

Sent:

Monday, October 21, 2019 1:35 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Stefani,

Catherine (BOS)

Cc:

savethetrees3333@gmail.com

Subject:

Objection File No. 190844/ File No. 190845

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good afternoon,

I would like to express my objection for the removal of 190+ street, significant, and trees for Prado Group's future development of 3333 California Street.

The street trees are healthy and provide a robust canopy for pedestrian shade, birds and squirrels, and enhanced streetscape beauty. Their demolition may prepare the site for new construction, but- as expressed by Prado Group- this may be years in the future. Total construction completion may be 15 year away and I firmly oppose degrading the public right-of-way for years to come to benefit a developer's perceived return on investment. Additionally, the planned replacement trees pale in comparison to the lush street trees we are lucky to currently enjoy on California.

The removal of the significant trees (Monterey Cypress) is so egregious that I was shocked to see them strapped with orange signage earlier this summer. Their trunks are so large that their signs were wrapped on an upper branch (please see photo below). At California and Presidio, the heritage trees located on a small hill behind the Fire Credit Union are nearly at the property border, a design solution involving their preservation is surely possible. These trees serve as a lush landmark for the entire neighborhood, provide shade for an extensive area of the sidewalk and adjacent green space and are beautiful beyond any other trees in the neighborhood. Their bases at eye level (due to a retaining wall) provide a wonderful experience for pedestrians who can experience their entire trunk from base to canopy. These significant trees are neighborhood gems that can't simply be replaced.



I understand that change is a good thing, but senseless change, independent of wonderful existing resources is wasteful and short-sighted. These trees provide a great deal of positive environmental impacts that would be terrible to lose for the local community. I respectfully request that you consider blocking Prado Group's efforts.

Thank you for your time, Caitlin Brady 3101 California Street

From:

Margie Kane <kane_margie@hotmail.com>

Sent:

Monday, October 21, 2019 12:22 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Subject:

Trees at 3333 California St

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Currently there are 19 mature trees that Prada wants to tear down in order to build on this site. It makes no sense to tear down significant trees to eventually replace them with smaller trees just for aesthetic features which is the only reason they have mentioned so far for removing them. And while they will eventually be replaced if removed, their current proposal calls for 15 yrs of development.

I do not see why they cannot work their design around the trees and keep these beautiful creatures alive and on the street.

I live in Presidio Heights and I am against removing the trees.

Margie Kane 3435 Clay St #3 SF CA 94118

From:

Emma Shtivelman <emmashtiv@gmail.com>

Sent:

Tuesday, October 22, 2019 8:24 AM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Stefani,

Catherine (BOS); Fewer, Sandra (BOS)

Subject:

Save the trees on 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City supervisors,

I heard that the trees on 3333 California will be taken down for the new development.

I find this outrageous. The trees are not only beautiful but also much needed to gobble up some of the CO2 from the traffic.

The Prado group developers should be directed to modify their plans and keep the trees.

Thank you for your consideration, Emma Shtivelman

From:

Sarah Thompson <sarah.thompson.sf@gmail.com> on behalf of Sarah Thompson

<sarahthompsonsf@gmail.com>

Sent:

Tuesday, October 22, 2019 7:36 AM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Subject:

Please stop tree removal!

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

As a resident of SF, I want to voice my opinion that the trees not be cut down at 3333 California Street. This is wrong.

Thank you!

Sarah Thompson sarahthompsonsf@gmail.com 415-404-1785

190947 190844 190845 HEAVERINGMA 10/21/209

October 21, 2019

Dear Members of the Land Use Committee,

My name is Krisanthy Desby and I have lived in Presidio Heights for over 20 years.

I have closely followed the plans for the development at 3333 California Street. I strongly oppose the Prado Group plan. It will completely destroy four family neighborhoods, chop down nearly every tree in an era of climate disruption, and deface the very thing that makes our neighborhoods special: a green, pleasant, park-like oasis, which is quiet and calming in an otherwise busy corridor.

Instead, I support the Community Preservation Lookalike Variant and the Community Full Preservation Alternative Variant 2. The reasons are:

Preservation of green space
Preservation of Laurel Village
Faster build-out of necessary housing instead of 15 years
Sensitive to the needs of the city and the neighborhood

The developer speaks of the area not being connected to the city grid. I would argue that Laurel Hill is the green heart of the grid that connects our neighborhoods to each other. His plan replaces the trees with cement, and crowds the land with grey and black towers and buildings. Even the hill is being removed. He is cutting out the heart of this area, and also destroying the grid of trees that go from the Presidio, to Laurel Hill, Golden Gate Park, Lone Mountain and beyond.

Furthermore, the Flex Permit the Prado Group is seeking would forever disrupt the family character of our neighborhoods with businesses being open from 6AM-2AM. Who would want to live with a family a few steps away from businesses open for 20 hours?

We have been fortunate to live in a calm, green corner of a bustling city. The mixture of architecture is a living, colorful history, from old Victorians to the present. Yet the Prado Group's plans show absolutely no sensitivity to the neighborhood and its surroundings.

I ask that you adopt the Community Alternative Plans, which are far more fitting to our neighborhoods and achieve the city's objectives more quickly in a much better way.



RE: 3333 California St Proposed Development

Dear Members of the Board of Supervisors,

My wife and I live in Presidio Heights at 3616-18 Sacramento St at Locust about 3 blocks away from the subject property and have been following this proposed development closely.

Although we recognize that the City is in great need of middle- and lower-income housing, we do not support the developer's plans as currently proposed. We do 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 specific areas of the proposed development that are most concerning and need modification are:

- We oppose adding retail uses to the site as there is adequate retail in Laurel Village and surrounding areas with many vacancies for plenty of growth.
- The prolonged 15-year construction period would jeopardize the survival of Laurel Village merchants, such as the independent quality groceries of Cal-Mart and Bryan's.
- The project phasing over the 15-year period is not definite and the BOS has no guarantee that the developer will complete the senior affordable housing on a definite schedule.
- Flexible Retail uses, which were not evaluated by the EIR, should not be allowed at all in this project (they are not allowed anywhere else in District 2 or in the Sacramento or Fillmore Street commercial districts) as they will bring adverse uses to our otherwise well planned neighborhoods.

We urge this BOS to require the project be redesigned according to one of the well planned Community Alternatives. These alternatives do not remove the significant trees along California Street and retain more on-site Redwoods and trees on the historically significant Eckbo Terrace.

Sincerely,

John and Usha Burns 3616-3618 Sacramento St. San Francisco 94118

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Monday, October 21, 2019 10:35 AM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Subject:

October 21, 2019 BOS Land Use & Tran. Committee - 3333 California

Attachments:

20191021130316.pdf; 20191021130431.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 File No. 190845 - Proposed Development Agreement

File No. 190947 - Proposed Ordinance for Major Encroachment

Record Number: 2015-014028CUA/PCA/MAP/DUA

Permit

Please see attached letter and Exhibits A-F for the official file for these matters.

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 21, 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 and File No. 190845 - Proposed Development Agreement

File No. 190947 - Proposed Ordinance for Major Encroachment Permit

Hearing Date: October 21, 2019

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

Please consider the following further amendments to the captioned matters and relevant information.

Amendment to Development Agreement

As to provision 11.1 of the proposed Development Agreement, the Committee should recommend deletion of the **Planning Director's discretion** to determine "whether a proposed change constitutes a Material Change," and substitution of terms similar to those used in the Pier 70 development agreement:

This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56 [of the San Francisco Administrative Code.]

The Pier 70, 5M and Trinity Plaza development agreements do not grant such discretion to the Planning Director. (Ex. B, Pier 70, 5M and Trinity Plaza development agreement excerpts)

The proposed terms of the development agreement that would grant such discretion to the Director are unreasonable and fail to specify that the determination must be made under the definition of "Material Change" in the agreement. (Ex. A, excerpts from 3333 California

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 2

Development Agreement).

Amendment to Special Use District

Second, provision (c)(7) of the Special Use District should be changed to allow discretionary review for Material Changes to the project, but it proposes to omit them for "projects within the SUD." It would be unreasonable to grant less rights to residents near this project than residents of other areas would have. The Committee should recommend the following amendment:

(7) Discretionary Review: No requests for discretionary review shall be accepted or heard for projects within the SUD, except that any proposed Material Change, as defined in section 1.62 of the Development Agreement, shall be subject to rights of discretionary review and Planning Code section 311 notice within the SUD. (New language italicized)

Amendment to Development Agreement

Supervisor Stefani has introduced an SUD amendment in BOS File No. 191002 (p. 3) that would allow the Lucky Penny developer to pay the full in lieu fee under Planning Code section 415.5 instead of build 23% affordable housing as was specified in his SUD. (Ex. C, p. 3) The Lucky Penny developer told me he cannot afford to build the affordable housing. Given these circumstances, the existence of the 2 other options in the 3333 agreement indicates that the possibility of building 25% affordable housing is being raised as a red herring to draw attention away from undesirable aspects of the project.

Thus, the committee should recommend that the development agreement be changed to make the developer pay the full in lieu fee required by Planning Code section 415.5 to the City if the developer does not build the affordable housing and omit the option of granting the Walnut Land to the City or paying the City the value of the Walnut Land.

Developer's Disclosure Report

The Disclosure Report for Developers of Major City Projects filed by Laurel Heights Partners LLC on October 4, 2019, discloses \$118,450 donated to SPUR, \$23,350 to SFHAC, \$6,032.19 to YIMBY Action and others. (Ex. D)

Major Encroachment Permit

There is no need to widen the sidewalk along California Street because it is now 19 feet wide or remove the 15 mature street trees that run along it. The Better Streets Plan only recommends sidewalks to be between 12 and 15 feet wide. (Ex. E) Older trees sequester more

San Francisco Board of Supervisors Land Use and Transportation Committee October 21, 2019 Page 3

carbon emissions than younger trees. (Ex. F)

Conclusion

The Committee should recommend the amendments set forth herein.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

Kathuju R. Deviccenzi

Attachments: A through F

EXHIBIT A

File No. 190845 Received via email 10/17/19

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

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.

- 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

EXHIBIT B

RECORDING REQUESTED BY 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 under Government Code § 27383.

Recorder's Stamp

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

FC PIER 70, LLC, A DELAWARE LIMITED LIABILITY COMPANY
RELATING TO DEVELOPMENT OF CITY LAND
UNDER THE JURISDICTION OF
THE PORT COMMISSION OF SAN FRANCISCO

[Insert Reference Date]

(c) <u>City's Rights and Obligations.</u>

- (i) The City's obligations with respect to a Lender, including any Successor by Foreclosure, will be identical to those of the Port under the Applicable Lender Protections.
- (ii) The City will reasonably cooperate with the request of a Lender or Successor by Foreclosure to provide further assurances to assure the Lender or Successor by Foreclosure of its rights under this Development Agreement, which may include execution, acknowledgement, and delivery of additional documents reasonably requested by a Lender confirming the applicable rights and obligations of the City and Lender with respect to a Mortgage.
- (iii) No breach by Developer, a Vertical Developer, or a DA Successor of any obligation secured by a Mortgage will defeat or otherwise impair the Parties' rights or obligations under this Development Agreement.
- (d) <u>Successor by Foreclosure</u>. A Successor by Foreclosure will succeed to all of the rights and obligations under and will be deemed a Party to this Development Agreement to the extent of the defaulting Borrower's rights and obligations.

10.4. Requests for Notice.

- (a) <u>Lender Request</u>. If the City receives a written request from a Lender, or from Developer or a DA Successor requesting on a Lender's behalf, a copy of any notice of default that the City delivers under this Development Agreement that provides the Lender's address for notice, then the City will deliver a copy to the Lender concurrently with delivery to the Breaching Party. The City will have the right to recover its costs to provide notice from the Breaching Party or the applicable Lender.
- (b) <u>City Request</u>. This provision is the City's request under California Civil Code section 2924 that a copy of any notice of default or notice of sale under any Mortgage be delivered to City at the address shown on the cover page of this Development Agreement.
- 10.5. No Third-Party Beneficiaries. Except for DA Successors with vested rights at the FC Project Area and to the extent of any Interested Person's rights, the City and Developer do not intend for this Development Agreement to benefit or be enforceable by any other persons. More specifically, this Development Agreement has no unspecified third-party beneficiaries.

11. AMENDMENT OR TERMINATION

- 11.1. Amendment. This Development Agreement may be amended only by the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56. The Port Commission, the Planning Commission, and the Board of Supervisors must all approve any amendment that would be a Material Change. Following an assignment, the City and Developer or any DA Successor may amend this Development Agreement as it affects Developer, the DA Successor, or the portion of the FC Project Area to which the rights and obligations were assigned without affecting other portions of the FC Project Area or other Vertical Developers and DA Successors. The Planning Director may agree to any amendment to this Development Agreement that is not a Material Change, subject to the approval of any City Agency that would be affected by the amendment.
- 11.2. Termination. This Development Agreement may be terminated in whole or in part by: (a) the Parties' agreement or as specifically provided otherwise in this Development Agreement, the Development Agreement Statute, or Chapter 56; or (b) by termination of the DDA as provided by Section 2.2 (DA Term).

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
AND 5M PROJECT, LLC

10.7 <u>Cured Defaults</u>. Upon the curing of any event of default by 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 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and Developer, provided 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, 5.6.4, 7.4.3, 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 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).

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. 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;

190-09

ORDINANCE NO.

FILE NO. 090829

[Trinity Plaza Development Agreement Amendment; Property at	. 1167 Warket Street,
670-693 Stevenson Street, and 1164 Mission Street]	

Ordinance amending a development agreement between the City and County of San Francisco and 1169 Market Street, L.P. for certain real property located at 1167 Market Street (Assessor's Block 3702/Lot 053), 670 Stevenson Street (Assessor's Block 3702/Lot 051), 693 Stevenson Street (Assessor's Block 3702/Lot 052), 1164 Mission Street (Assessor's Block 3702/Lot 039), and a portion of former Jessie Street between 7th and 8th Streets, altogether consisting of approximately 177,295 square feet (4.07 acres) and commonly known as Trinity Plaza, entered into on June 15, 2007, pursuant to Ordinance No. 92-07 adopted by the Board of Supervisors on April 17, 2007 (File No. 061217), to add 5 years to the term, to permit the construction of the entirety of a parking garage, to amend the definition of Existing Tenants, to identify the BMR Units for Building A, to modify the location and selection process for the Replacement Units, and to permit a Project-wide art component for the Project; and adopting environmental, General Plan and Planning Code Section 101.1(b) findings.

Note:

Additions are <u>single-underline italics Times New Roman</u>; deletions are <u>strikethrough italics Times New Roman</u>. Board amendment additions are <u>double underlined</u>. Board amendment deletions are <u>strikethrough normal</u>.

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

Section 1. Findings. The Board of Supervisors makes the following findings:

(a) California Government Code Section 65864 et seq. authorizes any city, county, or city and county to enter into an agreement for the development of real property within the jurisdiction or the city, county, or city and county.

Planning Department
BOARD OF SUPERVISORS

Page 1 6/10/2009 9.3 Review Procedure. In conducting the required initial and annual reviews of the Developer's compliance with this Agreement, the Director shall follow the process set forth in Section 56.17 of the Administrative Code as of the Effective Date.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 10.1 <u>Amendment or Termination</u>. Except as provided in Section 2.5 (Changes in State and Federal Rules and Regulations) or Section 12.5 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56 of the Administrative Code as of the Effective Date.
- 10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Subsequent Approval, or the approval of a Subsequent Approval, shall require an amendment to this Agreement. Upon 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 Subsequent Approval). Notwithstanding the foregoing, the in event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Basic Approval or Subsequent Approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 10.1 above.

10.2 Extension Due to Legal Action, Referendum, or Excusable Delay.

- 10.2.1 If any litigation affecting the Project Site is filed challenging this Agreement, the Basic Approvals or any Subsequent Approvals (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement, any Basic Approvals, or any Subject Approvals are suspended pending the outcome of an electoral vote on a referendum, the Term shall be extended pursuant to the provisions of this Section 10.2
- 10.2.2 In the event of changed conditions, changes in state or federal laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, or other circumstances beyond the control of the Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the Project or any portion thereof or with the ability of Developer to perform its obligations or to perform overall under this Agreement ("Excusable Delay"), the Parties agree to: (i) extend the time periods for performance of Developer's obligations; and (ii) extend the term of this Agreement. In the event that an Excusable Delay occurs, the Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with carrying out the Project or the ability of the Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, Developer shall have first notified City of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) Developer cannot, through commercially reasonable and diligent efforts, make up for the delay within the time period remaining prior to the applicable completion date. Notwithstanding anything to the contrary in this Section, (A) the lack of credit or financing shall not be considered to be a matter beyond Developer's control and therefore no lack of such financing shall be deemed an Excusable Delay, and (B) in no event shall an Excusable Delay last for more than twenty-four (24) months.

EXHIBIT C

ORDINANCE NO.

1	[Planning Code - Geary-Masonic Special Use District]
2	
3	Ordinance amending the Planning Code to modify the Geary-Masonic Special Use
4	District regarding minimum parking requirements, ground floor celling heights, and to
5	allow payment of an inclusionary housing fee; affirming the Planning Department's
6	determination under the California Environmental Quality Act; making findings of
7	consistency with the General Plan, and the eight priority policies of Planning Code,
8	Section 101.1; and adopting findings of public convenience, necessity, and welfare
9	under Planning Code, Section 302.
10	NOTE: Unchanged Code text and uncodified text are in plain Arial font.
11	Additions to Codes are in single-underline italics Times New Roman font. Deletions to Codes are in strikethrough italies Times New Roman font.
12	Board amendment additions are in double-underlined Arial font. 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	
17	Section 1.
18	(a) The Planning Department has determined that the actions contemplated in this
19	ordinance comply with the California Environmental Quality Act (California Public Resources
20	Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21	Supervisors in File No and is incorporated herein by reference. The Board affirms
22	this determination.
23	(b) On, the Planning Commission, in Resolution No, adopted
24	findings that the actions contemplated in this ordinance are consistent, on balance, with the
25	City's General Plan and eight priority policies of Planning Code Section 101.1. The Board

Supervisor Stefani BOARD OF SUPERVISORS

1	adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
2	Board of Supervisors in File No, and is incorporated herein by reference.
3	(c) Pursuant to Planning Code Section 302, this Board finds that this ordinance will
4	serve the public necessity, convenience, and welfare for the reasons set forth in Planning
5	Commission Resolution No, and the Board incorporates such reasons herein by
6	reference. A copy of Planning Commission Resolution No is on file with the Clerk of
7	the Board of Supervisors in File No
8	
9	Section 2. The Planning Code is hereby amended by revising Section 249.20, to read
10	as 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 of Assessor's Block 1071, Lot 003
20	as designated on Sectional Map SU03 of the Zoning Maps of the City and County of 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	(1) Use Size. Non-residential uses 3000 square feet and above shall require a
2	conditional use under Section 121.2. Uses more than 6000 square feet in size are not
3	permitted.
4	(2) Accessory Vehicle Parking. No minimum off-street parking shall be required for
5	any use in this Special Use District. No parking shall be permitted above .5 cars for each
6	Dwelling Unit.
7	(3) Car-sharing. Notwithstanding the provisions of section 166, no less than
8	25% of parking spaces provided shall be an off-street car-share parking space and shall be
9	provided on the building site. Except as expressly provided herein, all other provisions of
10	section 166 shall apply.
11	(4) Parking and Loading Access. Parking and Loading access from Masonic
12	Avenue is not permitted.
13	(5) Dwelling Unit Mix. The project shall provide a minimum dwelling unit mix of
14	(A) at least 40% two and three bedroom units, including at least 10% three bedroom units; or
15	(B) any unit mix which includes some three bedroom or larger units such that 50% of all
16	bedrooms within the project are provided in units with more than one bedroom.
17	(6) Ground Floor Non-Residential Height. Notwithstanding Section 145.1(c)(4), non-
18	residential uses on the ground floor shall have a minimum floor-to-floor height of 12 feet, measured
19	from the ground floor slab.
20	(d) Inclusionary Housing. In order to allow for the increased residential densities provided
21	by this Special Use District, on-site inclusionary units pursuant to Planning Code Section 415.6 shall
22	be required and required in the following amounts and income levels. Compliance with Section 415 et
23	seq. shall be by payment of the affordable housing fee, or provision of on-site units, as follows:
24	(1) Affordable Housing Fee. Payment of the Affordable Housing Fee pursuant to
25	Section 415.5 and subject to the following provisions:

1	(A) For a project providing Owned Units, the applicable percentage shall be
2	33% of the Gross Floor Area of residential use.
3	(B) For a project providing Rental Units, the applicable percentage shall be
4	30% of the Gross Floor Area of residential use.
5	(2) On-Site Inclusionary Units. On-site Units pursuant to Section 415.6 in the following
6	amounts and income levels:
7	(1)(A) In a rental project, at least 10% of units must be affordable to very
8	low-income households, at least 4% must be affordable to low-income households, at least
9	4% must be affordable to moderate-income households and at least 5% must be affordable to
10	middle-income households. For purposes of this section, rental units for very low-income
11	households shall have an affordable rent set at 55% of Area Median Income or less, with
12	households earning up to 65% of Area Median Income eligible to apply for very low-income
13	units. For purposes of this section, rental units for low-income households shall have an
14	affordable rent set at 80% of Area Median Income or less, with households earning up from
15	65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of
16	this section, rental units for moderate-income households shall have an affordable rent set at
17	110% of Area Median Income or less, with households earning from 90% to 120% of Area
18	Median Income eligible to apply for moderate-income units. For purposes of this section,
19	rental units for middle-income households shall have an affordable rent set at 120% of Area
20	Median Income or less, with households earning from 120% to 140% of Area Median Income
21	eligible to apply for middle-income units. For any affordable units with rental rates set at 110%
22	of Area Median Income or above, the units shall have a minimum occupancy of two persons.
23	(2)(B) In an ownership project, at least 11% of units must be affordable to
24	very low-income households, at least 5% must be affordable to low-income households, at
25	least 5% must be affordable to moderate income households and at least 5% must be

affordable 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 Media	n
Income or less, with households earning up to 100% of Area Median Income eligible to app	эly
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 les	s,
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 les	s,
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 les	s,
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	n
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 3. 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 4. 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

1	Code that are explicitly shown in this ordinance as additions, deletions, Board amendment	ent
2	additions, and Board amendment deletions in accordance with the "Note" that appears	under
3	the official title of the ordinance.	
4		
5	APPROVED AS TO FORM:	
6	DENNIS J. HERRERA, City Attorney	
7	By:	
8	Audrey Williams Pearson Deputy City Attorney	
9	n:\legana\as2019\2000039\01396521.docx	
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23		

24

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EXHIBIT D



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102 Phone: 415,252.3100 . Fax: 415.252.3112 ethics.commission@sfgov.org.www.sfethics.org

Received on:

10-04-2019 | 09:33:49 PDT

Disclosure Report for Developers of Major City Projects

SFEC Form 3500 (S.F. Campaign and Governmental Conduct Code § 3.500 et seq.) A Public Document

a. FILING INFORMATION		
TYPE OF FILING		DATE OF ORIGINAL FILING
		(for amendment only)
Original		
REPORT NUMBER	PERIOD COVERE	D
First Report	1 year prio	r to EEA to present (First Report)

2. DEVELOPER INFORMATION NAME OF DEVELOPER	
Laurel Heights Partners LLC	
BUSINESS ADDRESS	
c/o PSKS 150 Post Street, Suite 320 San	Francisco, CA 94108
BUSINESS TELEPHONE	BUSINESS EMAIL ADDRESS
415-395-0880	lcongdon@pradogroup.com
NAME OF PERSON COMPLETING THIS REPORT Lisa Congdon	TELEPHONE NUMBER OF PERSON COMPLETING THIS REPORT 415-395-0880

PLANNING DEPARTMENT CASE NUMBER 2015-014928ENV	
DESCRIPTION OF PROJECT: Construction of 15 buildings comprised of 74	4 units, 34,496 SF retail and 14,665 SF childcare.
DATE OF ENVIRONMENTAL EVALUATION APPLICATION	DATE EIR CERTIFIED OR FINAL ENVIRONMENTAL DETERMINATION ADOPTED
3/29/2016	09/05/2019

Z,	DONATIONS TO NONPROFIT ORGANIZATIONS
En	ter the information below for each nonprofit organization (including charities, social welfare organizations, trade associations, etc.): (1)
to	which the developer and/or its affiliates have made donations during the reporting period which, when considered with all other
do	nations to the nonprofit since one year prior to the filing of the major project's EEA, cumulatively total \$5,000 or more; and (2) which
ha:	s had one or more contacts with a City officer, or has provided public comment at any hearing before any City board or commission, in
ord	der to influence the City officer with regard to the developer's major project. Attach supplemental sheets if more space is needed.
	Check the box if donations were disclosed on any prior report filed with respect to the project listed on this report.
то	TAL DONATIONS TO NONPROFITS DURING THE REPORTING PERIOD
\$	337632.19

#	ITEMIZED NONPROFIT DONATION RECIPIENTS DURING THE RE	PORTING PERIOD
-	NAME OF NONPROFIT	
	SPUR	
	BUSINESS ADDRESS OF NONPROFIT	
654 Mission Street SF, CA 94105		
	WEBSITE OF NONPROFIT	
1	1 www.spur.org	
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT
	info@spur.org	415-781-8726
	AMOUNT OF DONATION	DATE OF DONATION
	\$ 118450	
	i 7	1
	NAME OF NONPROFIT	
		· ·
	NAME OF NONPROFIT	
	NAME OF NONPROFIT JCCSF	
	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT	
2	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118	
2	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118 WEBSITE OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT
2	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118 WEBSITE OF NONPROFIT www.jccsf.org	BUSINESS TELEPHONE OF NONPROFIT 415-292-1200
2	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118 WEBSITE OF NONPROFIT www.jccsf.org	
2	NAME OF NONPROFIT JCCSF BUSINESS ADDRESS OF NONPROFIT 3200 California Street SF, CA 94118 WEBSITE OF NONPROFIT www.jccsf.org EMAIL ADDRESS OF NONPROFIT	415-292-1200

	NAME OF NONPROFIT			
	Mercy Housing			
	BUSINESS ADDRESS OF NONPROFIT			
	1256 Market Street SF, CA 94102			
	WEBSITE OF NONPROFIT			
3	wwww.mercyhousing.org			
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT		
		415-355-7100		
	AMOUNT OF DONATION	DATE OF DONATION		
	\$ ⁶²⁰⁰			
	NAME OF NONPROFIT			
	SFHAC			
	BUSINESS ADDRESS OF NONPROFIT			
	95 Brady Street SF, CA 94103			
	WEBSITE OF NONPROFIT			
4	www.sfhac.org			
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT		
	todd@sfhac.org	415-541-9001		
	AMOUNT OF DONATION	DATE OF DONATION		
	\$ 23350			
	NAME OF NONPROFIT			
	YIMBY Acgtion			
	BUSINESS ADDRESS OF NONPROFIT			
	661 Natoma Street SF, CA 94103			
	WEBSITE OF NONPROFIT			
5	www.yimbyaction.com			
	EMAIL ADDRESS OF NONPROFIT	BUSINESS TELEPHONE OF NONPROFIT		
	hello@yimbyaction.org			
	AMOUNT OF DONATION	DATE OF DONATION		
	\$ 6032.19			
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED			
	Attach additional sheets to this statement to disclose additional nonprofit donations.			

5. AFFILIATES DONATING TO NONPROFIT ORGANIZATIONS
Enter the information below for each affiliate of the developer which made a donation that was reported in Part 4. An "affiliate" is any individual or entity that directly or indirectly controls, is controlled by or is under common control with, the developer. In this regard, the
term "control" means the power to direct the affairs or management of another entity, whether by contract, operation of law or
otherwise. Attach supplemental sheets if more space is needed.
TOTAL NUMBER OF AFFILIATES DURING THE REPORTING PERIOD
3

#	THE WIZED AFFICIATES OF THE DEVELOPER WHICH WADE A DONATION DURING THE REPORTING PERIOD			
	NAME OF AFFILIATE			
1	PSKS LH Development LLC			
	BUSINESS ADDRESS OF AFFILIATE			
	c/o PSKS 150 Post Street Suite 320 SF, CA 94108			
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	dsafier@pradogroup.com	415-395-0880		
	NAME OF AFFILIATE			
	Prado Group Inc.			
	BUSINESS ADDRESS OF AFFILIATE			
2	150 Post Street Suite 320 SF, CA 94108			
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	dsafier@pradogroup.com	415-395-0880		
	NAME OF AFFILIATE			
	SKS Partners LLC			
	BUSINESS ADDRESS OF AFFILIATE			
3	601 California Street SF, CA 94108			
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	DKingsley@sksre.com	415-421-8200		
	NAME OF AFFILIATE			
Ì	BUSINESS ADDRESS OF AFFILIATE			
4				
	EMAIL ADDRESS OF AFFILIATE	BUSINESS TELEPHONE OF AFFILIATE		
	ADDITIONAL SUPPLEMENTAL SHEETS REQUIRED Attach additional sheets to this statement to disclose			
	additional affiliates.			

SAN FRANCISCO ETHICS COMMISSION – SFEC Form 3500

6: VERIFICATION				
I have used all reasonable diligence in preparing this state	ement. I have reviewed this statement and to the best of my			
knowledge the information I have provided here is true and complete.				
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
NAME AND SIGNATURE OF PERSON FILING REPORT	DATE SIGNED			
DocuSigned by: DCJ24 OC812E1C4A19445				
Dan Safier	10-04-2019 09:33:49 PDT			

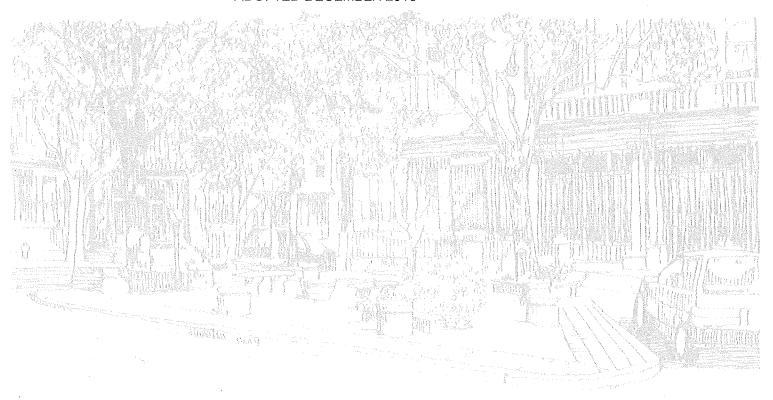
EXHIBIT E



Guide to the San Francisco **Better Streets Plan**

& RELATED AMENDMENTS
TO SAN FRANCISCO'S MUNICIPAL CODES

ADOPTED DECEMBER 2010

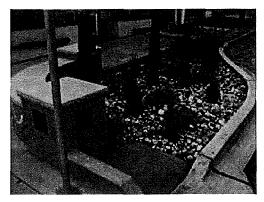


Rendering by Allan B. Jacobs

Streetscape Requirements







Stormwater management facilities

SUMMARY

The Better Streets
Plan legislation
requires property
owners and
developers making
certain changes to
their property to
provide streetscape
elements consistent
with the Better Streets
Plan.

The Better Streets Plan legislation, adopted December 7, 2010, establishes new requirements for streetscape improvements, building on existing requirements. All streetscape requirements for new development are now located in Section 138.1 of the Planning Code.

STREET TREES

In all zoning districts, property owners making certain changes are required to install street trees every 20 feet on center, as previously required.

The legislation made minor changes to street tree requirements in commercial and mixed-use districts – requirements for minimum tree caliper, branching height, basin size, and tree basin edging treatment were expanded to apply to all RC, C, NC, and MU zoning districts, in addition to C-3 and DTR districts.

The legislation also expands the requirement for trees to be planted in a continuous soil-filled trench: this requirement now applies to projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

As previously, street tree requirements may be waived or modified by the Zoning Administrator, and an in-lieu fee may be assessed or sidewalk landscaping provided.



Sidewalk landscaping



Sidewalk widening

STORMWATER MANAGEMENT FACILITIES

The legislation does not change existing requirements in the Public Works Code and Building Code regarding stormwater management. As before this legislation, projects that will disturb greater than 5,000 square feet of the ground surface, measured cumulatively over time, are required to manage the quantity and quality of stormwater runoff to meet or exceed either LEED sustainable sites 6.1 or 6.2 guidelines.

Projects may meet this requirement either on their site or by making improvements in the public right-of-way. Any development project that meets the thresholds above is required to submit a Stormwater Control Plan.

OTHER STREETSCAPE ELEMENTS

The legislation creates new requirements for projects on large lots and lots with significant street frontage (parcels that are 1/2 acre or more, contain 250 feet or more of lot frontage, or encompass a full block face of lot frontage) that will add a new building, add 20% or more to an existing building, or renovate 50% or more of an existing building.

In any zoning district, for projects that meet these thresholds, the City may require standard streetscape elements per the appropriate Better Streets Plan street type.

Any development project that meets the thresholds above must submit a streetscape plan to the Planning Department for review. The streetscape plan will be reviewed as part of overall project approvals.

SIDEWALK WIDENING

For the thresholds listed in the previous section, the City may also require sidewalk widening so that the resulting sidewalk meets or exceeds the *recommended* sidewalk width for the relevant street type from the Better Streets Plan.

Where development projects would create new streets, sidewalks must meed or exceed the recommended sidewalk width. This width may be decreased if a consistent front setback is provided.

Sidewalk widths

	Silitaria:	ROSHKOUL WOODS	a tiátkovaltákolatvákouti
COMMERCIAL	Downtown commercial	Per Downtown Streetscape Plan	
	Commercial throughway	12'	15'
	Neighborhood commercial	12'	15'
RESIDENTIAL	Downtown residential	12'	15'
	Residential throughway	12'	15'
	Neighborhood residential	10'	12'
OTHER	Industrial	8'	10'
	Mixed-use	12'	15'
SPECIAL	Parkway	12'	17'
	Park edge	12'	24'
	Multi-way boulevard	12'	15'
	Ceremonial	varies	varies
	Alley	6'	9'
	Shared public way	NA	NA
	Paseo	varies	varies



SIDEWALK WIDTH (4.2)

The Plan identifies a minimum and recommended sidewalk width for each street type. Sidewalks below the minimum width for the relevant street type should be widened as opportunities allow. Recommended sidewalk widths allow the provision of all features and elements necessary to create a gracious, usable pedestrian environment. The City should strive to meet recommended sidewalk widths wherever possible.

SIDEWALK ZONES (4.2)

In order to function for all users, sidewalks should allow sufficient clear width for through travel while providing amenities to serve passers-by. To that end, the Plan identifies a set of sidewalk "zones" to organize elements on the sidewalk. Each zone should meet guidelines for width, use, and appropriate elements.

The five sidewalk zones are:

Frontage zone: The area adjacent to the property line that transitions between the sidewalk and building uses

Throughway zone: The portion of the sidewalk for pedestrian travel along the street

Furnishing Zone: The portion of the sidewalk used for various streetscape amenities and functional elements, including plantings, street lights, furnishings, and surface utilities

Edge zone: The area of the sidewalk used by people getting in and out of parked vehicles

Extension zone: The area where pedestrian space may be extended into the roadway, via features such as curb extensions, landscaping, or paving treatments

SAN FRANCISCO BETTERSTRETSPIANTED EDESTRIANTED











ADOPTED BY THE SAN FRANCISCO BOARD OF SUPERVISORS ON DECEMBER 7, 2010



FINAL PLAN

1781

Interactions With Adjacent Parceis

The Better Streets Plan focuses primarily on improvements to the public right-of-way. However, fronting properties also exert a strong influence on the quality and character of the pedestrian realm that go beyond the scope of this plan. Specific ways in which properties can enhance or detract from the oublic realm include:

- Parking lot edges: opportunities for landscaping and screening of surface lots
- Building setbacks: balancing the desire for a consistent street wall with opportunities for wider sidewalks or fronting plazas
- Ground-floor uses and building design that creates activity at street level
- Overhead projections, such as awnings, marquees, signs, and balconies, that can add character to a streetscape, but may also interfere with tree plantings or accessibility

Minimum Sidewalk Width

All sidewalks should meet the minimum widths described in Figure 4.3, as measured from the face of the curb. Existing sidewalks may be narrower than the minimum widths for a variety of reasons, from physical constraints to historical context. Sidewalks that are below these widths should be considered deficient; when funding allows or the street is otherwise being reconstructed, they should be considered for widening as feasible given right-of-way constraints.

Where it is not possible to achieve minimum widths within existing rights-of-way, requiring consistent building setbacks may be considered as a way to provide extra space.

FIGURE 4.3
MINIMUM AND RECOMMENDED SIDEWALK WIDTH BY STREET TYPE

	aren 177	APPAREA WITTE	V (2000) (2000)
COMMERCIAL	Downtown commercial	Per Downtown	Streetscape Plan
	Commercial throughway	12'	15'
	Neighborhood commercial	12.	15'
RESIDENTIAL	Downtown residential	12'	15'
	Residential throughway	15,	. 15'
	Neighborhood residential	10'	15,
OTHER	Industrial	8,	10'
	Mixed-use	12'	15'
SPECIAL	Parkway	12'	17'
	Park edge	12'	24'
	Multi-way boulevard	12'	15'
	Ceremonial	varies	varies
	Alley	6'	9'
	Shared public way	NA	NA
	Paseo	varies	varies

Recommended Sidewalk Width

Sidewalks should strive to meet or exceed the recommended sidewalk widths, as measured from the face of the curb, shown in Figure 4.3. These widths allow for the ptovision of all desired streetscape elements on the sidewalk. Major new development or redevelopment areas that create new streets must meet or exceed recommended sidewalk widths.

On new streets, where continuous building setbacks are proposed, minimum sidewalk width may be narrowed by the width of the applicable frontage zone, as determined on a case-by-case basis.

Streetscape improvement projects should evaluate opportunities to widen sidewalks to the recommended minimums as conditions allow. However, most street improvements in San Francisco take place within existing constrained rightsof-way (as opposed to entirely new streets), and trade-offs among various travel modes are often necessary.

Sidewalk and Median Width

Though medians can add aesthetic value and safety benefits, roadway space is often more valuable to pedestrians as part of sidewalks rather than as part of a median, particularly where sidewalks are less than the recommended sidewalk width for the appropriate street type. On the other hand, due to the difficulty and cost of moving curbs, utilities, driveways, site furnishings and plantings (especially if trees are mature), widening sidewalks by a small amount may be a less cost-effective manner of improving a street than adding median space. This determination should be made on a case-by-case basis.



SIDEWALK ZONES

This section includes dimensions and guidelines for each sidewalk zone. The dimensions for sidewalk zones are meant as a general guide, within overall sidewalk width as described above. Appropriate widths for each sidewalk zone vary based on numerous conditions, such as overall sidewalk width, pedestrian volumes, adjacent land uses, presence of driveways, etc. Dimensions include the width of the curb.

Considerations for width of individual sidewalk zones will differ for constrained sidewalks; that is, sidewalks that are below the recommended widths shown in Figure 4.3. Constrained sidewalks are discussed in the following section.

Frontage zone

Use: Adjacent uses may occupy this zone for outdoor displays, café or restaurant seating, and plantings, with appropriate permits.

Architectural elements that encroach into the street such as awnings, canopies, and marquees may also occupy this zone.

On sidewalks not wide enough to accommodate a large furnishing zone, elements that would normally be sited there such as benches, newsracks, trash cans and poles may occupy the frontage zone to keep the throughway zone clear.

Width: On all street types, the frontage zone should be 18 inches to provide a comfortable shy distance for pedestrians or to allow adjacent uses to utilize the space.

On commercial street types, the frontage zone should be a minimum of 2 feet in width to allow for café tables and seating, benches, planting, merchandise displays, and other amenities, and higher volumes of window shopping and entering and exiting of doors. In many cases, the frontage zone should be wider to create a generous seating area.

Where there is relatively little pedestrian traffic, or where there are continuous building serbacks, the Frontage Zone may be decreased, or eliminated altogether, as determined on a case-by-case basis.

Throughway Zone

Use: The throughway zone is intended for accessible pedestrian travel only and should be clear of obstacles, including driveway aprons or other changes to cross-slope. The walking surface may be constructed of any walkable, accessible material.

In limited circumstances on narrow sidewalks, ADA-compliant tree grates may be counted toward the minimum clear path of travelt however, as they are difficult to maintain to an accessible standard, this is not a preferred solution.

Overhanging elements such as awnings, store signage, and bay windows may occupy this zone as long as there is a clear distance under them of at least 80 inches, as required by accessibility standards.

Width: Accessibility regulations require a clear path of travel of minimum 4 feet in width, widening to a minimum of 5 feet at least every 200 feet.

Alleys should maintain a minimum 4 feet clear path of travel; all other street types should maintain a minimum 6 feet of clear. In very limited circumstances (such as neighborhood residential streets with very low pedestrian volumes), this may be reduced to 4 feet minimum. Where adjacent frontage or furnishing zones are kept clear of obstacles and are paved with an accessible surface, this width may be included in the minimum required clear width.

For streets with higher pedestrian volumes, such as commercial and downtown streets, additional width should be provided to accommodate large numbers of pedestrians.

Furnishing zone

Use: The furnishing zone acts as a buffer between the active pedestrian walking area (throughway zone) and street traffic. Street trees and other landscaping, streetlights, site furnishings, traffic and parking poles and equipment, utility poles and boxes, fire hydrants, and other site furnishings should be consolidated in this zone. See Chapter 6 for specific guidelines for each of these elements.

The furnishing zone may be differentiated from the throughway zone through paving scoring, materials, or edge treatments to indicate that the furnishing zone is a place for lingering as opposed to moving.

Width: Where street trees or sidewalk landscaping is provided, the furnishing zone should be a minimum of 3 feet in width. (See Section 6.1)



As the furnishing zone acts as a buffer between pedestrians and the roadway, the width of the furnishing zone should be based upon traffic speeds and volumes and whether on-street parking is provided. If no on-street parking is provided and traffic speeds are 25 mph or less, the furnishing zone dimension should be a minimum of 4 feet in width. For speeds of 30 mph or above, the furnishing zone should be one foot wider for every 5 mph increment in posted speed above 30 mph.

In many circumstances, the furnishing zone may be considerably wider than this, to incorporate significant planting, seating, or stormwater facilities, and give the sense of the furnishing zone as a public space.

Where there is a continuous landscape treatment, a minimum 3 foot walkable path should be provided from the edge zone to the throughway zone every 20 feet, aligned with the mid-point of the parking space. See also the City's Sidewalk Landscape Permit guidelines.

Edge zone

Use: The edge zone is the interface between the roadway and the sidewalk, and is intended for use by people accessing parked cars. To allow people to get into and out of parked vehicles, the edge zone should have a walkable surface.

The edge zone may have some vertical elements, such as street lights, utility poles, parking meters, or traffic and parking signs, as long as these elements are non-continuous and allow space between for car doors to swing open and for people to access parked vehicles.

Street tree basins may also intrude into the edge zone, with the same requirements. Continuous sidewalk plantings are not generally allowed in the edge zone; however, where there is no adjacent parking lane, the edge zone may contain continuous sidewalk plantings or site furnishings.

See also the City's Sidewalk Landscape Permit guidelines.

Width: On streets with no parking lane, the edge zone may be omitted.

On streets with patallel parking, where there is a continuous planting strip or other continuous raised element (such as a raised planter, or stormwater planter with lip), the Edge Zone must be a minimum of 2 feet wide to allow access to parked vehicles.

Regularly-spaced non-continuous elements, such as parking meters, poles and street trees and basins, may encroach to within 18 inches of the face of the curb so long as elements allow space for open car doors and for people to get in and out of cars.

On streets with angled or perpendicular parking, the edge zone must be a minimum of 30 inches.

All dimensions are given from face of curb.

Extension zone

Use: The extension zone refers to specific conditions where the sidewalk extends into the parking lane. Specific examples include curb extensions, flexible use of parking lanes, and bicycle parking, tree planting, and stormwater features in the parking lane.

The extension zone may house elements such as landscaping, seating, stormwater facilities, and other site furnishings. Elements such as newsracks, traffic and parking signs, and kiosks may be consolidated in the extension zone (on curb extensions) to free up sidewalk space for through travel.

Width: Where the pedestrian realm is expanded into the extension zone, it should take up the full width of the curb extension or parking lane. Curb extensions should follow the guidance in Section 5.3. Parking lane treatments should follow the guidance in Section 5.6.

FIGURE 4.4
SUMMARY OF SIDEWALK ZONE GUIDELINES

Width	• Width of parking lane	O' (where no parking lane, or no continuous planting) 2' (where parking lane and continuous planting) 2'6" (where angled or perpendicular parking)	3' (where trees or landscaping are provided) 4' (+ 1' for every 5 mph increment over 25 mph) Wider (as needed for site furnishings/ public space)	4' minimum per ADA and on alleys; widening to 5' every 200'. 6' on other street types Wider (to accommodate expected pedestrian volumes)	18* 2'+ (commercial and mixed-use streets) Less (where continuous setback is provided)
Use	All site furnishings, trees and land- scaping, street lighting, and utilities Flexible use of parking lane	Walkable surface Non-continuous vertical elements such as street lights, utility poles, parking meters, etc. with 18" clearance to curb Street trees and basins, with non-continuous planting	All site furnishings, trees and landscaping	Clear of obstacles; accessible walking surface Overhanging elements (>80") Tree grates (not preferred)	Displays, cafe seating Furnishings aligned with frontage Planters (surface or above-ground) Overhanging elements

CONSTRAINED SIDEWALKS

This section describes how sidewalk zones should be divided in situations where the sidewalk width is constrained; that is, where sidewalks are below the recommended overall width shown in Figure 4.3. On constrained sidewalks, individual sidewalk zones must be correspondingly smaller as well, necessitating trade-offs. Some sidewalk zone dimensions are fixed as discussed in the previous section (such as minimum required through width for accessibility, or edge zone width where there is a continuous sidewalk planter), while others are variable depending on conditions.

Where a constrained sidewalk width does not allow for the recommended dimensions for each zone, the design of the street should meet the following criteria (in order of priority):

- → Accommodate required access for people with disabilities and access to adjacent uses and transit stops.
- → Accommodate expected levels of pedestrian activity.
- → Provide necessary buffering between the active area of the sidewalk and adjacent traffic.

→ Integrate design elements to enhance the public realm, and provide space for adjacent businesses to use the sidewalk for seating and displays.

In many cases, individual sidewalk zones should be greater than the minimum depending upon the context. For example:

- → On streets with significant pedestrian volumes, the throughway zone should be proportionally wider.
- → Where there is significant high-speed vehicle traffic and a need for buffering pedestrians, or a desire to create a public space character or significant planting area, the furnishing zone should be proportionally wider.
- → On commercial streets with larger numbers of restaurants where there is a desire to encourage outdoor scating, the frontage zone should be proportionally wider.

Sidewalk dimensions are given from face of curb.

6 Foot Sidewalk (Alleys)

Six foot sidewalks (typically found on alleys) do not have enough room for a furnishing zone with tree plantings. Alternatively, the frontage zone may have a building-adjacent planter, leaving 4 to 5 feet for through travel. Curb extensions may allow for additional plantings, trees, or site furnishings. Converting the alley to a shared public way is preferable, to allow more comfortable pedestrian space.

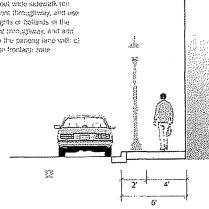
7 to 8 Foot Sidewalk

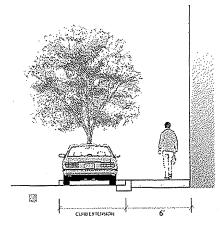
On 7 to 8 foot sidewalks, a 3 foot furnishing zone with street trees would leave 4 to 5 feet of through width. This width is sufficient on alleys and on some neighborhood residential streets with low pedestrian volumes; however, on most streets, a 6 foot throughway zone should be provided, meaning there is not enough space for a row of street trees. The designer should consider narrower design elements in the edge zone, such as street lights or bollards. Curb extensions may allow for additional plantings, trees, or site furnishings.

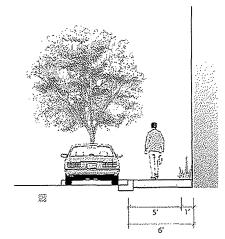
Constrained Sidewalks: 6 Feet

Burney British St. Act St.

Three obscurs for designing a 6-foot wide sclewalk (or allays), all flerain a numeric A foot throughway, and use narrow elements such as streetlights or bollands in the edge where or flerain a 5-to 6-foot throughway, and addiscreet trees or contractersions in the parining land with combined 1-foot wide obstier in the footage zone.

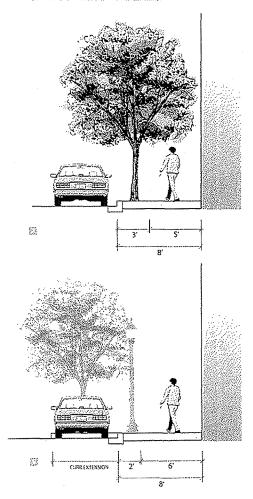


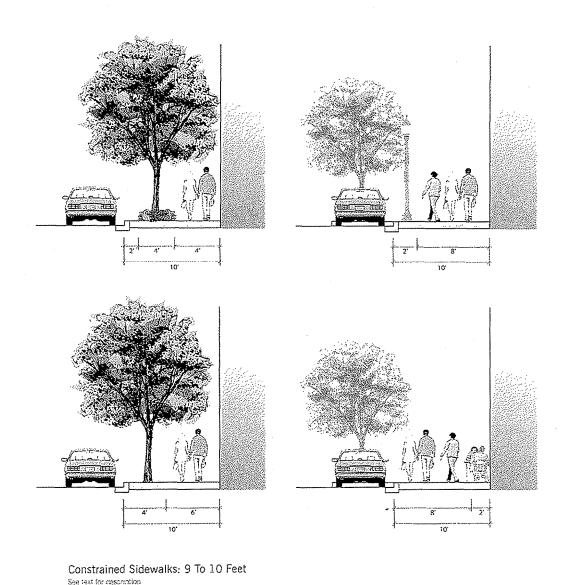




Constrained Sidewalks: 7 To 8 Feet

Two options for dividing an 8 feet vaide sidewalk (a) On alleys or some neighborheed residenced streets, rotain a minimum 4 feet directaginway, and plant trees in the furnishings zone (min. 3 feet); b) On other street ignes, retain a 6 feet throughway, use narrow elements soon as streetlights or bellards in the Enge Zone, and add optional card extensions with street trees.





9 to 10 Foot Sidewalk

A 9 or 10 foor sidewalk allows a few options for dividing the sidewalk space:

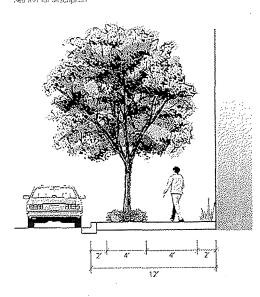
- → On alleys or some neighborhood residential streets, use a 4 to 5 foot throughway zone, 3 to 4 foot furnishing zone with street trees and landscaping, and 2 foot edge zone. The presence of the edge zone allows for a planting strip;
- → Where a 6 foot clear path is required, the sidewalk could be divided into a 6 foot throughway zone and a 3 to 4 foot furnishing zone, with street trees but no planting strip; or
- → On downtown or commercial streets with congested sidewalks (such as on Stockton Street), there should be a 6 foot or greater throughway zone, with either or both a 2 foot frontage zone (for merchandise displays or outdoor seating) or edge zone (with narrow design elements such as street lights or bollards).

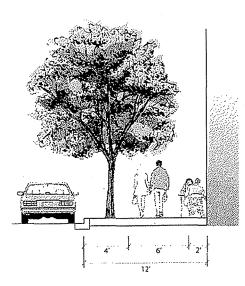
11 to 12 Foot Sidewalk

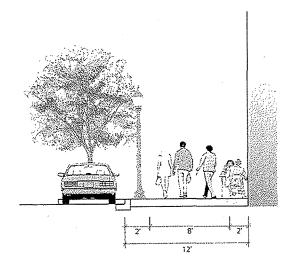
11 to 12 foot sidewalks meet the minimum overall sidewalk widths described in Figure 4.3. However, they still may not be wide enough to achieve all the desirable amenities that create a quality streetscape. Eleven to twelve foot sidewalks may be divided in numerous ways, including:

- → On residential streets, an optional 2 foot frontage zone (with plantings), a 4 to 6 foot throughway zone, a 4 foot furnishing zone with optional planting strip, and 2 foot edge zone;
- → On commercial, downtown, or mixed-use streets, a 2 foot frontage zone (for displays or seating), a 6 foot throughway zone, and a 4 foot furnishing zone; or
- → On downtown or commercial streets with congested sidewalks, an 8 foot or greater throughway zone. with a 2 foot frontage zone (for merchandise displays or outdoor seating) and/or edge zone (with narrow design elements such as street lights or bollards).

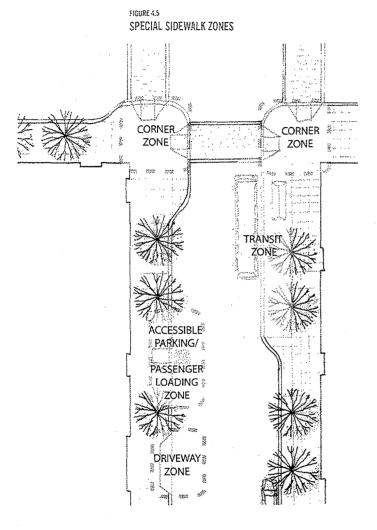
Constrained Sidewalks: 11 To 12 Feet Sea tox for description











SPECIAL SIDEWALK ZONES

Certain portions of the streetscape require special consideration in terms of the spacing and placement of streetscape elements. The following guidelines offer specific guidelines for these areas.

Corners

Corners (as defined by an extension of the property line to the curb) should be kept clear of obstructions. They should maintain drivers' and pedestrians' clear views of each other. Amenities should be clustered adjacent to corners but not within the corner zone itself.

The following streetscape elements are appropriate for corners:

- → Corners should include curb ramps and detectable warning surfaces per accessibility regulations.
- Pre-existing utility poles and sub-surface vaults may be prohibitively expensive to move, and may remain in place. However, they should be relocated as funding and opportunities allow.
- → On residential streets, corners may include a corner planter to the width of the furnishing zone on the adjacent sidewalks, so long as sufficient clear width for curb ramps is maintained.

Transit Stops

Transit stops require special layout guidelines due to the high number of people often waiting near them and the need to board and alight from transit vehicles. Transit stops require special layout guidelines to accommodate passengers who are waiting, boarding or alighting, and the need for vehicles to deploy lifts. See Section 5.5.

Accessible Parking and Passenger Loading Zones Accessible parking and passenger loading zones require special streetscape considerations to ensure that passengers may safely get into and out of vehicles. Specific guidelines include:

- Street trees, furnishings and other obstructions should allow a minimum of 8 feet of clear sidewalk width adjacent to the curb.
- Special paving treatments and sub-surface utilities may be located within this zone, as long as they provide an accessible surface.

Driveways

Driveways present special challenges to the pedestrian due to changes in cross-slope and the presence of vehicles crossing the sidewalk. See Section 6.6.

Medians

Medians can add substantial greenery to the streetscape, decrease impermeable surface, offer opportunities for pedestrian refuges, and offer locations for lighting and some utilities.

Wide medians on some streets offer opportunities for lines of trees that are otherwise difficult to achieve along sidewalks.

Sufficiently wide medians (12 feet or more) generally can be designed to include seating and gathering areas and other pedestrian amenities.

Medians also create opportunities for pedestrian refuges at busy intersections. See Section 5.4.

EXHIBIT F



When It Comes to the Climate, Older Trees Do It Better

Scientists long assumed that as trees got older, they grew slower---just like us. But a new study underscores the climate benefits of the oldest, biggest trees

By Bryan Walsh @bryanrwalsh Jan. 15, 2014

Read Later

The giant coastal redwoods of northern California are breathtaking-literally. They are the tallest trees on Earth, growing to more than 350 ft. (106 m), with trunks that can be more than 25 ft. (7.6 m) across. The oldest redwoods date back to the time of the Roman Empire, though few of that age still remain, since more than 95% of the original old-growth forest has been lost, mostly for lumber. And the trees are unparalleled living carbon banks-a large redwood can sequester a ton of carbon from the air in its trunk and roots.

Despite the redwoods' beauty, though, scientists young trees have long assumed that very old trees like them absorb less and less carbon as they age, slowing down like the rest of us as we get older. That idea has important implications for global warming: climate scientists assume that younger trees will take up carbon more rapidly than their older counterparts, which means youth is valued when it comes to using trees as carbon stores.

Harald Sund via Gotty Images

Print

Old, big trees like the giant redwood sequester carbon faster than

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But according to a new study published in Nature, it turns out that the oldest trees are actually still growing rapidly, and storing increasing amounts of carbon as they age. An international research group led by Nate Stephenson of the U.S. Geological Survey Western Ecological Research Center reviewed records from forest studies on six continents, involving 673,046 individual trees and more than 400 species, going back as far as 80 years ago. For 97% of the species surveyed, the mass growth rate-literally, the amount of tree in the tree-kept increasing even as the individual tree got older and taller. Even though trees tended to lose leaf density as they aged---which, as a victim of male pattern baldness, I can sympathize with—the total amount of leaf cover kept increasing as the tree itself got bigger and older. In other words, the number of leaves per cubic foot fell off but the leafy surface area grew and grew. That enabled the tree to keep absorbing an increasing amount of carbon as it aged.

(MORE: That Thing About Money Not Growing on Trees Just Got More Complicated)

For some species of trees, that increase could be enormous. A single big tree could sequester the same amount of new carbon in a year as might be contained in an entire mid-sized tree. For sports fans, it would be as if Jamie Moyer, a baseball pitcher who was a record 49 years old when he recorded his last win, could best Jose Fernandez, a Miami Marlins pitcher who won the National League Rookie of the Year in 2013 at the age of 21.

Of course, human beings don't age like trees-except maybe for Peyton Manning-and that's probably a good thing. "In human terms, it's as if our growth just kept accelerating after adolescence, instead of slowing down," Stephenson said in a statement. "By that measure, humans could weigh half a ton by middle age, and well over a ton by retirement."

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Most Popular FROM SCIENCE & SPACE some of them will die, leaving older and bigger trees but fewer of them, sort of like the way a high school class will begin to thin out as the reunions pile up over the years. But on a tree by tree basis, elderly trees are carbon vacuums. That's one more reason to appreciate—and conserve—these ancient, majestic forests.

(MORE: Woody Harrelson, Sustainable Paper Salesman)

Bryan Walsh @bryanrwalsh

Bryan Walsh is a senior ordior at TIME.

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From: Sent: stan kurz <stankurz@gmail.com> Sunday, October 20, 2019 11:29 PM

To: Subject:

Major, Erica (BOS) 3333California

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

DearMx Major,

I am writing this email as a resident of San Francisco who strongly protests the removal of trees from 3333 California St. These trees are beautiful and necessary for all to enjoy and benefit from. It would be unconscionable to cut them down! Please reconsider; do not allow the developer to dictate our environment. You must stop destroying the trees.

Thank you for your consideration in this urgent matter.

Stan Kurz

"In philosophy, or religion, or ethics, or politics, two and two might make five, but when one was designing a gun or an aeroplane they had to make four."

— George Orwell, 1984

From:

Jay Cheng <jcheng@sfchamber.com>

Sent:

Sunday, October 20, 2019 8:12 PM

Subject:

Letter Asking for Continuance of File 190548, Jobs Housing Linkage Fee

Attachments:

Oct202019_JobsHousingLinkageFee_LandUseCommittee.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

Please see attached for a letter from the San Francisco Chamber of Commerce encouraging you to continue "File 190548 - Jobs Housing Linkage Fee" at the upcoming Land Use and Transportation Committee meeting to allow for further stakeholder feedback and discussion.

Thank you for your consideration.

Sincerely, Jay Cheng

408-691-0423
Public Policy
SF Chamber of Commerce
Pronouns: he/him/his



235 Montgomery St., Ste. 760, San Francisco, CA 94104 tel: 415.352.4520 • fax: 415.392.0485

sfchamber.com • twitter: @sf chamber

October 20th, 2019

Supervisor Aaron Peskin Supervisor Matt Haney Supervisor Ahsha Safai San Francisco City Hall 1 Dr. Carlton B. Goodlett Place San Francisco, CA

RE: Jobs Housing Linkage Fee, File No: 190548

Dear Chair Peskin, Supervisor Haney, and Supervisor Safai;

Thank you for the opportunity to provide input on the proposed increase to the Jobs Housing Linkage Fee (File: 190548), before you at the October 21st, 2019 meeting of the Land Use and Transportation Committee.

The San Francisco Chamber of Commerce, representing over a thousand local businesses, is writing to encourage you to continue the item to allow for more stakeholder input and feedback.

We appreciate Supervisor Haney's leadership in strengthening the linkage between jobs and housing and initiating an overdue examination of the Jobs Housing Linkage Fee. We absolutely agree that San Francisco needs more affordable housing to support our growing economy.

The Jobs Housing Linkage Fee is an integral part of our City's planning process. It has significant impacts on our local economy, the supply of commercial and laboratory space, and our ability to fund affordable housing.

The City's feasibility study has warned that increasing the fee too dramatically and suddenly would postpone and stop construction of commercial space in San Francisco. A joint memorandum from the City's Planning Department, Office of Housing and Community Development, and Office of Economic and Workforce Development also cautions that limiting office space development would have negative impacts on affordable housing, parks, and public transit - all public benefits which rely on office space development for funding.

The memo also concludes that limiting development will lead to an "ever-tightening market for office space, resulting in only top-paying companies being able to afford new office space in San Francisco." This will inevitably push out smaller, home-grown businesses that rely on affordable office space.

We deeply appreciate the Supervisor's willingness to work with businesses and stakeholders in creating a Jobs Housing Linkage Fee that will responsibly balance our jobs-housing ratio. We are optimistic that we can reach a positive, consensus solution that is supported by the business community, affordable housing advocates, and City Hall.

We hope that the Supervisor will also consider nuanced approaches to implementing the Jobs Housing Linkage Fee, such as:

- Incrementally increasing the Jobs Housing Linkage Fee over a period of time.
- Different fee tiers for developments that support small and medium-sized businesses, as well as developments that include housing and office.



235 Montgomery St., Ste. 760, San Francisco, CA 94104

tel: 415.352.4520 • fax: 415.392.0485 sfchamber.com • twitter: @sf_chamber

 Regular economic analysis of the Jobs Housing Linkage Fee and regular fee adjustment, as recommended by the City Economist.

We believe continuing the item at the Land Use and Transportation Committee on October 21st will allow all parties an opportunity to collaborate on a responsible and progressive policy. Thank you for your consideration.

Sincerely,

Rodney Fong President & CEO

San Francisco Chamber of Commerce

CC: Mayor London Breed, Clerk of the Board of Supervisors

From:

sharon marks <sharon94941@sbcglobal.net>

Sent:

Sunday, October 20, 2019 7:04 PM

To:

Major, Erica (BOS)

Cc:

Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS)

Subject:

Trees on California St.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

It is my understanding that there is no ecological or environmental reason to destroy perfectly healthy, mature trees. If the developer can work around them, it will save the neighborhood, the air quality, the aesthetic and make a lot of people happier and healthier than if they are removed.

Please strongly reconsider this proposed action.

Thank you, Sharon Marks Sharon

"Happiness consists not in the multitude of friends, but in the worth and choice." Ben Johnson

From:

Pat Walker <walkercom111@gmail.com>

Sent:

Sunday, October 20, 2019 5:52 PM

To:

Major, Erica (BOS)

Subject:

Stop the loss of trees

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Erica:

I just learned about the 190 trees that are scheduled to be taken out by the Prado developers!

That is j just a crying shame. I say NO NO NO, a thousand times no. Why are we only hearing about this now. This is San Francisco - when did we become a city that cuts down all our trees? The Presidio is now a total mess due to all the trees being take out. It is barren and ugly. It used to be beautiful and wild.

I am totally against these big developers or anyone for that matter taking out trees. For every tree they take out (they should be force to plant two). But I prefer that we keep our old beautiful trees and not let them cut them down. Trees are what give our city shade and character.

Shame, shame, shame on anyone who votes to take those trees out. Such a travesty.

Pat Walker

Pat Walker 211 27th Ave, Suite 301 San Francisco, CA 94121 Office phone: 415-387-7593 Cell: 415-994-0019

walkercom111@gmail.com

From:

Maxine Moerman <maxine.moerman@comcast.net>

Sent:

Sunday, October 20, 2019 4:40 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Stefani,

Catherine (BOS)

Subject:

3333 California - Land Use and Transportation Committee

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I live at 3524 California Street just a block and a half away from 3333

California Street. It is imperative that we save the healthy and

mature trees that are in this location. These beautiful trees give us shade, improve our air by filtering particular matter and sequestering

CO2 and have been around longer than any of us. We need more trees, not less in our neighborhood. Please preserve the trees and vote against their removal.

Sincerely,

Maxine Moerman

3524 California Street, SF CA 94118

From:

Ester Beerle <estersbeerle@gmail.com>

Sent:

Saturday, October 19, 2019 8:41 PM

To:

Major, Erica (BOS); Peskin, Aaron (BOS); Safai, Ahsha (BOS); Haney, Matt (BOS); Stefani,

Catherine (BOS); Fewer, Sandra (BOS)

Subject:

Save the trees on 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello all,

We were shocked to learn about the plan to chop down 190 mature healthy trees on 3333 California Street. The trees are not only beautiful but they help the fight against climate change. How can a city known for progressive values and environmentalism chop down so many trees? It is unconscionable. I don't see any good reason for the developer's plan. The years of construction will need something to hide it and absorb dust and the mature trees will fulfill that job. Please reconsider approval of this plan.

--Ester Beerle

240 Parker Ave, San Francisco, CA 94118

415 260 1163

From:

Steven Zeluck <s zeluck@yahoo.com>

Sent:

Saturday, October 19, 2019 1:45 PM

To:

Board of Supervisors, (BOS)

Cc:

Major, Erica (BOS)

Subject:

Regarding preservation of trees at 3333 California Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors:

The proposed project at 3333 California Street does **NOT** meet at least three of the Priority Policies required for granting a Major Encroachment. This major encroachment directly impacts removal of healthy "Street" trees and "Significant" trees the removal of which will have a significant negative impact on the area. They are:

- 1. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood;
- 2. That landmarks and historic buildings be preserved; <u>That our parks and open space and their access to sunlight and vistas be protected from development.</u>
- 3. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhood:

Please deny the request for a Major Encroachment permit by the developer.

Thank you.

Steven C. Zeluck 28 year resident 2750 Sutter Street #8 San Francisco, CA 94115

From: Kathy Devincenzi < krdevincenzi@gmail.com>

Sent: Friday, October 18, 2019 6:29 PM

To: Major, Erica (BOS); BOS Legislation, (BOS)

Cc: Richard Frisbie

Subject: Re: October 21, 2019 BOS Land Use & Trans. Committee - 3333 California

Attachments: 20191018205501.pdf; 20191018192638.pdf; 20191018193341.pdf

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Re: 3333 California Street, BOS Land Use & Trans. Committee: Hearing Date October 21, 2019. File No. 190947, Ordinance Approving Major Encroachment Permit

The following corrections are made to LHIA's letter of this date regarding the proposed Ordinance approving major encroachment permit, File No. 190947, Hearing Date October 21, 2019.

On page 2, in the paragraph beginning with "However," the Exhibit citation for Public Works Order No. 202030 is changed from "Ex. H" to "Ex. G".

On page 4, in the paragraph beginning with "To mitigate," "Director" is changed to "Committee."

On page 5, in the paragraph beginning with "In the event," the terms "it should also recommend against the proposed Special Use District" are changed to "it should also recommend against the proposed Ordinance."

For your convenience, corrected copies of the entire submission are attached hereto.

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

(415) 221-4700

On Fri, Oct 18, 2019 at 4:56 PM Kathy Devincenzi krdevincenzi@gmail.com wrote:

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. 190947 - Proposed Ordinance for Major Encroachment

Record Number: 2015-014028CUA/PCA/MAP/DUA

Please see attached letter and Exhibits A-H for the official file.

rease see attached letter and Exhibits A-11 for the official file

Thank you,

Permit

Laurel Heights Improvement Association of SF, Inc. By: Kathryn Devincenzi, President (415) 221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY E-MAIL

October 18, 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. 190947 - Proposed Ordinance for Major Encroachment Permit

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

1. The Committee Should Recommend Modification of the Requested Encroachment Permit to Omit Removal of 19 Significant Trees and 15 Mature Street Trees Along California Street and Widening of the California Street Sidewalk To Avoid Abrogation of Rights of Adjacent Property Owners and Interested Organizations to Appeal to the Board of Appeals.

The Committee should recommend against the provisions of the proposed Ordinance that would sanction removal of 19 Significant Trees and 15 Street Trees because the ordinance constitutes an end run around rights of Interested Organizations and abutting property owners to written notice of the proposed Removal date of those trees and rights of appeal concerning the removal to the Board of Appeals. Also, the existing sidewalk is approximately 19 feet wide and does not need to be widened. (October 18, 2019 Measurement by Richard Frisbie, engineer)

Public Works Code section 806(b)(3)(B)-(D) requires an abutting owner who wishes to remove a street tree to obtain a permit after the Director of Public Works gives written notice of the Removal date to abutting property owners, who have rights of appeal to the Board of Appeals, as follows:

(B) Thirty days prior to the Removal date, the Department shall give Notice to all Interested San Francisco organizations and, to the extent practicable, the owners and occupants of properties that are on or across from the block face or adjacent to where the

affected Tree is located. In addition, 30 days prior to the Removal date, the Department shall post a notice on the affected Tree. If within 30 days after the giving of such notice any person files with the Department written objections to the Removal, the Director shall hold a hearing prior to removing the Tree. Written notice of the date, time, and place of the hearing shall be posted on the affected Tree and sent to the objecting party and all Interested San Francisco organizations not less than seven days prior thereto.

- (C) The Director shall issue his or her written decision and order on the objections after the public hearing specified above.
- (D) The Director's decision shall be final and appealable to the Board of Appeals.

Under Public Works Code section 810A, removal of significant trees is subject to the above requirements, as follows:

- (b) Removal; Requirements.
- (1) Removal of a significant tree(s) on privately-owned property shall be subject to the rules and procedures governing permits for removal of street trees as set forth in Section 806(b).
- (2) Removal of a significant tree(s) that are the responsibility of the Department shall be subject to the rules and procedures governing permit for Departmental removal of street trees as set forth in Section 806(a).

However, the Director of Public Works only recommended "CONDITIONAL APPROVAL of the request for the Major Encroachment Permit with transmittal to the Board of Supervisors for approval based on the following conditions and findings." (Ex. G, Public Works Order No. 202030) Thus, the Director of Public Works forwarded the approval of the Major Encroachment Permit to the Board of Supervisors and did not approve it himself. The result is unreasonable abrogation of the rights of abutting property owners and Interested Organizations to appeal to the Board of Appeals the decision of the Director of Public Works, which constitutes unlawful denial of rights of due process.

I am President of the Laurel Heights Improvement Association and am the person designated to receive notices on the City's neighborhood organizations list and routinely receive City notices. I did not receive any mailed or emailed notice concerning the proposed Removal date for the 15 street trees or 19 significant trees or information concerning rights of appeal to the Board of Appeals, although notices were posted on some trees. The Laurel Heights Improvement Association is an Interested San Francisco organization because its members reside along Laurel Street and Euclid Avenue, which streets border the 3333 California Street site.

The result would be the same if the trees were proposed to be removed by Public Works because Public Works Code section 806 (a) requires the same notice before removal of a street

tree by the Department.

Apparently in recognition of the fact that provisions of Public Works Code section 806 relating to trees were not observed, Section 4.(d) of the proposed Ordinance proposes to bring tree removal approval under Public Works Code section 786, which only deals with major encroachment permits, and waive any conflicting provisions of sections 800 *et seq*. (Urban Forestry Ordinance) and 810A (significant Trees). These waiver provisions would deny rights to residents of this area that are provided to residents of other areas.

To avoid abrogation of rights of appeal to the Board of Appeal, the Committee should modify the proposed ordinance to remove provisions relating to removal of 19 Significant Trees, 15 Street Trees and increase in the width of the California Street sidewalk.

2. The Committee Should Recommend Modification of the Ordinance to Prohibit the New Proposed Street Trees Along Euclid Avenue and Laurel Street that Would Impair Public Vistas from the Historically Significant Green Space.

The encroachment permit requires replacement of 88 Street Trees. The newly proposed street trees that would impair public vistas from the historically significant green open space are circled in red in Exhibit A hereto. New trees should not be planted in this location. Payment of in lieu fees should be ordered for these proposed new trees.

Again, due process was denied, because public rights to appeal the Director's decision as to this portion of the encroachment permit to the Board of Appeals were abrogated by the Director of Public Works' action forwarding the approval of the encroachment permit to the Board of Supervisors.

3. The City Violated LHIA's Rights of Due Process and the Requirements of the Block Book Notice Filed Against this Property by Failing to Give LHIA 10 Days' Notice of the Planning Department's Review of the Requested Major Encroachment Permit.

Section 786.2 of the Public Works Code requires that the Public Works Director forward copies of the application for a street encroachment permit to the Director of Planning and that the Public Works Director shall request a report from that department concerning the effect of the proposed encroachment in relation to their duties and responsibilities. The completed report shall be returned to the Public Works Director within 60 days of the receipt of the copies of the application by the listed departments. *Ibid.* The project sponsor applied for a major encroachment permit. (See Ex. H, application for major encroachment permit)

Laurel Heights Improvement Association of SF, Inc. (LHIA) filed an Application to Request a Block Book Notice against this property on June 18, 2019, which is valid for one year.

(Ex. B hereto) LHIA specifically requested to review any application reviewed by the Planning Department as to 3333 California Street including the following:

- any and all applications for a permit to remove or replace street trees
- public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
- approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street
- approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening. (Ex. B, Attachment A, p. 1, Application for Block Book Notice)

The Planning Department failed to notify LHIA that Planning Department review was requested as to the request for major street encroachment and also failed to hold the request for 10 days so the BBN requestor may review it, as required by Planning Department procedures. (Ex. C, p. 2, San Francisco Planning Department Application to Request a Block Book Notice, explanations)

For the reasons stated herein, among others, and in comments submitted in the administrative record for the proposed Project, LHIA was prejudiced by being denied the opportunity to voice objections to the Planning Department's view of the proposed request for major encroachment at the time the Planning Department was reviewing the application. LHIA was further prejudiced by being denied the opportunity to obtain the report of the Director of Planning and the lack of adequate time to prepare and submit to SF Public Works and the SF Planning Department LHIA's objections to the request. These violations of LHIA's rights and the rights of its officers constitute unlawful and unconstitutional violations of the rights of due process afforded to LHIA and its officers under the United States Constitution and/or the State of California Constitution.

As a result of these violations, the request for major encroachment should be returned to the Planning Department so that it can give LHIA and its officers the required 10 days' notice of the Planning Department's review of the request for major encroachment permit.

4. The Requested Encroachment is Inconsistent with the General Plan.

The November 7, 2018 DEIR confirmed that the "proposed project or project variant would cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines." (DEIR p. 4.B.41)

The requested encroachment is inconsistent with the priority policy of Planning Code section 101.1 that "landmarks and historic buildings be preserved."

This site contains historically significant natural landscaping that is integrated with the main building so that there is a seamless connection between the interior and exterior spaces through the window walls. (Ex. D)

The proposed new street trees would block the public vistas from the existing green open space that has been used by the public for recreational purposes. (Ex. E, developer's rendering and plan sheet L1.03; Ex. F, photos of public vistas from green open space)

To mitigate the significant impact on the historic resource, the Committee should recommend that the project be modified to eliminate new street trees along Euclid Avenue and Laurel Street and to require in lieu fees to be paid. Public Works Code section 806(b)(3)(A) permits a fee to be paid in lieu of planting a replacement tree, as it provides that:

If the Department grants a Tree removal permit, it shall require that a Street Tree or Trees of equivalent replacement value to the one removed be planted in the place of the removed Tree or impose an in-lieu fee unless it makes written findings detailing the basis for waiving or modifying this requirement.

The proposed Project is also inconsistent with the following policies of the Urban Design Element of the General Plan, among others:

Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.

Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.

The Housing Element EIR also recognized that public vistas are protected by CEQA:

"Implementation of the 2004 Housing Element and 2009 Housing Element could result in

impacts related to conflicts with existing land use policy, plans, or regulations if the Housing Elements resulted in housing development that was not consistent with zoning and land use designations as outlined in governing land use plans and/or the City's Planning Code to the extent those regulations help to avoid or mitigate potential environmental impacts. For example, if a height limit in a particular area was designed to avoid impacting a view from a public vantage point, there could be an impact from a policy that increased the height limits." (Ex. C to June 8, 2018 Comments of Kathryn Devincenzi on 3333 California Street Initial Study, p. V.B-29.)

Thus, the Committee should recommend that the public vistas be preserved by requiring in lieu fees to be paid rather than planting street trees in these locations.

5. If the Committee Recommends Against the Proposed Special Use District or Development Agreement, the Committee Should Recommend Against the Proposed Ordinance as to the Major Encroachment Permit.

The Preliminary Project Assessment establishes 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) 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.

In the event the Committee recommends against the proposed Special Use District or Development Agreement, it should also recommend against the proposed Ordinance.

6. Consideration of the Proposed Ordinance Should be Deferred Until After the Board of Supervisors Renders a Decision on the Proposed Special Use District and Appeal as to Adequacy of the FEIR.

The Board of Supervisors could reject or modify the proposed Special Use District, overturn or modify the conditional use authorization, and/or overturn the certification of the Final EIR. Any such actions could change the nature of the project and location of proposed landscaping and other items reflected in the proposed Ordinance for Major Encroachment Permit. Thus, consideration of the proposed Ordinance should be continued to a date that occurs after the Board of Supervisors renders a decision on these matters.

7. The FEIR Failed to Adequately Describe the Project's Inconsistencies With Policies Calling For Preservation of Historical Resources, and the Proposed Project and Ordinance Are Not Consistent with the San Francisco General Plan.

"An EIR must discuss any inconsistencies between a proposed project and applicable general plans." 14 Cal.Code Regs. Section 15125(d). By doing so, a lead agency may be able to modify a project to avoid any inconsistency. *Orinda Association v. Board of Supervisors* (1986) 183 Cal.App.3d 1145, 1169. However, the Planning Commission's Resolution merely found that the proposed rezoning ordinance "is in general conformity with the General Plan as set forth in Planning Commission Resolution 20514." The finding of "general conformity" is ambiguous, as it is not the same as consistency with the General Plan.

Section 101.1(b) of the San Francisco General Plan, passed by the voters in Proposition M, codifies the General Plan Priority Policies that "shall be the basis upon which inconsistencies in the General Plan are resolved." They include the following Priority Policies:

That landmarks and historic buildings be preserved.

That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

That our parks and open space and their access to sunlight and vistas be protected from development. (Ex. BB to August 28, 2019 letter of LHIA to Planning Commission).

The FEIR is inadequate because it merely noted that the above policy to preserve historic resources exists, but failed to describe the inconsistency between the proposed Project and this General Plan Priority Policy. DEIR 4.B.34. Moreover, the DEIR used an erroneous legal standard, indicating that Planning Code section 101.1 merely allowed the City to balance the eight master plan priority policies, whereas CEQA requires that an EIR describe *any* inconsistency with a general plan policy. DEIR 4.B.34.

Thus, the Committee should recommend against the proposed Ordinance because it is part of a project which is inconsistent with the General Plan.

8. The Requested Encroachment Permit is Not Consistent With Urban Design Element Policies that Protect Public Vistas and the Visibility of Open Spaces, Especially Those on Hilltops.

The proposed request for new street trees along Euclid Avenue and Laurel Street is inconsistent with the following policies of the Urban Design Element, and the September 5, 2019

Planning Commission findings omitted the following policies and failed to analyze the inconsistencies of the Project with them, among others:

Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.

Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.

Objective 3: Moderation of major new development to complement the City pattern, the resources to be conserved and the neighborhood environment.

Policy 3.3: Promote efforts to achieve high quality design for buildings to be constructed at prominent locations.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5: Relate the height of buildings to important attributes of the city patterns and to the height and character of existing development.

Policy 3.6: Relate the bulk of the buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction....

When buildings reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area, especially at prominent and exposed locations, they can overwhelm other buildings, open spaces and the natural land forms, block views and disrupt the city's character. Such extremes in bulk should be avoided by establishment of maximum horizontal dimensions for new construction above the prevailing height of development in each area of the city...

Policy 3.7: Recognize the special urban design problems posed in development of large properties.

Policy 3.8: Discourage accumulation and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding area and upon the City.

Policy 3.9: Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

Policy 4.1: Protect residential areas from the noise, pollution and physical danger of excessive traffic.

Policy 4.2: Provide buffering for residential properties when heavy traffic cannot be avoided. (See Ex. V to June 8, 2018 Kathryn Devincenzi comments on 3333 California Street Initial Study, Urban Design Element of San Francisco General Plan, excerpts).

The Project proposes to install street trees along Euclid Avenue and Laurel Street that would impair the historically significant public hilltop views (See Ex. D, excerpts from approved nomination of Fireman's Fund Insurance Company Home Office in National Register of Historic Places stating that site was long recognized for its views including views "to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District;" Ex. E and Ex. F; see also Exhibit KK to September 5, 2019 LHIA submission to Planning Commission).

The project site is atop Laurel Hill and commands valued public vistas of the downtown and eastern portion of the City and also of the Golden Gate Bridge and other neighborhoods of the City to the northwest. (Ex. F) During my years living in the neighborhood, I have seen innumerable members of the public enjoy these views during daytime as well as during nighttime. I have seen jubilant crowds of people view lunar eclipses from the sidewalks atop Laurel Hill at the corner of Laurel Street and Euclid Avenue and from the landscaped green spaces surrounding the main office building.

Some photographs I have taken which show the existing condition of some of these views are attached hereto. (Ex. F; see also Ex. B to January 1, 2019 comments of Devincenzi,, photographs taken on October 24, 2017 and January 7, 2019) These photographs show that the portions of the Bank of America Building, Transamerica Pyramid, Salesforce Building and Golden Gate Bridge can be seen from the high ground at Laurel Street and Euclid Avenue, from the landscaped green spaces surrounding the main office building and from public sidewalks along Laurel Street and Euclid Avenue. Also, the historically significant architecture of the main building can be seen across the landscaping on the perimeter of the site, and the site was designed so that the building and landscaping would function as an integrated composition.

The Final EIR for the 2004 and 2009 Housing Element acknowledges that new residential housing could result in an impact related to scenic vistas if it would be developed in a manner that obstructs views from a scenic vista from a public area or introduces a visual element that would dominate or upset the quality of a view. (January 8, 2019 comments of Devincenzi, Ex. F. p. V.C-11) Figure V.C-1 of that Final EIR shows street views of an important building in the area

of the 3333 California site. The FEIR failed to adequately analyze this potentially significant impact.

The Community Preservation Alternative/Variants would avoid this significant impact on public vistas because they would retain the existing landscaped areas largely in their present form and existing public vistas from sidewalks and open space used by the public. Also, DEIR Alternatives B and C would retain the existing landscaped areas largely in their present form and avoid this significant impact on public vistas. DEIR 6.35 and 6.67.

Under CEQA, the City may not lawfully approve the Proposed Project/Variant, because a feasible alternative is available that would avoid or substantially reduce the project's significant impact upon scenic resources.

Mitigation Measure: Approve an alternative that would preserve the existing landscaped areas surrounding the main building on the southern and western portions of the site in their present form and do not locate any new construction on these areas.

This Mitigation Measure is feasible and should be adopted.

9. The EIR Failed to Identify and Describe Feasible Mitigation Measures that Would Reduce or Avoid the Proposed Project's Significant Adverse Impact on the Historical Resource.

The EIR is defective because it failed to identify and describe modifications to the proposed site plan that would reduce or avoid the proposed project's significant adverse impact on the historical resource. Such modifications would, *inter alia*, avoid installing new street trees along Euclid Avenue and Laurel Street that would block public vistas from the historically significant landscaping.

The modifications proposed by LHIA would conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties. However, as previously stated in LHIA's August 28, 2019 submission to the Planning Commission, the City failed to apply the Secretary's Standards to the design of the project, even though City Preservation Bulletin No. 21 states that:

For both Article 10-designated historic resources and CEQA-identified historical resources, the *Standards* will be applied to any work involving new construction, exterior alteration (including removal or demolition of a structure), or any work involving a sign, awning, marquee, canopy or other appendage for which a City permit is required. (Ex. U to LHIA's August 28, 2019 submittal, excerpt)

An EIR must identify and describe mitigation measures to minimize the significant

environmental effects identified in the EIR. Public Resources Code sections 21002.1(a), 21100(b)(3); 14 Cal. Code Regs. section 15126.4. The requirement that EIRs identify mitigation measures implements CEQA's policy that agencies adopt feasible measures when approving a project to reduce or avoid its significant environmental effects. Public Resources Code sections 21002, 21081(a).

Mitigation measures must be designed to minimize significant environmental impacts, not necessarily to eliminate them. Public Resources Code section 21100(b)(3); 14 Cal. Code Regs. section 15126(a)(1). Any action that is designed to minimize, reduce, or avoid a significant environmental impact or to rectify or compensate for the impact qualifies as a mitigation measure. 14 Cal. Code Regs. sections 15126(a)(1), 15370. The following specific requirements for mitigation measures are set forth in 14 Cal. Code Regs. section 15126.4:

Mitigation measures should be identified for each significant effect described in the EIR. If several measures are available to mitigate a significant adverse impact, the EIR should discuss each measure and identify the reason for selecting a particular measure.

The description must distinguish between mitigation measures that are included in the project as proposed and other measures that the lead agency determines could reasonably be expected to reduce significant effects if required as conditions of project approval.

Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means. CEB, *Practice Under the California Environmental Quality Act*, p. 14-4. An EIR should focus on mitigation measures that are feasible, practical, and effective. *Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 365.

A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely. 14 Cal.Code Regs. section 15370(b); see also Public Resources Code sections 21002.1(a), 21081(a)(1); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 239. The CEQA Guidelines provide a broad definition of mitigation, which also includes actions taken to rectify or compensate for a significant impact. Under 14 Cal.Code Regs. Section 15370, mitigation" includes the following:

Avoiding an impact altogether by not taking a certain action or part of an action;

Minimizing an impact by limiting the magnitude of a proposed action and its implementation;

Rectifying an impact by repairing, rehabilitating, or restoring the affected environmental resource. CEB, *Practice Under the California Environmental Quality Act*, p. 14-7.

An EIR's discussion of mitigation measures should distinguish between measures proposed by the project proponent and measures that the lead agency determines could reduce significant adverse impacts if imposed as conditions of project approval. 14 Cal.Code Regs. section 15126.4(a)(1)(A).

Some mitigation measures make a change in the proposed project, such as not taking a certain action or not building a certain part of the project, to avoid the identified significant impact entirely. 14 Cal.Code Regs. section 15370(a). Examples include:

Changing a project to avoid a wetland area on the project site;

Restricting demolition or alteration of significant historic structures or cultural sites; and

Prohibiting activities that produce significant noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8.

Some mitigation measures do not avoid an impact entirely but limit the scope or magnitude of a proposed activity or development. 14 Cal.Code Regs. Section 15370(b). Examples include:

Changing a project plan to reduce the amount of wetland fill;

Avoiding the most important habitat of a wildlife species; Establishing a buffer zone on a project site to reduce adverse effects on adjacent areas;

Preserving areas of native vegetation.

Shielding activities, or restricting the hours during which activities are conducted, to reduce noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8 to 14-9.

Some mitigation measures do not avoid an environmental impact but rectify or correct it by restoring the affected environment or resource. 14 Cal.Code Regs. section 15370(c). Examples include:

Repairing or reconstructing a wetland or habitat area after it has been affected by a project activity;

Replanting trees or native landscape;

Restoring a historical structure that is affected by a project; and restoring areas damaged during project construction. CEB, *Practice Under the California Environmental Quality*

Act, p. 14-9.

With respect to historical resources, the CEQA Guidelines specify that modifications that conform with the Secretary's Standards generally mitigate an impact to below a level of significance:

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur. 14 Cal.Code Regs. section 15126.4(b)(1) and (2).

The DEIR considered only inadequate mitigation for the project's significant impact on historical resources consisting of documentation of the historical resource (M-CR-1a) and development of an interpretative program focused on the history of the project site (M-CR-1b). DEIR pp. 4.B.45-46. Neither of these measures would substantially reduce or avoid the significant impact upon the listed historical resource.

This Board of Supervisors has the authority to order modifications to the proposed project as a condition of approval, through the conditional use authorization procedure or by design modifications. Cities and counties are authorized to regulate land use by local planning law (Government Code sections 65100-65763), the zoning law (Government Code sections 65800-65912), and the Subdivision Map Act (Government Code sections 66410-66499.37).

Thus, the Committee should defer its decision on the request for major encroachment until the Board decides whether to grant LHIA's appeal of adequacy of the FEIR or approve the Project as proposed or modify it.

We will respectfully urge the Board of Supervisors to strike the appropriate balance, because the developer has stated "this is not a negotiation" and declined to make appropriate revisions in response to community input. Also, the developer paid only approximately \$192.35 per square foot for the property (\$88,600,000.00 for 99-year lease plus \$1,612,000 for the fee interest = \$90,212,000/469,000 = \$192.35) so can well afford to make some modifications to

avoid significant adverse impact on this listed historical resource. (August 28, 2019 LHIA submission, Ex. D, deeds)

Public Resources Code section 21002 states:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects..... The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

Public Resources Code section § 21081 provides that:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless **both of the following occur:**

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. (Emphasis added; see also 14 Cal. Code Regs. § 15091)

This is a stand-down mandate. The developer's project is unnecessarily destructive and prolonged, and the Board of Supervisors may order it redesigned to preserve the historically significant natural green spaces and landscaping and its integrated Mid-Century modern main building. This resource is also significant for its association with the Fireman's Fund Insurance Company, a company established in San Francisco that grew due to its reputation for integrity and played an important role in the development of San Francisco, paying fire claims after the 1906 earthquake and other significant conflagrations. (August 28, 2019 LHIA submittal Ex. G,

listing and excerpts from approved nomination)

Conclusion

For the reasons stated above, the proposed Ordinance approving a major encroachment permit is not consistent with applicable general plans and the site is not physically suitable for the type of alterations proposed. Further information on inadequacies of the FEIR and findings has been submitted to the Board of Supervisors in LHIA's appeal as to adequacy of the FEIR.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

KRDevincenzi@gmail.com

Attachments: Exhibits A-H

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. 190947 - Proposed Ordinance for Major Encroachment
Permit
Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS G-H

EXHIBIT G

City and County of San Francisco

San Francisco Public Works

GENERAL - DIRECTOR'S OFFICE City Hall, Room 348 1 Dr. Carlton B. Goodlett Place, S.F., CA 94102

(415) 554-6920 \$\text{\text{www.SFPublicWorks.org}}



London N. Breed, Mayor Mohammed Nuru, Director

Public Works Order No: 202030

DIRECTOR'S DECISION FOR MAJOR (STREET) ENCROACHMENT PERMIT (19ME-00010) TO INSTALL AND MAINTAIN IMPROVEMENTS WITHIN THE NORTHWEST CORNER OF PRESIDIO AVENUE AND MASONIC AVENUE, AND THE NORTHWEST CORNER OF MASONIC AVENUE AND EUCLID AVENUE, AS PART OF THE DEVELOPMENT AT 3333 CALIFORNIA ST, ALSO BEING ASSESSOR'S BLOCK 1032 LOT 003.

APPLICANT:

The Prado Group Inc.

PROPERTY IDENTIFICATION:

Lot 003 in Assessor's Block 1032

3333 California Street

San Francisco, CA 94118

DESCRIPTION OF REQUEST:

Major Encroachment Permit

BACKGROUND:

- 1. On August 2, 2019 The Prado Group Inc. filed a letter of request with Public Works (PW) to consider approval of a Major (Street) Encroachment Permit to install and maintain improvements at the northwest corner of Presidio Avenue and Masonic Avenue, and at the northwest corner of Masonic Avenue and Euclid Avenue.
- 2. In Planning Commission Resolutions number 20514 and 20515, dated September 5, 2019, indicated that the project is in conformity with the General Plan.
- 3. The San Francisco Municipal Transportation Agency (SFMTA) acknowledges that the proposed improvements identified under this Major Encroachment has been discussed as part of a Development Agreement and has been approved by Planning Department, as well as, the planning section within the **SFMTA**
- 4. August 23, 2019 Public Works provided a Notice for Public Hearing to all property owners within a 300foot radius of the subject encroachments as well as posting said hearing within City Hall.



San Francisco Public Works Making San Francisco a beautiful, livable, vibrant, and sustainable city.

- 5. A public hearing was held on September 18, 2019. The public protested the major encroachment with majority of concerns being the removal of trees along the frontage of the development. Additional written testimony was received with similar concerns.
- 6. On September 25, 2019, the Hearing Officer made her recommendation after hearing the above testimony, and reviewing the application, reports, plans and other documents contained in Public Works files
- 7. The Director concur with said recommendation, and is forwarding this Major Encroachment Application via legislation to the Full Board for evaluation

RECOMMENDATION:

CONDITIONAL APPROVAL of the request for the Major Encroachment Permit with transmittal to the Board of Supervisors for approval based on the following conditions and findings.

CONDITION OF APPROVAL:

The applicant shall fulfill all permit requirements of the Major Encroachment Permit.

FINDING 1:

The Planning Department determined that the subject encroachment is in conformity with the General Plan.

FINDING 2:

All required City Agencies provided review and no further comment to the overall encroachment.

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Acting Manager

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Suskind, Suzamiergroupresere

Acting Deputy Director and City Engineer

X

Docusigned by:

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Certificate Of Completion

Envelope Id: 4BB5545C1CF74329B2FB5A97F6F21AA1

Subject: Order 202030 - Major Encroachment referral - 3333 California St

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Bernard Tse

Bernie.Tse@sfdpw.org

Public Works

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Signature

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Director

Public Works

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Intermediary Delivery Events

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Status

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Carbon Copy Events

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Public Works

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Rivera, Javier

Javier.Rivera@sfdpw.org

Public Works

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Spitz, Jeremy

jeremy.spitz@sfdpw.org

Public Works

(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Security Level: Email, Account Authentication

Witness Events

Signature

Signature

Envelope Summary Events

Envelope Sent

Notary Events

Certified Delivered

Signing Complete

Completed

Payment Events

Status

Status

COPIED

COPIED

COPIED

Hashed/Encrypted

Security Checked Security Checked

Security Checked

Status

Electronic Record and Signature Disclosure

Timestamp

Sent: 10/15/2019 5:07:26 PM

Sent: 10/15/2019 5:35:34 PM

Sent: 10/15/2019 10:22:28 PM

Viewed: 10/16/2019 9:51:25 AM

Timestamp

Timestamp

Timestamps

10/15/2019 10:22:28 PM 10/16/2019 9:58:26 AM

10/16/2019 9:58:49 AM

10/16/2019 9:58:49 AM

Timestamps

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Public Works (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Public Works:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: dannie.tse@sfdpw.org

To advise Public Works of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at dannie.tse@sfdpw.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Public Works

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to dannie.tse@sfdpw.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Public Works

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may; ii. send us an e-mail to dannie.tse@sfdpw.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0,
	NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	
	•Allow per session cookies
	•Users accessing the internet behind a Proxy
	Server must enable HTTP 1.1 settings via
	proxy connection

^{**} These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Public Works as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Public Works during the course of my relationship with you.

EXHIBIT H

From:

Lutenski, Leigh (ECN)

Sent:

Friday, August 2, 2019 5:14 PM

To:

ECN, 3333CalCompliance (ECN)

Subject:

FW: 3333 California MEP Application

Attachments:

2019.08.02 3333 California MEP Application.pdf

From: Lisa Congdon [mailto:lcongdon@pradogroup.com]

Sent: Friday, August 02, 2019 10:09 AM

To: BSMpermitdivision (DPW)
 | Smpermitdivision@sfdpw.org>; Kwong, John (DPW) < John.Kwong@sfdpw.org>;

Lutenski, Leigh (ECN) < leigh.lutenski@sfgov.org>

Cc: Gregg Miller <gmiller@coblentzlaw.com>; Don Bragg <dbragg@pradogroup.com>; Gershwin, Dan

<dgershwin@coblentzlaw.com>; Kaitlin Roth <kroth@pradogroup.com>

Subject: 3333 California MEP Application

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please find the Major Encroachment Permit Application attached for 3333 California Street. The hardcopy of the application letter, mailing labels, postage and application fee will be dropped off at DPW later today.



LISA CONGDON | Project Manager Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 lcongdon@pradogroup.com T: 415.395.0880 | D: 415.857.9303 | C: 415.202.3326

www.pradogroup.com

This message contains information which may be confidential and privileged Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply lcongdon@pradogroup com, and delete the message Thank you very much.



Attn: Mohammed Nuru
San Francisco Public Works
Bureau of Street-Use & Mapping
1155 Market Street, 3rd Floor
San Francisco, CA 94103
Email: bsmpermitdivision@sfdpw.org

August 2, 2019

RE:

Letter of Application for a Major Encroachment Permit 3333 California Street Parcel #1032/003

Sent via EMAIL

Dear Mr. Nuru,

Laurel Heights Partners LLC is requesting a major encroachment permit for our proposed work in the public right of way. This work is part of the public improvements referenced in the Development Agreement currently being negotiated between the City and Laurel Heights Partners for the construction of a new mixed-use project at 3333 California Street.

The proposed project includes permanent improvements in the bulb-outs at the intersections of Masonic/Presidio Avenue, Masonic/Euclid Avenue and Mayfair/Laurel Street. The proposed bulb-outs are a key improvement measure intended to enhance pedestrian safety through the removal of the slip lanes, strengthening pedestrian crosswalks, reducing the speed of automobile traffic and reinforcing the idea of the site being more accessible and walkable. The proposal, developed with community input and designed by MSLA, includes the following improvements:

- the removal of two slip lanes
- the creation of bulb-outs at the corner of Masonic/Presidio, Masonic/Euclid and Mayfair/Laurel
- the installation of a set of stairs ("Pine Street Stairs") to allow for direct pedestrian access to the site
- stepped planters with trees adjacent to the new set of stairs
- additional street level special paving, landscaping and street trees
- public bike parking racks

Please see the attached plans for further detail and reach out with any additional questions or clarifications (dbragg@pradogroup.com).

Sincerely,

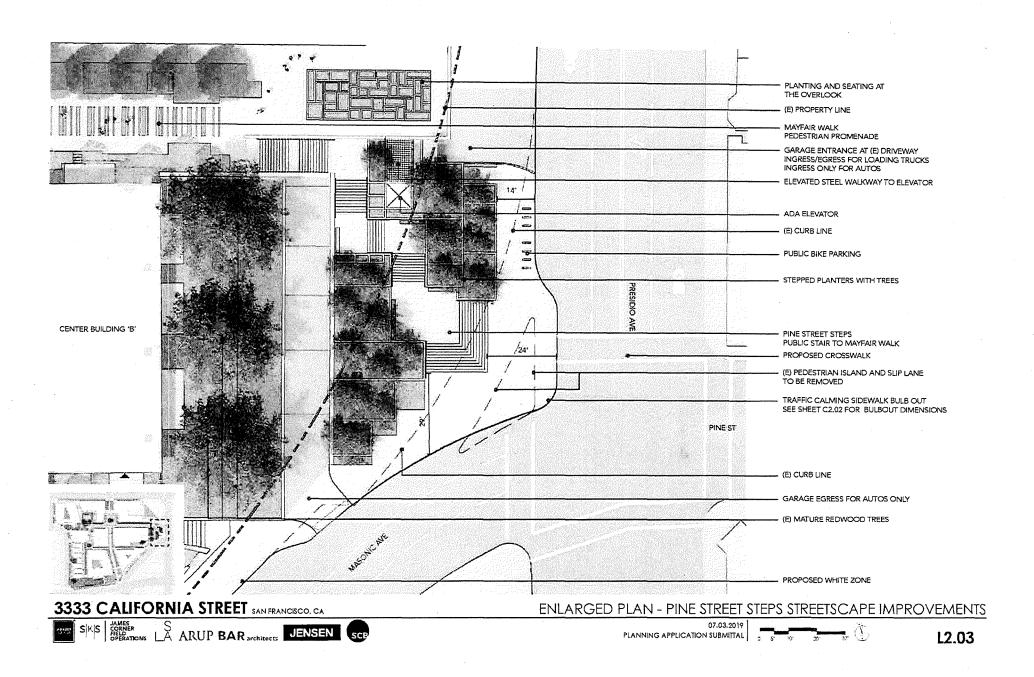
Laurel Heights Partners, LLC, a Delaware limited liability company By: Tie Prado Groyn, Inc., a California corporation, its agent

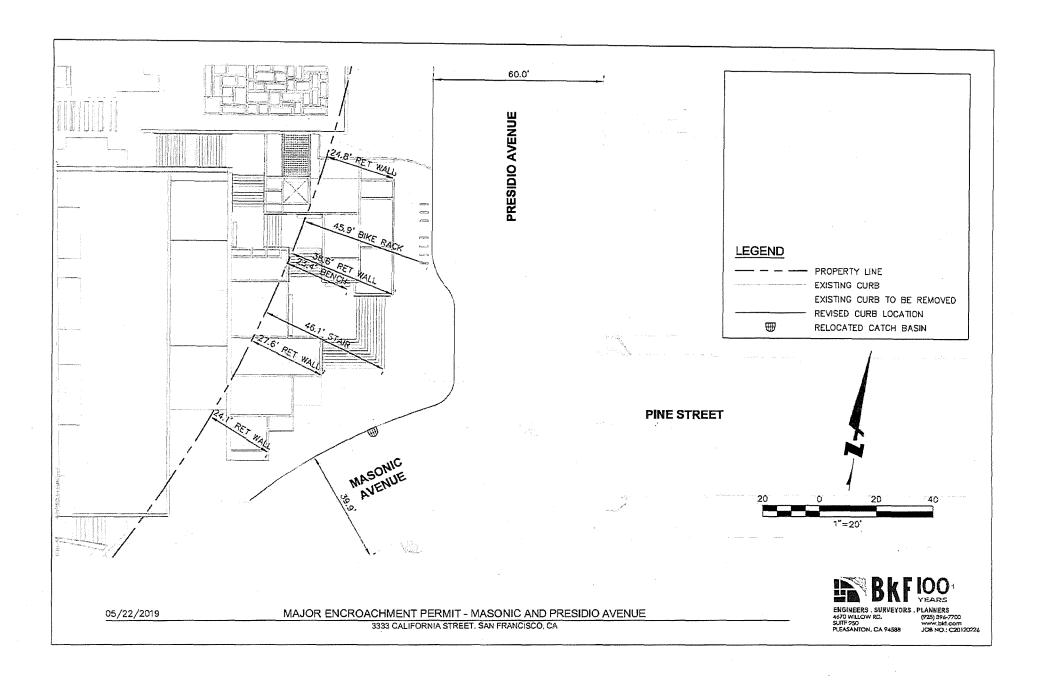
nou pregge

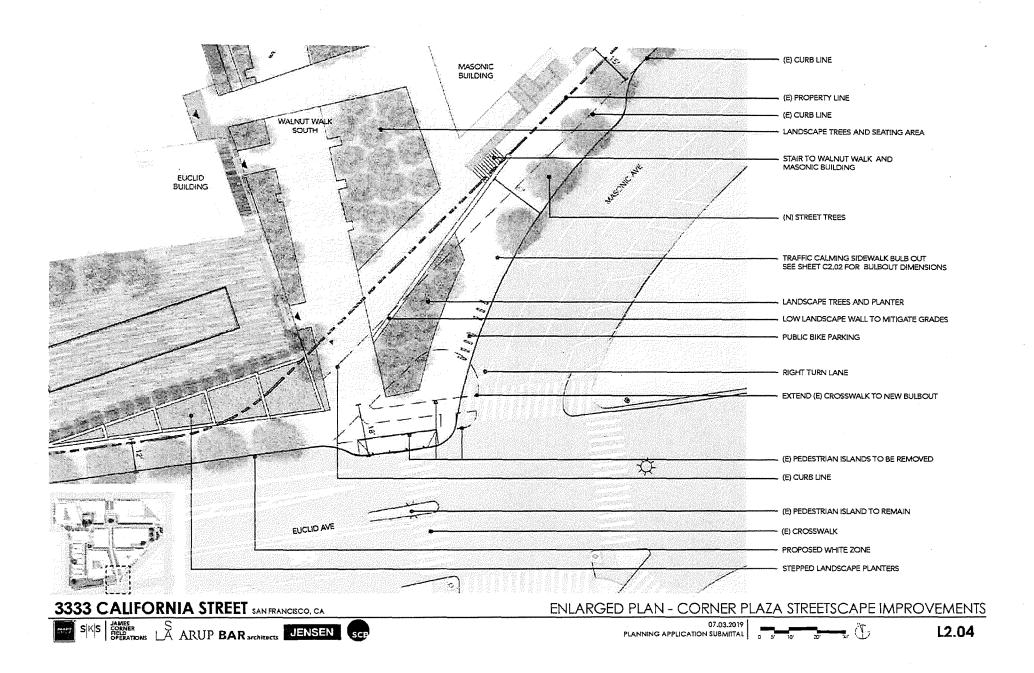
Director of Development, Prado Group Inc.

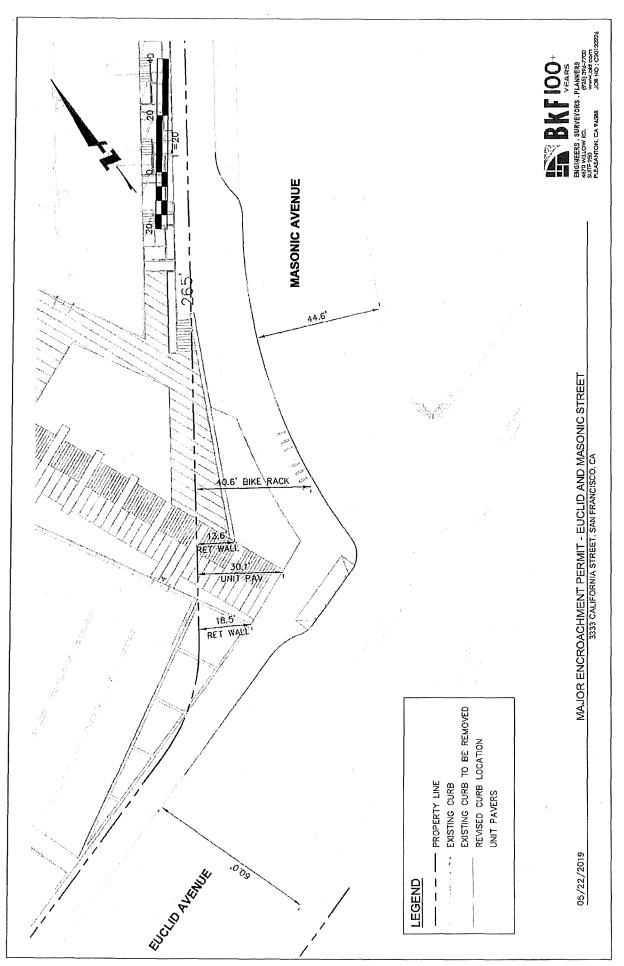
cc: John Kwong (DPW), Leigh Lutenski (OEWD), Gregg Miller (CPDB)

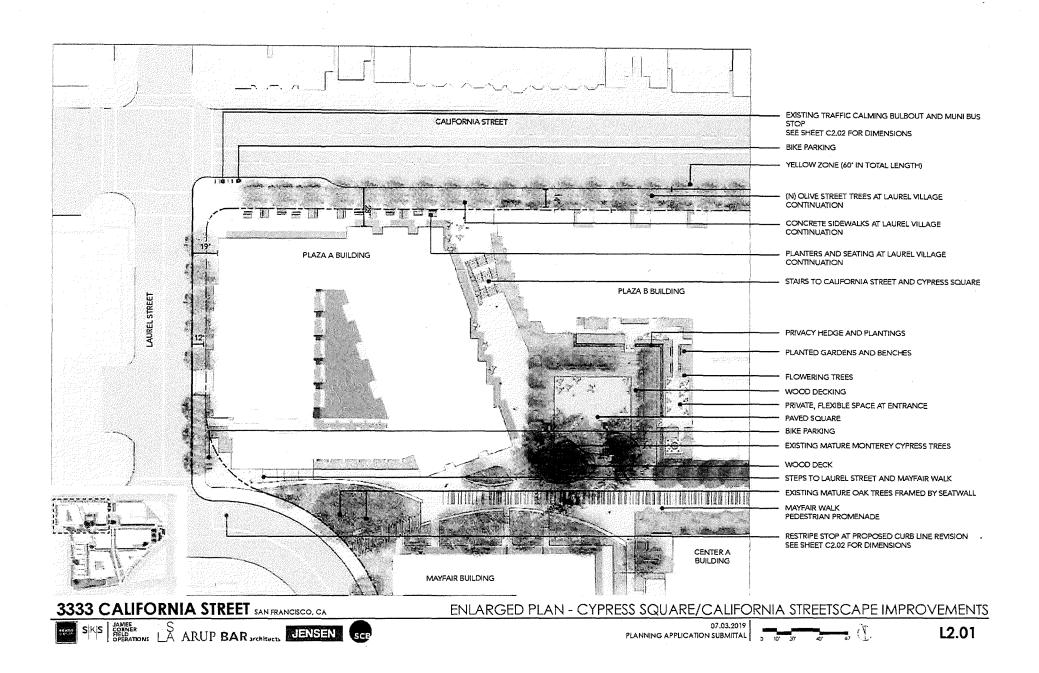
attachments: 3333 California MEP Plans (4 pages), application fee and Neighborhood Notice mailing labels

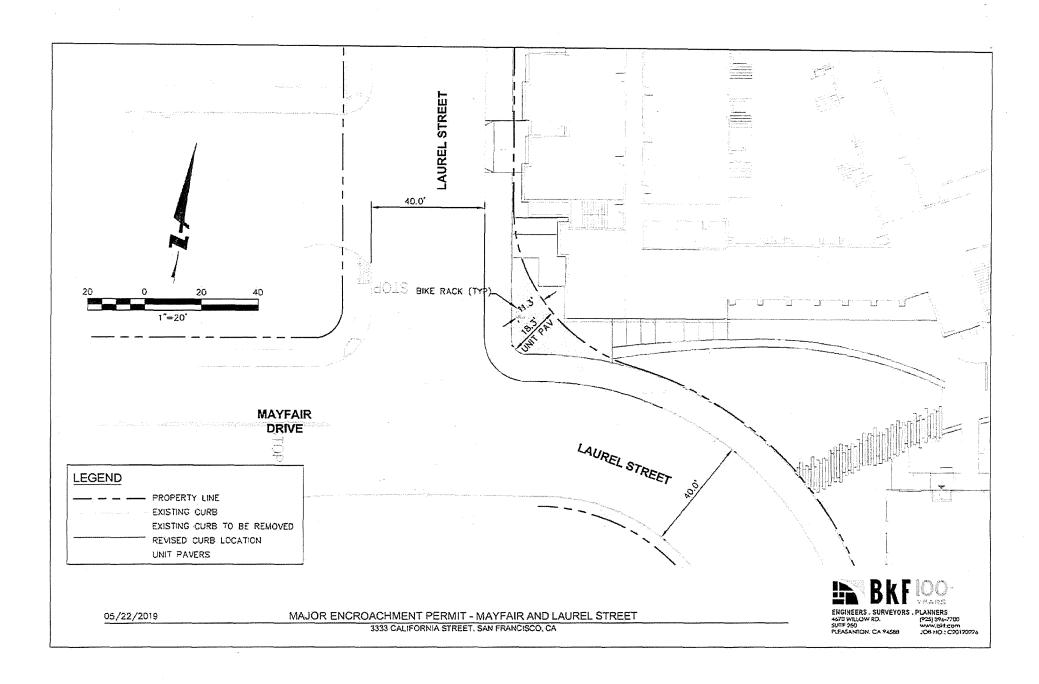












San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA
File No. 190947 - Proposed Ordinance for Major Encroachment
Permit
Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-F

EXHIBIT A

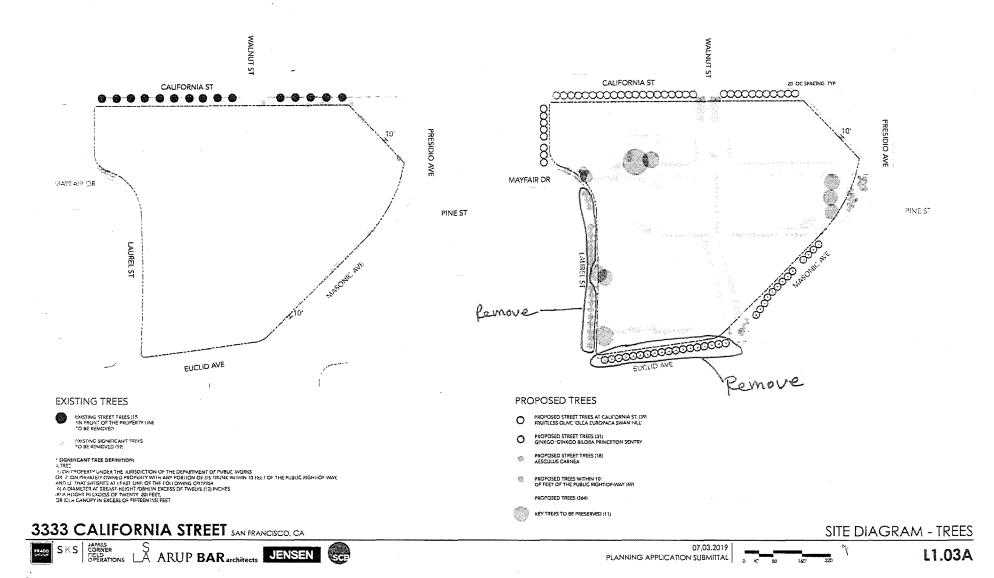


EXHIBIT B

Block Book Notice

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Offy & Charles Of S.F. Poster and Albert RSCE and Company

1. Applicant Information

APPLICANTS NAME:

Laurel Heights Improvement Association of San Francisco, Inc.

MAILING ADDRESS

22 Iris Avenue, San Francisco, CA 94118-2727

EMAIL

LaurelHeights2016@gmail.com

TELEPHONE:

(415) 221-4700

2. BBN Property Location

SUBJECT PARCEL ADDRESS
3333 California Street

ADDITIONAL BLOCK/LOT(S):

ASSESSORS BLOCKLOT: Block 1032, Lot 003

3. Notification Preference

Please identify the type(s) of applications reviewed by the Planning Department for which you are interested in receiving notification (check all that apply):

- All Building Permit Applications (interior and exterior)
- Any Exterior Work (windows, garage doors, horizontal and vertical additions)
- Morizontal and / or Vertical Additions
- ☑ Changes of Use
- □ Conditional Use and Variance
- Other: See descriptions in Attachments A and B hereto.

Payment

First Assessor's Parcel: \$40.00

Additional Parcels: No. of Parcels

-

Total Enclosed: \$40.00

Laurel Heights Improvement Association of SF, Inc.

Requestor Signature: By: Kathiyu Devicienzi, President Date: June 18, 2019

x \$

X26 in 4.1/1

ATTACHMENT A (types of applications, continued)

Any application, request or proposal that may be reviewed by the San Francisco Planning Department and/or San Francisco Planning Commission, including without limitation relating to any of the following:

any conditional use application

any planned use development application

any large project authorization application

any authorization of any kind allowed under the San Francisco Planning Code or any applicable building code

any application for any change in, or waiver of, the terms of Resolution 4109 of the San Francisco Planning Commission that applies to this property

any inter-agency referral

any proposed subdivision map, including tentative and final maps

any and all applications for a permit to remove and replace street trees

any and all applications for a street space permit from the Bureau of Street Use and Mapping and/or a special traffic permit from the Sustainable Streets Division if sidewalk(s) are to be used for construction staging and/or pedestrian walkways are constructed in the curb lane(s)

any and all requests or applications for on-street commercial truck and/or passenger loading zones on Laurel Street, California Street, Masonic Avenue, and/or Euclid Avenue

any application for alteration, renovation, demolition, and/or construction

any application for revision(s) to any permit or site permit

any application relating to a change in the nonconforming use and/or structure on said property

any review of any matter relating to this property by the San Francisco Historic Preservation Commission

ATTACHMENT A (types of applications, continued)

any environmental review under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 et seq., of any application reviewed by the Planning Department, Planning Commission, Department of Building Inspection, Department of Public Works and/or for a building permit or a site permit relating to this property

any and all draft and/or proposed findings relating to any approval of a site permit, conditional use, planned unit development or other authorization relating to this property, including findings as to feasibility of alternatives under CEQA

any and all requests and/or applications for approval of placement of bicycle racks and/or stations on the perimeter sidewalks and/or within the project site

any and all drafts of and/or proposals for a proposed special use district for this property

any and all potential approvals described on Attachment B hereto

any and all proposed amendments to the Special Use District Map

any and all draft and/or proposed recommendations to the Board of Supervisors of a Special Use District

any and all draft and/or proposed conditional use and/or planned unit development authorization(s) relating to this property

any and all draft and/or proposed recommendations to the Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing to be developed as part of the proposed project or project variant, to develop and maintain privately owned, publicly accessible open space, to vest the project's entitlements for a period of time and/or to prohibit rezoning for a period of time relating to this property

any and all draft and/or proposed planning code and zoning map amendments, including for a Special Use District

any and all draft and/or proposed findings of consistency with the General Plan and priority policies of Planning Code section 101.1

any and all draft and/or proposed resolutions to modify and/or waive Planning Commission Resolution 4109 that pertains to this property

ATTACHMENT B

E. INTENDED USES OF THE EIR

An EIR is an informational document that is intended to inform the public and the decision-makers of the environmental consequences of a proposed project and to present information about measures and feasible alternatives to avoid or reduce the proposed project's identified significant environmental impacts. This is a project-level EIR that provides the environmental information and evaluation that is necessary for decision-makers to approve the proposed 3333 California Street Mixed-Use Project, prepared by the City and County of San Francisco pursuant to the California Environmental Quality Act (California Public Resources Code section 21000 et seq. and California Code of Regulations Title 14, sections 15000 et seq., "CEQA Guidelines"). It analyzes construction and operation of the proposed project and project variant at a project-specific level.

Before any discretionary project approvals may be granted for the proposed project or project variant, the San Francisco Planning Commission (Planning Commission) must certify the EIR as adequate, accurate, and objective. This Draft EIR will undergo a public comment period (from November 8, 2018 to Monday December 24, 2018) as noted on the cover of this EIR, during which time the Planning Commission will hold a public hearing on the Draft EIR. Following the close of the public comment period, the Planning Department will prepare and publish a Responses to Comments document, containing all comments received on the Draft EIR and the Planning Department's responses to substantive environmental comments. It may also contain specific changes to the Draft EIR text and/or figures. The Draft EIR, together with the Responses to Comments document, including revisions to the Draft EIR, if any, will be considered for certification by the Planning Commission at a public hearing and certified as a Final EIR if deemed adequate, accurate, and objective.

ANTICIPATED APPROVALS

Implementation of the proposed project or project variant would require changes to existing development controls for the project site through planning code, and zoning map amendments including changes to allow office and retail as permitted uses and changes to allow increased heights along California Street (increasing from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses), and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building. The project sponsor would seek to create a new Special Use District (SUD), which would require a recommendation by the Planning Commission and approval by the Board of Supervisors. The project sponsor would also seek approval of a conditional use authorization/planned unit development to permit development of buildings with heights in excess of 50 feet and to provide for minor deviations from the provisions for measurement of height, to allow for more residential units than principally permitted in the RM-1 Zoning District, and to allow certain planning code

2. Project Description

314 1

exceptions. It is anticipated that the project sponsor would seek approval of a development agreement between the City and the project sponsor (which requires recommendation for approval by the Planning Commission and approval by the Board of Supervisors) with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space, and would vest the project's entitlements for a 15-year period.

The following is a preliminary list of San Francisco agencies' anticipated approvals for the proposed project and the project variant and is subject to change. These approvals may be reviewed in conjunction with the required environmental review, but may not be granted until after the required environmental review is completed.

Actions by the City Planning Commission

- Certification of Environmental Impact Report (EIR) and adoption of findings under CEQA.
- Adoption of Findings of Consistency with the general plan and priority policies of Planning Code section 101.1.
- Recommendation to the Board of Supervisors of an amendment to the Height and Bulk Map to increase height limits along California Street from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses, and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building.
- Recommendation to the Board of Supervisors of an amendment to the Special Use District Map to designate the boundaries of the Special Use District.
- Recommendation to the Board of Supervisors of a Special Use District to reflect other planning code compliance issues, including to allow office and retail uses at the project site and to modify or waive the requirements of Resolution 4109.
- Conditional Use/Planned Unit Development authorization to permit development of buildings with height in excess of 50 feet and provide for minor deviations from the provisions for measurement of height, to provide for additional dwelling unit density under the project variant, and to provide other exceptions to the planning code requirements applicable to the project site.
- Approval of office allocation for up to 49,999 square feet (Planning Code section 321).
- Recommendation to Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space and vesting the project's entitlements for a 15-year period.
- Approval of a Transportation Demand Management Plan (Planning Code section 169).

November 7, 2018 Case No. 2015-014028ENV 3333 California Street Mixed-Use Project
Draft EIR

Actions by the San Francisco Board of Supervisors

- Adoption of findings under CEQA
- Adoption of Findings of Consistency with the General Plan and priority policies of Planning Code section 101.1
- · Approval of planning code and zoning map amendments, including Special Use District
- Approval of Development Agreement
- Approval of sidewalk widening legislation
- Adoption of resolution to modify or waive Planning Commission Resolution 4109

Actions by Other City Departments

- San Francisco Public Works
 - Approval of Subdivision Map
 - O Public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
 - o Approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street (eight)
 - Approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the Masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening
 - Approval of a street space permit from the Bureau of Street Use and Mapping if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - Recommendation to Board of Supervisors to approve legislation for sidewalk widening
- San Francisco Municipal Transportation Agency
 - Approval of request for on-street commercial truck (yellow) and passenger (white) loading zones on Laurel Street, California Street, Masonic Avenue, and Euclid Avenue
 - o Approval of a special traffic permit from the Sustainable Streets Division if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - Approval of construction within the public right-of-way (e.g., bulbouts and sidewalk extensions) to ensure consistency with the Better Streets Plan
 - o Approval of the platement of bicycle racks on the perimeter sidewalks and within the project site

2. Project Description

- San Francisco Department of Building Inspection
 - o Review and approval of demolition, excavation, and site/building permits
 - o Review and approval of construction permit for non-potable water system
 - O Approval of a permit for nighttime construction if any night construction work is proposed that would result in noise greater than five dBA above ambient noise levels, as applicable.
 - o Review and approval of plumbing plans for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Public Utilities Commission
 - o Review and approval of Erosion and Sediment Control Plan, in accordance with article 4.1 of the public works code
 - Review and approval of any changes to sewer laterals (connections to the City sewer system)
 - Review and approval of any changes to existing publicly-owned fire hydrants, water service laterals, water meters, and/or water mains
 - o Review and approval of the size and location of new fire, standard, and/or irrigation water service laterals
 - Review and approval of post-construction stormwater design guidelines including a Stormwater Control Plan, in accordance with City's 2016 Stormwater Management Requirements and Design Guidelines
 - o Review and approval of Landscape Plan per the Water Efficient Irrigation Ordinance
 - o Approval of the use of dewatering wells per article 12B of the health code (joint approval by the health department)
 - o Review and approval of documentation for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Department of Public Health
 - o Review and approval of Site Mitigation Plan, in accordance with San Francisco Health Code article 22A (Maher Ordinance)
 - o Review and approval of a Construction Dust Control Plan, in accordance with San Francisco Health Code article 22B (Construction Dust Control Ordinance)
 - O Approval of the use of dewatering wells per article 12B of the health code (joint approval by the San Francisco Public Utilities Commission)
 - o Review and approval of design and engineering plans for non-potable water reuse system and testing prior to issuance of Permit to Operate

Actions by Other Government Agencies

- Bay Area Air Quality Management District
 - Approval of any necessary air quality permits for installation, operation, and testing (e.g., Authority to Construct/Permit to Operate) for individual air pollution sources, such as boilers and emergency standby diesel generator
 - Approval of Asbestos Dust Mitigation Plan for construction and grading operations

EXHIBIT C



APPLICATION TO REQUEST A Block Book Notice

Planning Department 1650 Mission Street Suite 400 San Francisco, CA 94103-9425

T: 415.558.6378 F: 415.558.6409 A complete application is necessary for the Planning Department to process your application. The instructions for this application should be read carefully before the application form is completed to ensure a proper submission.

Planning Department staff are available to advise you in the preparation of this application. Call (415) 558-6377 for further information.

WHAT IS A BLOCK BOOK NOTICE?

A Block Book Notice (BBN) is a request made by a member of the public to be provided notice of permits on any property within the City and County of San Francisco that is subject to the San Francisco Planning Code. Applications that do not require San Francisco Planning Department Review WILL NOT be subject to a BBN (examples include applications for plumbing permits, electrical permits and building permits that do not require Planning Department review). BBNs are intended to provide the requestor notice of applications reviewed by the Planning Department that they may not otherwise receive.

WHEN CAN AN APPLICATION FOR A BLOCK BOOK NOTICE BE FILED?

An application for a BBN may be filed at any time. The Planning Department requires an annual fee for the first Assessor's Parcel, plus an additional fee for each additional parcel included in the same request. While legislation does not allow a fee exemption for any individual or groups, neighborhood organizations (defined as having been in existence for 24-months prior to the request and listed on the Planning Department's neighborhood organization notification list) require an annual fee for the first Assessor's Block, plus an additional fee for each additional block included in the same request. If you are an authorized representative of a neighborhood organization (as defined above), please also include the organization name and your title on this application form.

HOW DOES THE PROCESS WORK?

To file a request for BBN on properties within the City and County of San Francisco and subject to the San Francisco Planning Code please complete the attached Application to Request a Block Book Notice and submit a check in the appropriate amount payable to the San Francisco Planning Department. Those wishing more specific or more detailed information may call 558-6392.

Once an Application is filed on a property, a notice of the application that requires San Francisco Planning Department review is provided to the BBN Requestor. The Planning Department notifies a Requestor under a BBN, or if another notice is otherwise required, the Requestor is also included in the required notice. Please note that should a particular Planning Code Section (e.g. Sections 303, 305, 311, 312) require a notice, the BBN Requestor may not receive notice immediately following submittal of a permit to the Planning Department but rather through notice requirements in accordance with the specific Planning Code Section. The Department is required to hold a permit for 10 days so that the BBN Requestor may review it. The BBN procedure is a notification process only and any individual receiving notice has the options available to any citizen and no more. If the BBN Requestor has a concern regarding approval of the subject permit they may ultimately file a request for Discretionary Review.

If you are submitting a permit that requires San Francisco Planning Department review and there is a BBN filed on the subject property, you may ask the Planning Department at the Planning Information Center to call the BBN Requestor to determine if they are willing to waive the notification requirement, in which case the Planning Department may proceed without sending a 10 day notice letter. The permit applicant may also contact the BBN Requestor in advance or during the 10 day notice period to obtain their agreement to forego notice where the permit under consideration is not of concern to them.

If the Requestor does not waive the notice requirement, the permit will be accepted for submittal and internally routed from the Building Department to the Planning Department for staff assignment. It may take a week or more for the routing, assignment and for the planner to be able to send out a notice, based upon their workload. The planner assigned to the case will send a notice to the Requestor indicating they have 10 days from the date of the Planning Department's letter to raise any concerns with the project and/or initiate Discretionary Review.

WHO MAY APPLY FOR A BBN?

Any member of the public may request a BBN on any lot within the City and County of San Francisco that is subject to the San Francisco Planning Code.

INSTRUCTIONS:

Please complete the attached Application to Request a Block Book Notice and submit your request with a check in the appropriate amount payable to the San Francisco Planning Department. Requests may be mailed or delivered to the San Francisco Planning Department, 1650 Mission Street, Ste. 400, San Francisco, CA 94103-2414. Please refer to the Planning Department Fee Schedule available at www.sfplanning.org or at the Planning Information Center (PIC) located at 1660 Mission Street, First Floor, San Francisco. For questions related to the Fee Schedule, please call the PIC at (415) 558-6377. Please note: All returned checks are subject to a \$50.00 bank fee.

CASE NUMBER: For Staff Use only

APPLICATION TO REQUEST A Block Book Notice

Applicant Information		
APPLICANTS NAME:		
MAILING ADDRESS:		
EMAIL:		TELEPHONE:
		()
2. BBN Property Location		
SUBJECT PARCEL ADDRESS		ASSESSORS BLOCK/LOT:
ADDITIONAL BLOCK/LOT(S):		
3. Notification Preference		
Please identify the type(s) of applications reviewed receiving notification (check all that apply):	by the Planning Department	for which you are interested in
☐ All Building Permit Applications (interior and e	exterior)	
☐ Any Exterior Work (windows, garage doors, h	orizontal and vertical addition	ns)
☐ Horizontal and / or Vertical Additions		
☐ Changes of Use		
☐ Conditional Use and Variance		
Other:	, and the second	
4. Payment		
	First Assessor's Parcel:	\$
Additional Parcels: No. of Parcels x \$	-	\$
	Total Enclosed:	\$
Requestor Signature:		Date:

FOR MCUSE INFORMATION: Call or dold the San Prancisco Planning Capadinect

Central Reception 1650 Mission Street, Suite 400 San Francisco CA 94103-2479

TEL: 415.558.6378

FAX: 415.558.6409 WEB: http://www.sfplanning.org

Planning Information Center (PIC)

1660 Mission Street, First Floor San Francisco CA 94103-2479

TEL: 415.558.6377

Planning staff are available by phone and at the PIC counter. No appointment is necessary.

EXHIBIT D

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

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SETTING

The Fireman's Fund Home Office property is located in a central area of the north half of the City of San Francisco near the intersection of two principal streets, California and Presidio. The property occupies almost all of a large irregular block bound by California Street on the north, (continuing clockwise) Presidio Avenue on the east, Masonic Avenue on the southeast, Euclid Avenue on the south, and Laurel Street (in straight and curved sections) on the west. Fireman's Fund occupies about 10.2 acres – the entire block except for a small triangular parcel at the corner of California and Presidio. (See Map 1 and Map 4)

The site itself slopes down from about 300 feet in elevation in the southwest corner to about 225 feet in the northeast corner. It is part of a cluster of low hills associated with Lone Mountain whose several high points were developed as cemeteries in the nineteenth century. The Fireman's Fund site was previously a portion of the Laurel Hill Cemetery, and was long recognized for its views. Today there are distant views from the property to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District.

The property is surrounded on all sides by thoroughly developed parts of the City of San Francisco. The site itself is at a junction of several different historical developments. To the east and north, the streets are laid out in a modified extension of the original grid of the city. Across Presidio Avenue on the east the neighborhood is called the Western Addition, characterized by a mix of middle-class homes built in the nineteenth century, and by flats and apartments built in the years after the earthquake and fire of 1906. To the north, Presidio Avenue is the dividing line between two of San Francisco's wealthiest late-nineteenth- and early twentieth-century neighborhoods, Pacific Heights to the east and Presidio Heights to the west. To the west along California Street is Laurel Village, a post-World War II strip shopping center. To the west and south is Laurel Heights, a post-World War II residential development of houses and apartments. To the southeast across Masonic Avenue is Station 10 of the San Francisco Fire Department.

BUILDINGS

There are two buildings on the Fireman's Fund property. The Office Building, which is by far the larger of the two and is sometimes referred to as the main building, is located in the center of the property and is surrounded by lawns, gardens, and landscaped parking lots. The Service Building, referred to as the Annex since 1985 under a new owner, is a relatively small structure located at the northwest corner of the property. Although different in size and function, the two

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OMB No. 1024 0018

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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.

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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

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OMB No. 1024 0016

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

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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

San Francisco, CA Name of Property 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, customdesigned 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).

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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."

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." 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 [}bid., 44.

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

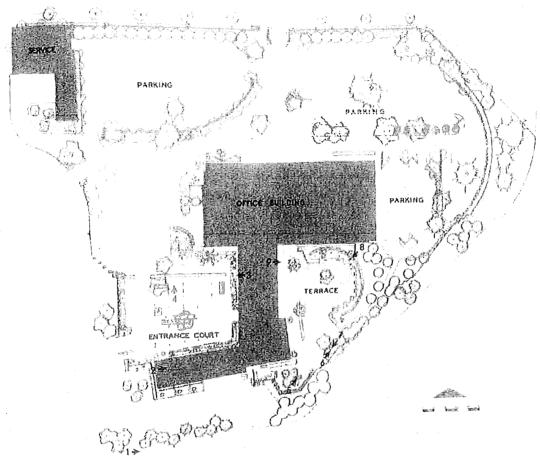
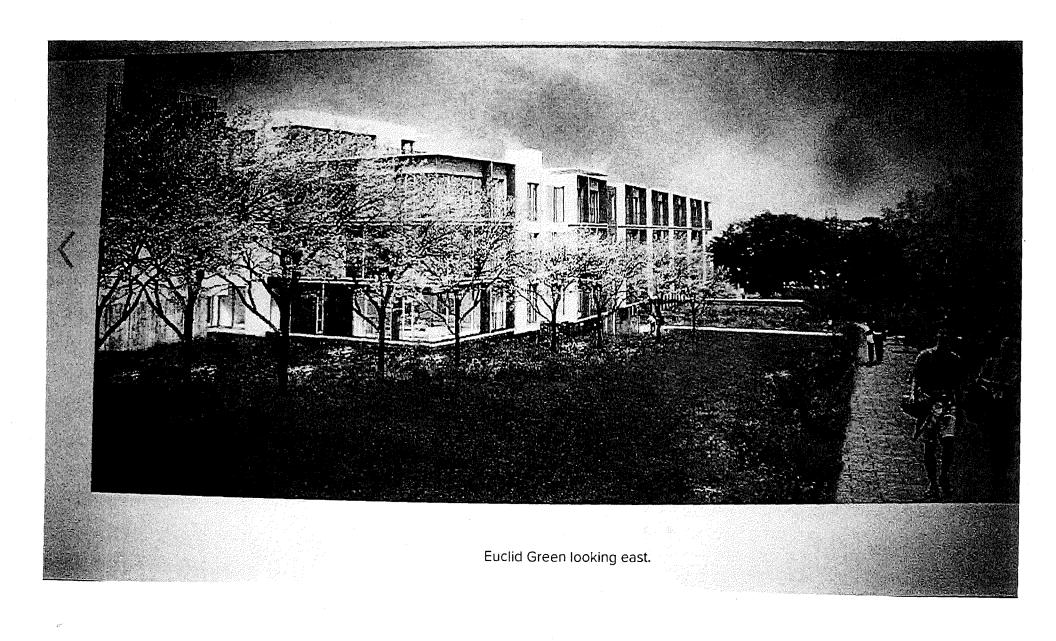
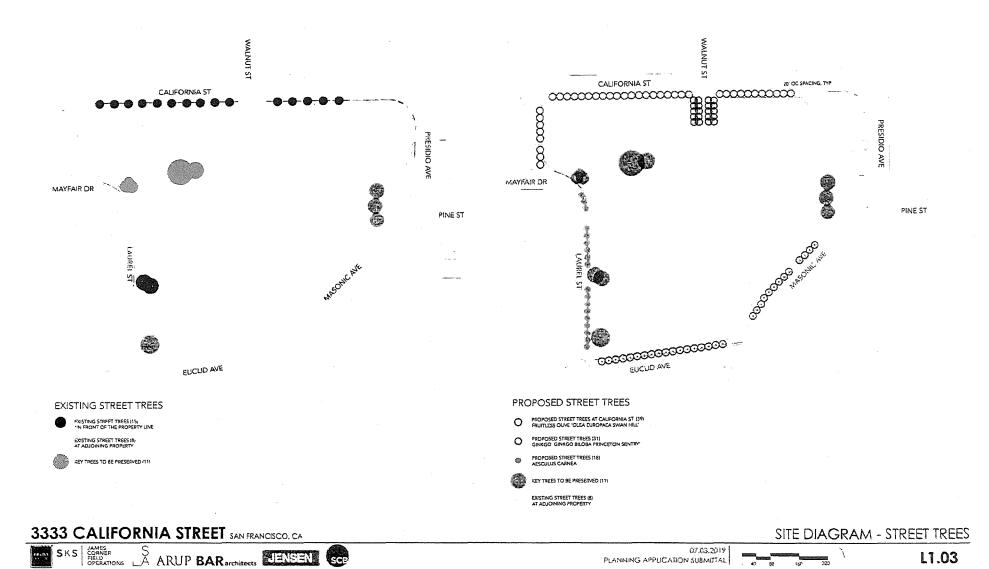


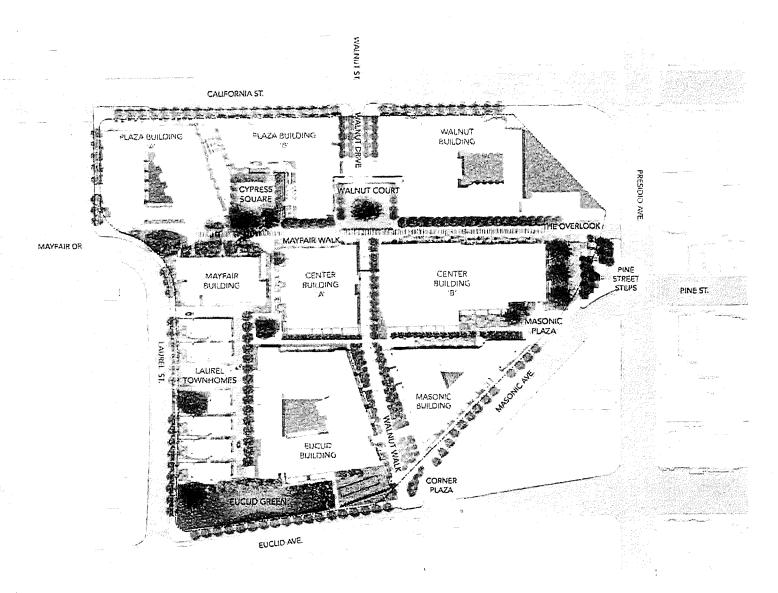
Figure 2. Site Plan showing features ca. 1957-1963. Source: Garrett Eckbo, Urban Landscape Design, 1964

EXHIBIT E





PLANNING APPLICATION SUBMITTAL



3333 CALIFORNIA STREET SAN FRANCISCO CA

LANDSCAPE SITE PLAN

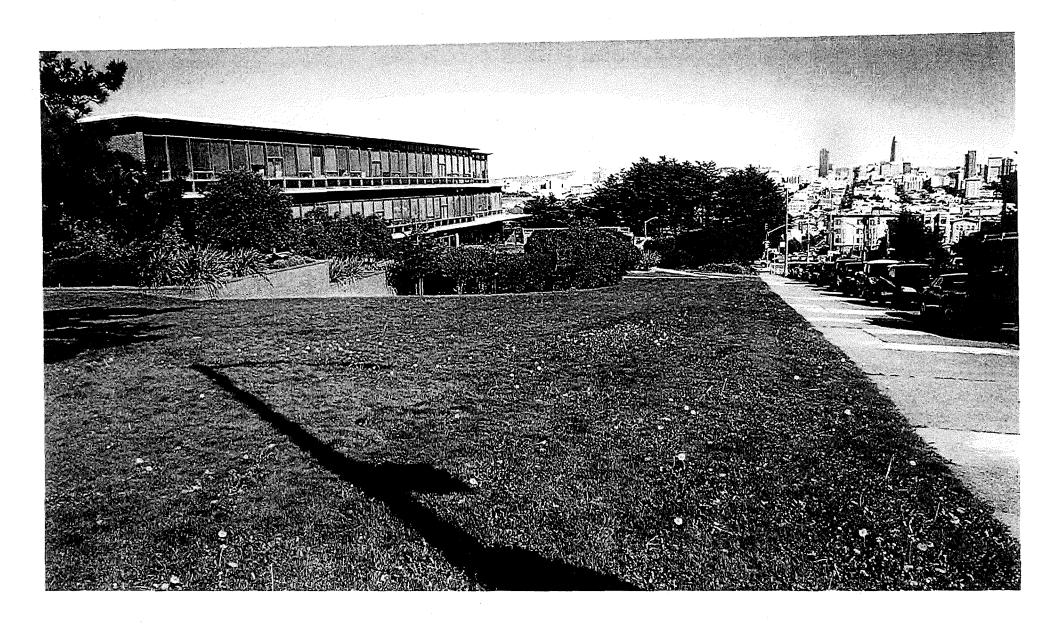
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07 03.2019 | PLANNING APPLICATION SUBMITTAL :

VAR.04

EXHIBIT F







Major, Erica (BOS)

From:

Kathy Devincenzi < krdevincenzi@gmail.com>

Sent:

Friday, October 18, 2019 4:57 PM

To:

Major, Erica (BOS); BOS Legislation, (BOS)

Cc:

Richard Frisbie

Subject:

October 21, 2019 BOS Land Use & Trans. Committee - 3333 California

Attachments:

20191018192502.pdf; 20191018192638.pdf; 20191018193341.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. 190947 - Proposed Ordinance for Major Encroachment

Record Number: 2015-014028CUA/PCA/MAP/DUA

Permit

Please see attached letter and Exhibits A-H for the official file.

Thank you,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

(415) 221-4700



Laurel Heights Improvement Association of San Francisco. Inc.

BY E-MAIL

October 18, 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. 190947 - Proposed Ordinance for Major Encroachment Permit

Record Number: 2015-014028CUA/PCA/MAP/DUA

Dear Chair Peskin, Vice Chair Safai and Member Haney:

1. The Committee Should Recommend Modification of the Requested Encroachment Permit to Omit Removal of 19 Significant Trees and 15 Mature Street Trees Along California Street and Widening of the California Street Sidewalk To Avoid Abrogation of Rights of Adjacent Property Owners and Interested Organizations to Appeal to the Board of Appeals.

The Committee should recommend against the provisions of the proposed Ordinance that would sanction removal of 19 Significant Trees and 15 Street Trees because the ordinance constitutes an end run around rights of Interested Organizations and abutting property owners to written notice of the proposed Removal date of those trees and rights of appeal concerning the removal to the Board of Appeals. Also, the existing sidewalk is approximately 19 feet wide and does not need to be widened. (October 18, 2019 Measurement by Richard Frisbie, engineer)

Public Works Code section 806(b)(3)(B)-(D) requires an abutting owner who wishes to remove a street tree to obtain a permit after the Director of Public Works gives written notice of the Removal date to abutting property owners, who have rights of appeal to the Board of Appeals, as follows:

(B) Thirty days prior to the Removal date, the Department shall give Notice to all Interested San Francisco organizations and, to the extent practicable, the owners and occupants of properties that are on or across from the block face or adjacent to where the

affected Tree is located. In addition, 30 days prior to the Removal date, the Department shall post a notice on the affected Tree. If within 30 days after the giving of such notice any person files with the Department written objections to the Removal, the Director shall hold a hearing prior to removing the Tree. Written notice of the date, time, and place of the hearing shall be posted on the affected Tree and sent to the objecting party and all Interested San Francisco organizations not less than seven days prior thereto.

- (C) The Director shall issue his or her written decision and order on the objections after the public hearing specified above.
- (D) The Director's decision shall be final and appealable to the Board of Appeals.

Under Public Works Code section 810A, removal of significant trees is subject to the above requirements, as follows:

- (b) Removal; Requirements.
- (1) Removal of a significant tree(s) on privately-owned property shall be subject to the rules and procedures governing permits for removal of street trees as set forth in Section 806(b).
- (2) Removal of a significant tree(s) that are the responsibility of the Department shall be subject to the rules and procedures governing permit for Departmental removal of street trees as set forth in Section 806(a).

However, the Director of Public Works only recommended "CONDITIONAL APPROVAL of the request for the Major Encroachment Permit with transmittal to the Board of Supervisors for approval based on the following conditions and findings." (Ex. H, Public Works Order No. 202030) Thus, the Director of Public Works forwarded the approval of the Major Encroachment Permit to the Board of Supervisors and did not approve it himself. The result is unreasonable abrogation of the rights of abutting property owners and Interested Organizations to appeal to the Board of Appeals the decision of the Director of Public Works, which constitutes unlawful denial of rights of due process.

I am President of the Laurel Heights Improvement Association and am the person designated to receive notices on the City's neighborhood organizations list and routinely receive City notices. I did not receive any mailed or emailed notice concerning the proposed Removal date for the 15 street trees or 19 significant trees or information concerning rights of appeal to the Board of Appeals, although notices were posted on some trees. The Laurel Heights Improvement Association is an Interested San Francisco organization because its members reside along Laurel Street and Euclid Avenue, which streets border the 3333 California Street site.

The result would be the same if the trees were proposed to be removed by Public Works because Public Works Code section 806 (a) requires the same notice before removal of a street

tree by the Department.

Apparently in recognition of the fact that provisions of Public Works Code section 806 relating to trees were not observed, Section 4.(d) of the proposed Ordinance proposes to bring tree removal approval under Public Works Code section 786, which only deals with major encroachment permits, and waive any conflicting provisions of sections 800 *et seq*. (Urban Forestry Ordinance) and 810A (significant Trees). These waiver provisions would deny rights to residents of this area that are provided to residents of other areas.

To avoid abrogation of rights of appeal to the Board of Appeal, the Committee should modify the proposed ordinance to remove provisions relating to removal of 19 Significant Trees, 15 Street Trees and increase in the width of the California Street sidewalk.

2. The Committee Should Recommend Modification of the Ordinance to Prohibit the New Proposed Street Trees Along Euclid Avenue and Laurel Street that Would Impair Public Vistas from the Historically Significant Green Space.

The encroachment permit requires replacement of 88 Street Trees. The newly proposed street trees that would impair public vistas from the historically significant green open space are circled in red in Exhibit A hereto. New trees should not be planted in this location. Payment of in lieu fees should be ordered for these proposed new trees.

Again, due process was denied, because public rights to appeal the Director's decision as to this portion of the encroachment permit to the Board of Appeals were abrogated by the Director of Public Works' action forwarding the approval of the encroachment permit to the Board of Supervisors.

3. The City Violated LHIA's Rights of Due Process and the Requirements of the Block Book Notice Filed Against this Property by Failing to Give LHIA 10 Days' Notice of the Planning Department's Review of the Requested Major Encroachment Permit.

Section 786.2 of the Public Works Code requires that the Public Works Director forward copies of the application for a street encroachment permit to the Director of Planning and that the Public Works Director shall request a report from that department concerning the effect of the proposed encroachment in relation to their duties and responsibilities. The completed report shall be returned to the Public Works Director within 60 days of the receipt of the copies of the application by the listed departments. *Ibid.* The project sponsor applied for a major encroachment permit. (See Ex. H, application for major encroachment permit)

Laurel Heights Improvement Association of SF, Inc. (LHIA) filed an Application to Request a Block Book Notice against this property on June 18, 2019, which is valid for one year.

(Ex. B hereto) LHIA specifically requested to review any application reviewed by the Planning Department as to 3333 California Street including the following:

- any and all applications for a permit to remove or replace street trees
- public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
- approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street
- approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening. (Ex. B, Attachment A, p. 1, Application for Block Book Notice)

The Planning Department failed to notify LHIA that Planning Department review was requested as to the request for major street encroachment and also failed to hold the request for 10 days so the BBN requestor may review it, as required by Planning Department procedures. (Ex. C, p. 2, San Francisco Planning Department Application to Request a Block Book Notice, explanations)

For the reasons stated herein, among others, and in comments submitted in the administrative record for the proposed Project, LHIA was prejudiced by being denied the opportunity to voice objections to the Planning Department's view of the proposed request for major encroachment at the time the Planning Department was reviewing the application. LHIA was further prejudiced by being denied the opportunity to obtain the report of the Director of Planning and the lack of adequate time to prepare and submit to SF Public Works and the SF Planning Department LHIA's objections to the request. These violations of LHIA's rights and the rights of its officers constitute unlawful and unconstitutional violations of the rights of due process afforded to LHIA and its officers under the United States Constitution and/or the State of California Constitution.

As a result of these violations, the request for major encroachment should be returned to the Planning Department so that it can give LHIA and its officers the required 10 days' notice of the Planning Department's review of the request for major encroachment permit.

4. The Requested Encroachment is Inconsistent with the General Plan.

The November 7, 2018 DEIR confirmed that the "proposed project or project variant would cause a substantial adverse change in the significance of a historical resource as defined in section 15064.5 of the CEQA Guidelines." (DEIR p. 4.B.41)

The requested encroachment is inconsistent with the priority policy of Planning Code section 101.1 that "landmarks and historic buildings be preserved."

This site contains historically significant natural landscaping that is integrated with the main building so that there is a seamless connection between the interior and exterior spaces through the window walls. (Ex. D)

The proposed new street trees would block the public vistas from the existing green open space that has been used by the public for recreational purposes. (Ex. E, developer's rendering and plan sheet L1.03; Ex. F, photos of public vistas from green open space)

To mitigate the significant impact on the historic resource, the Director should recommend that the project be modified to eliminate new street trees along Euclid Avenue and Laurel Street and to require in lieu fees to be paid. Public Works Code section 806(b)(3)(A) permits a fee to be paid in lieu of planting a replacement tree, as it provides that:

If the Department grants a Tree removal permit, it shall require that a Street Tree or Trees of equivalent replacement value to the one removed be planted in the place of the removed Tree or impose an in-lieu fee unless it makes written findings detailing the basis for waiving or modifying this requirement.

The proposed Project is also inconsistent with the following policies of the Urban Design Element of the General Plan, among others:

Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.

Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.

The Housing Element EIR also recognized that public vistas are protected by CEQA:

"Implementation of the 2004 Housing Element and 2009 Housing Element could result in

impacts related to conflicts with existing land use policy, plans, or regulations if the Housing Elements resulted in housing development that was not consistent with zoning and land use designations as outlined in governing land use plans and/or the City's Planning Code to the extent those regulations help to avoid or mitigate potential environmental impacts. For example, if a height limit in a particular area was designed to avoid impacting a view from a public vantage point, there could be an impact from a policy that increased the height limits." (Ex. C to June 8, 2018 Comments of Kathryn Devincenzi on 3333 California Street Initial Study, p. V.B-29.)

Thus, the Committee should recommend that the public vistas be preserved by requiring in lieu fees to be paid rather than planting street trees in these locations.

5. If the Committee Recommends Against the Proposed Special Use District or Development Agreement, the Committee Should Recommend Against the Proposed Ordinance as to the Major Encroachment Permit.

The Preliminary Project Assessment establishes 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) 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.

In the event the Committee recommends against the proposed Special Use District or Development Agreement, it should also recommend against the proposed Special Use District.

6. Consideration of the Proposed Ordinance Should be Deferred Until After the Board of Supervisors Renders a Decision on the Proposed Special Use District and Appeal as to Adequacy of the FEIR.

The Board of Supervisors could reject or modify the proposed Special Use District, overturn or modify the conditional use authorization, and/or overturn the certification of the Final EIR. Any such actions could change the nature of the project and location of proposed landscaping and other items reflected in the proposed Ordinance for Major Encroachment Permit. Thus, consideration of the proposed Ordinance should be continued to a date that occurs after the Board of Supervisors renders a decision on these matters.

7. The FEIR Failed to Adequately Describe the Project's Inconsistencies With Policies Calling For Preservation of Historical Resources, and the Proposed Project and Ordinance Are Not Consistent with the San Francisco General Plan.

"An EIR must discuss any inconsistencies between a proposed project and applicable general plans." 14 Cal.Code Regs. Section 15125(d). By doing so, a lead agency may be able to modify a project to avoid any inconsistency. *Orinda Association v. Board of Supervisors* (1986) 183 Cal.App.3d 1145, 1169. However, the Planning Commission's Resolution merely found that the proposed rezoning ordinance "is in general conformity with the General Plan as set forth in Planning Commission Resolution 20514." The finding of "general conformity" is ambiguous, as it is not the same as consistency with the General Plan.

Section 101.1(b) of the San Francisco General Plan, passed by the voters in Proposition M, codifies the General Plan Priority Policies that "shall be the basis upon which inconsistencies in the General Plan are resolved." They include the following Priority Policies:

That landmarks and historic buildings be preserved.

That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

That our parks and open space and their access to sunlight and vistas be protected from development. (Ex. BB to August 28, 2019 letter of LHIA to Planning Commission).

The FEIR is inadequate because it merely noted that the above policy to preserve historic resources exists, but failed to describe the inconsistency between the proposed Project and this General Plan Priority Policy. DEIR 4.B.34. Moreover, the DEIR used an erroneous legal standard, indicating that Planning Code section 101.1 merely allowed the City to balance the eight master plan priority policies, whereas CEQA requires that an EIR describe *amy* inconsistency with a general plan policy. DEIR 4.B.34.

Thus, the Committee should recommend against the proposed Ordinance because it is part of a project which is inconsistent with the General Plan.

8. The Requested Encroachment Permit is Not Consistent With Urban Design Element Policies that Protect Public Vistas and the Visibility of Open Spaces, Especially Those on Hilltops.

The proposed request for new street trees along Euclid Avenue and Laurel Street is inconsistent with the following policies of the Urban Design Element, and the September 5, 2019

Planning Commission findings omitted the following policies and failed to analyze the inconsistencies of the Project with them, among others:

Policy 1.1: Recognize and protect major views in the city, with particular attention to those of open space and water.

Visibility of open spaces, especially those on hilltops, should be maintained and improved, in order to enhance the overall form of the city, contribute to the distinctiveness of districts and permit easy identification of recreational resources. The landscaping at such locations also provides a pleasant focus for views along streets.

Objective 3: Moderation of major new development to complement the City pattern, the resources to be conserved and the neighborhood environment.

Policy 3.3: Promote efforts to achieve high quality design for buildings to be constructed at prominent locations.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Policy 3.5: Relate the height of buildings to important attributes of the city patterns and to the height and character of existing development.

Policy 3.6: Relate the bulk of the buildings to the prevailing scale of development to avoid an overwhelming or dominating appearance in new construction...

When buildings reach extreme bulk, by exceeding the prevailing height and prevailing horizontal dimensions of existing buildings in the area, especially at prominent and exposed locations, they can overwhelm other buildings, open spaces and the natural land forms, block views and disrupt the city's character. Such extremes in bulk should be avoided by establishment of maximum horizontal dimensions for new construction above the prevailing height of development in each area of the city...

Policy 3.7: Recognize the special urban design problems posed in development of large properties.

Policy 3.8: Discourage accumulation and development of large properties, unless such development is carefully designed with respect to its impact upon the surrounding area and upon the City.

Policy 3.9: Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

Policy 4.1: Protect residential areas from the noise, pollution and physical danger of excessive traffic.

Policy 4.2: Provide buffering for residential properties when heavy traffic cannot be avoided. (See Ex. V to June 8, 2018 Kathryn Devincenzi comments on 3333 California Street Initial Study, Urban Design Element of San Francisco General Plan, excerpts).

The Project proposes to install street trees along Euclid Avenue and Laurel Street that would impair the historically significant public hilltop views (See Ex. D, excerpts from approved nomination of Fireman's Fund Insurance Company Home Office in National Register of Historic Places stating that site was long recognized for its views including views "to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District;" Ex. E and Ex. F; see also Exhibit KK to September 5, 2019 LHIA submission to Planning Commission).

The project site is atop Laurel Hill and commands valued public vistas of the downtown and eastern portion of the City and also of the Golden Gate Bridge and other neighborhoods of the City to the northwest. (Ex. F) During my years living in the neighborhood, I have seen innumerable members of the public enjoy these views during daytime as well as during nighttime. I have seen jubilant crowds of people view lunar eclipses from the sidewalks atop Laurel Hill at the corner of Laurel Street and Euclid Avenue and from the landscaped green spaces surrounding the main office building.

Some photographs I have taken which show the existing condition of some of these views are attached hereto. (Ex. F; see also Ex. B to January 1, 2019 comments of Devincenzi,, photographs taken on October 24, 2017 and January 7, 2019) These photographs show that the portions of the Bank of America Building, Transamerica Pyramid, Salesforce Building and Golden Gate Bridge can be seen from the high ground at Laurel Street and Euclid Avenue, from the landscaped green spaces surrounding the main office building and from public sidewalks along Laurel Street and Euclid Avenue. Also, the historically significant architecture of the main building can be seen across the landscaping on the perimeter of the site, and the site was designed so that the building and landscaping would function as an integrated composition.

The Final EIR for the 2004 and 2009 Housing Element acknowledges that new residential housing could result in an impact related to scenic vistas if it would be developed in a manner that obstructs views from a scenic vista from a public area or introduces a visual element that would dominate or upset the quality of a view. (January 8, 2019 comments of Devincenzi, Ex. F. p. V.C-11) Figure V.C-1 of that Final EIR shows street views of an important building in the area

of the 3333 California site. The FEIR failed to adequately analyze this potentially significant impact.

The Community Preservation Alternative/Variants would avoid this significant impact on public vistas because they would retain the existing landscaped areas largely in their present form and existing public vistas from sidewalks and open space used by the public. Also, DEIR Alternatives B and C would retain the existing landscaped areas largely in their present form and avoid this significant impact on public vistas. DEIR 6.35 and 6.67.

Under CEQA, the City may not lawfully approve the Proposed Project/Variant, because a feasible alternative is available that would avoid or substantially reduce the project's significant impact upon scenic resources.

Mitigation Measure: Approve an alternative that would preserve the existing landscaped areas surrounding the main building on the southern and western portions of the site in their present form and do not locate any new construction on these areas.

This Mitigation Measure is feasible and should be adopted.

9. The EIR Failed to Identify and Describe Feasible Mitigation Measures that Would Reduce or Avoid the Proposed Project's Significant Adverse Impact on the Historical Resource.

The EIR is defective because it failed to identify and describe modifications to the proposed site plan that would reduce or avoid the proposed project's significant adverse impact on the historical resource. Such modifications would, *inter alia*, avoid installing new street trees along Euclid Avenue and Laurel Street that would block public vistas from the historically significant landscaping.

The modifications proposed by LHIA would conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties. However, as previously stated in LHIA's August 28, 2019 submission to the Planning Commission, the City failed to apply the Secretary's Standards to the design of the project, even though City Preservation Bulletin No. 21 states that:

For both Article 10-designated historic resources and CEQA-identified historical resources, the *Standards* will be applied to any work involving new construction, exterior alteration (including removal or demolition of a structure), or any work involving a sign, awning, marquee, canopy or other appendage for which a City permit is required. (Ex. U to LHIA's August 28, 2019 submittal, excerpt)

An EIR must identify and describe mitigation measures to minimize the significant

environmental effects identified in the EIR. Public Resources Code sections 21002.1(a), 21100(b)(3); 14 Cal. Code Regs. section 15126.4. The requirement that EIRs identify mitigation measures implements CEQA's policy that agencies adopt feasible measures when approving a project to reduce or avoid its significant environmental effects. Public Resources Code sections 21002, 21081(a).

Mitigation measures must be designed to minimize significant environmental impacts, not necessarily to eliminate them. Public Resources Code section 21100(b)(3); 14 Cal. Code Regs. section 15126(a)(1). Any action that is designed to minimize, reduce, or avoid a significant environmental impact or to rectify or compensate for the impact qualifies as a mitigation measure. 14 Cal. Code Regs. sections 15126(a)(1), 15370. The following specific requirements for mitigation measures are set forth in 14 Cal. Code Regs. section 15126.4:

Mitigation measures should be identified for each significant effect described in the EIR. If several measures are available to mitigate a significant adverse impact, the EIR should discuss each measure and identify the reason for selecting a particular measure.

The description must distinguish between mitigation measures that are included in the project as proposed and other measures that the lead agency determines could reasonably be expected to reduce significant effects if required as conditions of project approval.

Mitigation measures must either be incorporated into the design of the project or be fully enforceable through conditions, agreements, or other means. CEB, *Practice Under the California Environmental Quality Act*, p. 14-4. An EIR should focus on mitigation measures that are feasible, practical, and effective. *Napa Citizens for Honest Gov't v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 365.

A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely. 14 Cal.Code Regs. section 15370(b); see also Public Resources Code sections 21002.1(a), 21081(a)(1); *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230, 239. The CEQA Guidelines provide a broad definition of mitigation, which also includes actions taken to rectify or compensate for a significant impact. Under 14 Cal.Code Regs. Section 15370, mitigation" includes the following:

Avoiding an impact altogether by not taking a certain action or part of an action;

Minimizing an impact by limiting the magnitude of a proposed action and its implementation;

Rectifying an impact by repairing, rehabilitating, or restoring the affected environmental resource. CEB, *Practice Under the California Environmental Quality Act*, p. 14-7.

An EIR's discussion of mitigation measures should distinguish between measures proposed by the project proponent and measures that the lead agency determines could reduce significant adverse impacts if imposed as conditions of project approval. 14 Cal.Code Regs. section 15126.4(a)(1)(A).

Some mitigation measures make a change in the proposed project, such as not taking a certain action or not building a certain part of the project, to avoid the identified significant impact entirely. 14 Cal.Code Regs. section 15370(a). Examples include:

Changing a project to avoid a wetland area on the project site;

Restricting demolition or alteration of significant historic structures or cultural sites; and

Prohibiting activities that produce significant noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8.

Some mitigation measures do not avoid an impact entirely but limit the scope or magnitude of a proposed activity or development. 14 Cal.Code Regs. Section 15370(b). Examples include:

Changing a project plan to reduce the amount of wetland fill;

Avoiding the most important habitat of a wildlife species; Establishing a buffer zone on a project site to reduce adverse effects on adjacent areas;

Preserving areas of native vegetation.

Shielding activities, or restricting the hours during which activities are conducted, to reduce noise impacts. CEB, *Practice Under the California Environmental Quality Act*, p. 14-8 to 14-9.

Some mitigation measures do not avoid an environmental impact but rectify or correct it by restoring the affected environment or resource. 14 Cal.Code Regs. section 15370(c). Examples include:

Repairing or reconstructing a wetland or habitat area after it has been affected by a project activity;

Replanting trees or native landscape,

Restoring a historical structure that is affected by a project; and restoring areas damaged during project construction. CEB, *Practice Under the California Environmental Quality*

Act, p. 14-9.

With respect to historical resources, the CEQA Guidelines specify that modifications that conform with the Secretary's Standards generally mitigate an impact to below a level of significance:

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur. 14 Cal.Code Regs. section 15126.4(b)(1) and (2).

The DEIR considered only inadequate mitigation for the project's significant impact on historical resources consisting of documentation of the historical resource (M-CR-1a) and development of an interpretative program focused on the history of the project site (M-CR-1b). DEIR pp. 4.B.45-46. Neither of these measures would substantially reduce or avoid the significant impact upon the listed historical resource.

This Board of Supervisors has the authority to order modifications to the proposed project as a condition of approval, through the conditional use authorization procedure or by design modifications. Cities and counties are authorized to regulate land use by local planning law (Government Code sections 65100-65763), the zoning law (Government Code sections 65800-65912), and the Subdivision Map Act (Government Code sections 66410-66499.37).

Thus, the Committee should defer its decision on the request for major encroachment until the Board decides whether to grant LHIA's appeal of adequacy of the FEIR or approve the Project as proposed or modify it.

We will respectfully urge the Board of Supervisors to strike the appropriate balance, because the developer has stated "this is not a negotiation" and declined to make appropriate revisions in response to community input. Also, the developer paid only approximately \$192.35 per square foot for the property (\$88,600,000.00 for 99-year lease plus \$1,612,000 for the fee interest = \$90,212,000/469,000 = \$192.35) so can well afford to make some modifications to

avoid significant adverse impact on this listed historical resource. (August 28, 2019 LHIA submission, Ex. D, deeds)

Public Resources Code section 21002 states:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.... The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

Public Resources Code section § 21081 provides that:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. (Emphasis added; see also 14 Cal. Code Regs. § 15091)

This is a stand-down mandate. The developer's project is unnecessarily destructive and prolonged, and the Board of Supervisors may order it redesigned to preserve the historically significant natural green spaces and landscaping and its integrated Mid-Century modern main building. This resource is also significant for its association with the Fireman's Fund Insurance Company, a company established in San Francisco that grew due to its reputation for integrity and played an important role in the development of San Francisco, paying fire claims after the 1906 earthquake and other significant conflagrations. (August 28, 2019 LHIA submittal Ex. G,

listing and excerpts from approved nomination)

Conclusion

For the reasons stated above, the proposed Ordinance approving a major encroachment permit is not consistent with applicable general plans and the site is not physically suitable for the type of alterations proposed. Further information on inadequacies of the FEIR and findings has been submitted to the Board of Supervisors in LHIA's appeal as to adequacy of the FEIR.

Respectfully submitted,

Laurel Heights Improvement Association of SF, Inc.

By: Kathryn Devincenzi, President

KRDevincenzi@gmail.com

Attachments: Exhibits A-H

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. 190947 - Proposed Ordinance for Major Encroachment Permit

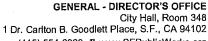
Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS G-H

EXHIBIT G

City and County of San Francisco

San Francisco Public Works



(415) 554-6920 Swww.SFPublicWorks.org



London N. Breed, Mayor Mohammed Nuru, Director

Public Works Order No: 202030

DIRECTOR'S DECISION FOR MAJOR (STREET) ENCROACHMENT PERMIT (19ME-00010) TO INSTALL AND MAINTAIN IMPROVEMENTS WITHIN THE NORTHWEST CORNER OF PRESIDIO AVENUE AND MASONIC AVENUE, AND THE NORTHWEST CORNER OF MASONIC AVENUE AND EUCLID AVENUE, AS PART OF THE DEVELOPMENT AT 3333 CALIFORNIA ST, ALSO BEING ASSESSOR'S BLOCK 1032 LOT 003.

APPLICANT:

The Prado Group Inc.

PROPERTY IDENTIFICATION:

Lot 003 in Assessor's Block 1032

3333 California Street

San Francisco, CA 94118

DESCRIPTION OF REQUEST:

Major Encroachment Permit

BACKGROUND:

- 1. On August 2, 2019 The Prado Group Inc. filed a letter of request with Public Works (PW) to consider approval of a Major (Street) Encroachment Permit to install and maintain improvements at the northwest corner of Presidio Avenue and Masonic Avenue, and at the northwest corner of Masonic Avenue and Euclid Avenue.
- 2. In Planning Commission Resolutions number 20514 and 20515, dated September 5, 2019, indicated that the project is in conformity with the General Plan.
- 3. The San Francisco Municipal Transportation Agency (SFMTA) acknowledges that the proposed improvements identified under this Major Encroachment has been discussed as part of a Development Agreement and has been approved by Planning Department, as well as, the planning section within the **SFMTA**
- 4. August 23, 2019 Public Works provided a Notice for Public Hearing to all property owners within a 300foot radius of the subject encroachments as well as posting said hearing within City Hall.



San Francisco Public Works Making San Francisco a beautiful, livable, vibrant, and sustainable city.

- 5. A public hearing was held on September 18, 2019. The public protested the major encroachment with majority of concerns being the removal of trees along the frontage of the development. Additional written testimony was received with similar concerns.
- 6. On September 25, 2019, the Hearing Officer made her recommendation after hearing the above testimony, and reviewing the application, reports, plans and other documents contained in Public Works files
- 7. The Director concur with said recommendation, and is forwarding this Major Encroachment Application via legislation to the Full Board for evaluation

RECOMMENDATION:

CONDITIONAL APPROVAL of the request for the Major Encroachment Permit with transmittal to the Board of Supervisors for approval based on the following conditions and findings.

CONDITION OF APPROVAL:

The applicant shall fulfill all permit requirements of the Major Encroachment Permit.

FINDING 1:

The Planning Department determined that the subject encroachment is in conformity with the General Plan.

FINDING 2:

All required City Agencies provided review and no further comment to the overall encroachment.

Acting Manager

DocuSigned b

Suskind, Suzamie FDB7F6564E/

Acting Deputy Director and City Engineer

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X

Docusigned by:

Nuru, Molammed

B1145AB17F474FA

Nuru, Mohammed Director



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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?	
Browsers (for SENDERS):	Internet Explorer 6.0? or above	
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0,	
	NetScape 7.2 (or above)	
Email:	Access to a valid email account	
Screen Resolution:	800 x 600 minimum	
Enabled Security Settings:	•Allow per session cookies	
	•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection	

^{**} These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Public Works as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Public Works during the course of my relationship with you.

EXHIBIT H

From:

Lutenski, Leigh (ECN)

Sent:

Friday, August 2, 2019 5:14 PM

To:

ECN, 3333CalCompliance (ECN)

Subject:

FW: 3333 California MEP Application

Attachments:

2019.08.02 3333 California MEP Application.pdf

From: Lisa Congdon [mailto:lcongdon@pradogroup.com]

Sent: Friday, August 02, 2019 10:09 AM

To: BSMpermitdivision (DPW)
 | Smpermitdivision@sfdpw.org>; Kwong, John (DPW) < John.Kwong@sfdpw.org>;

Lutenski, Leigh (ECN) <leigh.lutenski@sfgov.org>

Cc: Gregg Miller <gmiller@coblentzlaw.com>; Don Bragg <dbragg@pradogroup.com>; Gershwin, Dan

<dgershwin@coblentzlaw.com>; Kaitlin Roth <kroth@pradogroup.com>

Subject: 3333 California MEP Application

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please find the Major Encroachment Permit Application attached for 3333 California Street. The hardcopy of the application letter, mailing labels, postage and application fee will be dropped off at DPW later today.



LISA CONGDON | Project Manager Prado Group, Inc. 150 Post Street, Suite 320 San Francisco, CA 94108 lcongdon@pradogroup.com T: 415.395.0880 | D: 415.857.9303 | C: 415.202.3326

This message contains information which may be confidential and privileged Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply lcongdon@pradogroup com, and delete the message. Thank you very much



Attn: Mohammed Nuru San Francisco Public Works Bureau of Street-Use & Mapping 1155 Market Street, 3rd Floor San Francisco, CA 94103 Email: bsmpermitdivision@sfdpw.org

August 2, 2019

RE: Letter of Application for a Major Encroachment Permit 3333 California Street Parcel #1032/003

Sent via EMAIL

Dear Mr. Nuru,

Laurel Heights Partners LLC is requesting a major encroachment permit for our proposed work in the public right of way. This work is part of the public improvements referenced in the Development Agreement currently being negotiated between the City and Laurel Heights Partners for the construction of a new mixed-use project at 3333 California Street.

The proposed project includes permanent improvements in the bulb-outs at the intersections of Masonic/Presidio Avenue, Masonic/Euclid Avenue and Mayfair/Laurel Street. The proposed bulb-outs are a key improvement measure intended to enhance pedestrian safety through the removal of the slip lanes, strengthening pedestrian crosswalks, reducing the speed of automobile traffic and reinforcing the idea of the site being more accessible and walkable. The proposal, developed with community input and designed by MSLA, includes the following improvements:

- the removal of two slip lanes
- the creation of bulb-outs at the corner of Masonic/Presidio, Masonic/Euclid and Mayfair/Laurel
- the installation of a set of stairs ("Pine Street Stairs") to allow for direct pedestrian access to the site
- stepped planters with trees adjacent to the new set of stairs
- additional street level special paving, landscaping and street trees
- public bike parking racks

Please see the attached plans for further detail and reach out with any additional questions or clarifications (dbragg@pradogroup.com).

Sincerely,

Laurel Heights Partners LLC, a Delaware limited liability company

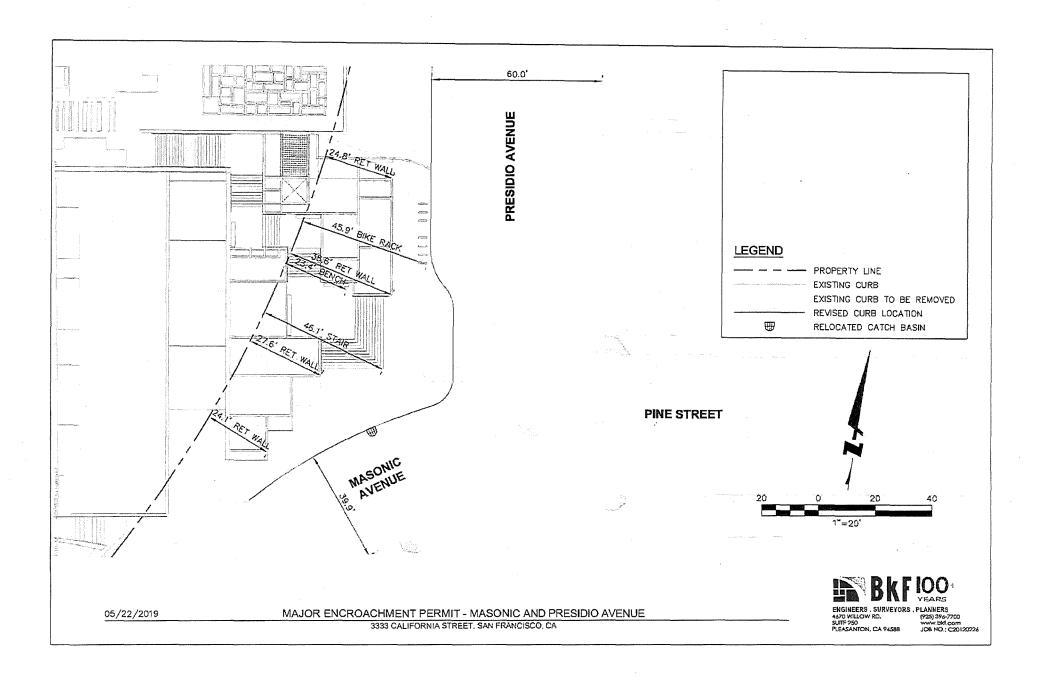
The Prado Group, Inc., a California corporation, its agent

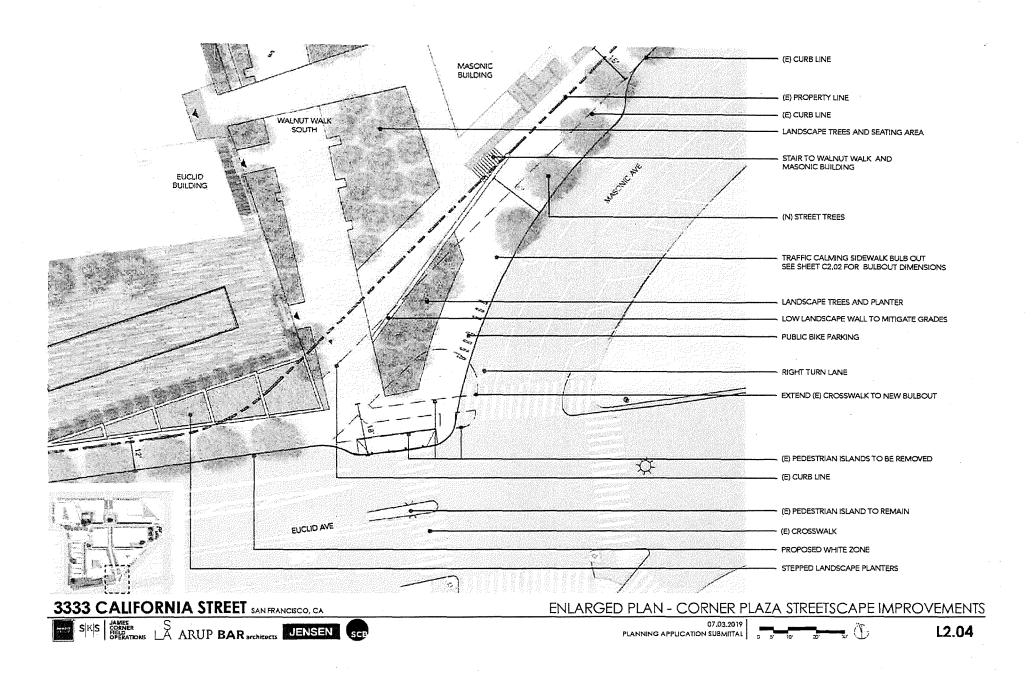
Director of Development, Prado Group Inc.

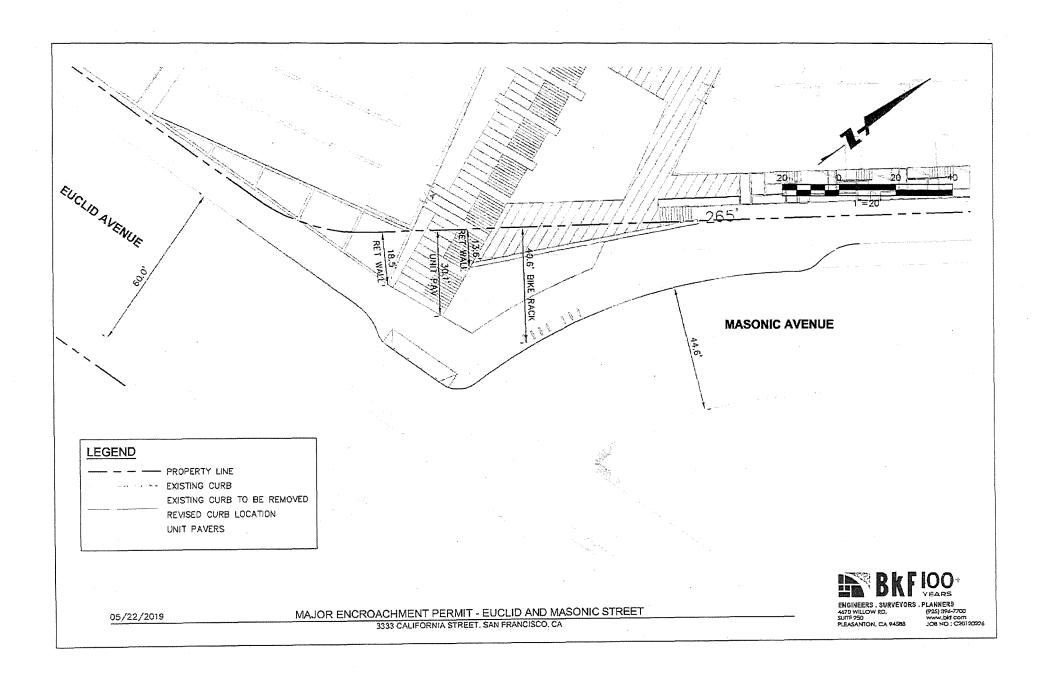
cc: John Kwong (DPW), Leigh Lutenski (OEWD), Gregg Miller (CPDB)

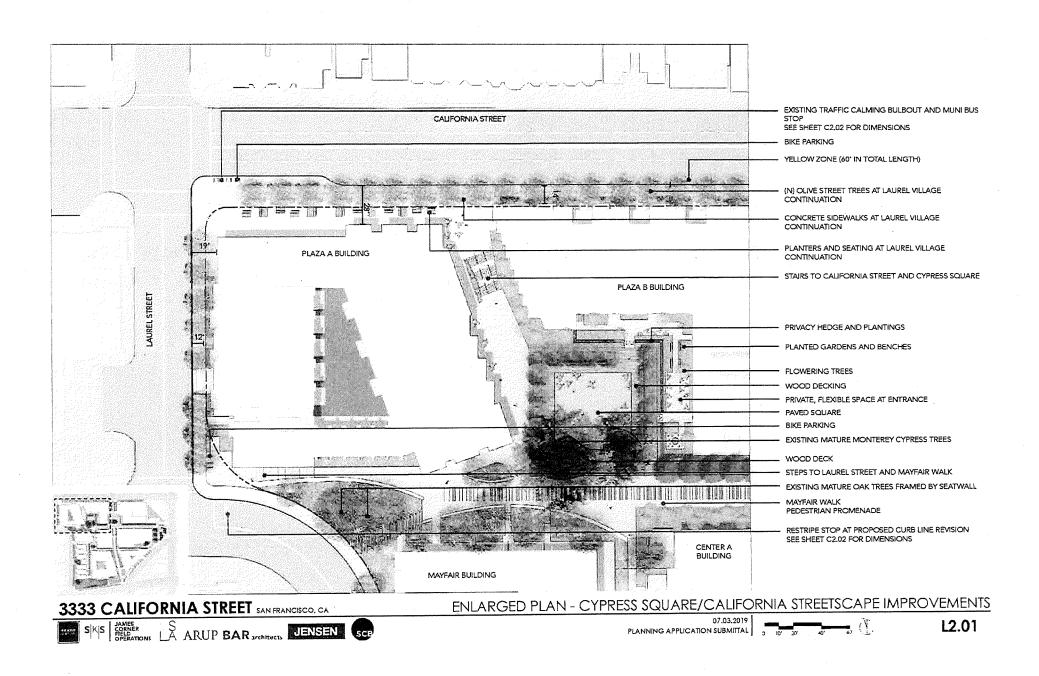
attachments: 3333 California MEP Plans (4 pages), application fee and Neighborhood Notice mailing labels

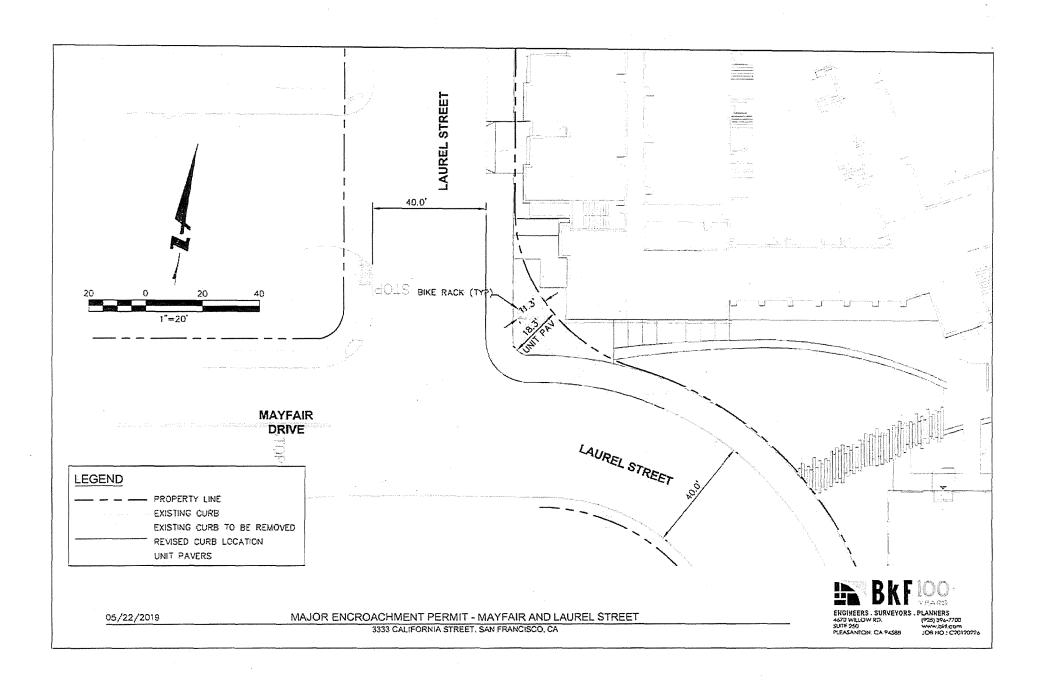












San Francisco Board of Supervisors Land Use and Transportation Committee c/o Erica Major, Clerk City and County of San Francisco City Hall, Room 244 San Francisco, CA 94102

Re: 3333 California Street, San Francisco, CA
File No. 190947 - Proposed Ordinance for Major Encroachment
Permit
Record Number: 2015-014028CUA/PCA/MAP/DUA

EXHIBITS A-F

EXHIBIT A

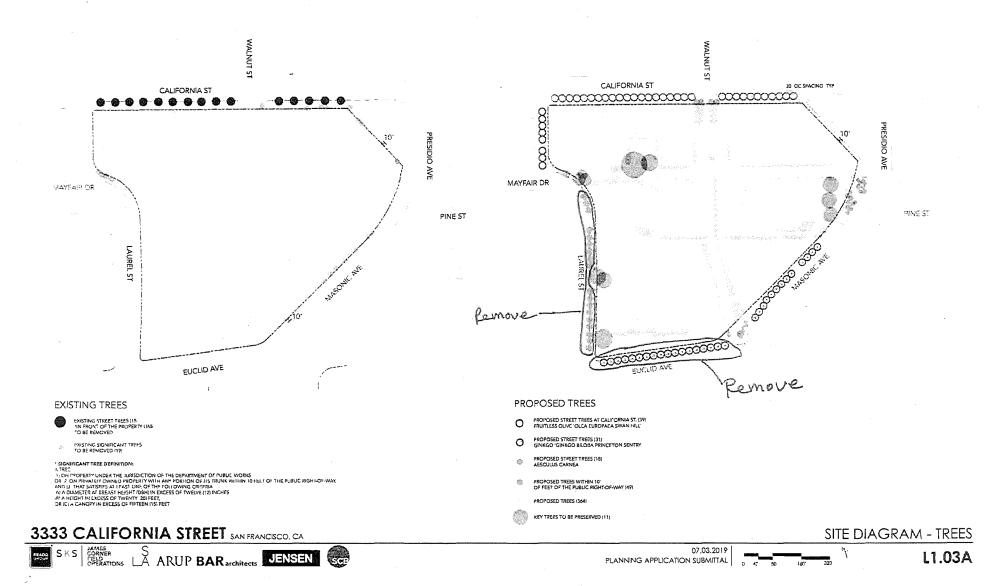


EXHIBIT B

APPLICATION TO REQUEST A Block Book Notice

MMCE VED

CHE SI MUL

CITY & C SECTION S.E. PLEGRAD RECE

Applicant Information

APPLICANTS NAME:

Laurel Heights Improvement Association of San Francisco, Inc.

22 Iris Avenue, San Francisco, CA 94118-2727

LaurelHeights2016@gmail.com

TELEPHONE:

(415) 221-4700

2. BBN Property Location

SUBJECT PARCEL ADDRESS 3333 California Street

ADDITIONAL BLOCK/LOT(S):

ASSESSORS BLOCK/LOT: Block 1032, Lot 003

3. Notification Preference

Please identify the type(s) of applications reviewed by the Planning Department for which you are interested in receiving notification (check all that apply):

- All Building Permit Applications (interior and exterior)
- Any Exterior Work (windows, garage doors, horizontal and vertical additions)
- Morizontal and / or Vertical Additions
- ☑ Changes of Use
- □ Conditional Use and Variance
- Other: See descriptions in Attachments A and B hereto.

4. Payment

First Assessor's Parcel:

\$ 40.00

Additional Parcels: No. of Parcels

x \$

Total Enclosed: \$40.00

Laurel Heights Improvement Association of SF, Inc.

Requestor Signature: By: Kathuyu Devauenu, President Date: June 18, 2019

18 shan 6/11/1

ATTACHMENT A (types of applications, continued)

Any application, request or proposal that may be reviewed by the San Francisco Planning Department and/or San Francisco Planning Commission, including without limitation relating to any of the following:

any conditional use application

any planned use development application

any large project authorization application

any authorization of any kind allowed under the San Francisco Planning Code or any applicable building code

any application for any change in, or waiver of, the terms of Resolution 4109 of the San Francisco Planning Commission that applies to this property

any inter-agency referral

any proposed subdivision map, including tentative and final maps

any and all applications for a permit to remove and replace street trees

any and all applications for a street space permit from the Bureau of Street Use and Mapping and/or a special traffic permit from the Sustainable Streets Division if sidewalk(s) are to be used for construction staging and/or pedestrian walkways are constructed in the curb lane(s)

any and all requests or applications for on-street commercial truck and/or passenger loading zones on Laurel Street, California Street, Masonic Avenue, and/or Euclid Avenue

any application for alteration, renovation, demolition, and/or construction

any application for revision(s) to any permit or site permit

any application relating to a change in the nonconforming use and/or structure on said property

any review of any matter relating to this property by the San Francisco Historic Preservation Commission

ATTACHMENT A (types of applications, continued)

any environmental review under the California Environmental Quality Act (CEQA), Public Resources Code sections 21000 et seq., of any application reviewed by the Planning Department, Planning Commission, Department of Building Inspection, Department of Public Works and/or for a building permit or a site permit relating to this property

any and all draft and/or proposed findings relating to any approval of a site permit, conditional use, planned unit development or other authorization relating to this property, including findings as to feasibility of alternatives under CEQA

any and all requests and/or applications for approval of placement of bicycle racks and/or stations on the perimeter sidewalks and/or within the project site

any and all drafts of and/or proposals for a proposed special use district for this property

any and all potential approvals described on Attachment B hereto

any and all proposed amendments to the Special Use District Map

any and all draft and/or proposed recommendations to the Board of Supervisors of a Special Use District

any and all draft and/or proposed conditional use and/or planned unit development authorization(s) relating to this property

any and all draft and/or proposed recommendations to the Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing to be developed as part of the proposed project or project variant, to develop and maintain privately owned, publicly accessible open space, to vest the project's entitlements for a period of time and/or to prohibit rezoning for a period of time relating to this property

any and all draft and/or proposed planning code and zoning map amendments, including for a Special Use District

any and all draft and/or proposed findings of consistency with the General Plan and priority policies of Planning Code section 101.1

any and all draft and/or proposed resolutions to modify and/or waive Planning Commission Resolution 4109 that pertains to this property

ATTACHMENT B

E. INTENDED USES OF THE EIR

An EIR is an informational document that is intended to inform the public and the decision-makers of the environmental consequences of a proposed project and to present information about measures and feasible alternatives to avoid or reduce the proposed project's identified significant environmental impacts. This is a project-level EIR that provides the environmental information and evaluation that is necessary for decision-makers to approve the proposed 3333 California Street Mixed-Use Project, prepared by the City and County of San Francisco pursuant to the California Environmental Quality Act (California Public Resources Code section 21000 et seq. and California Code of Regulations Title 14, sections 15000 et seq., "CEQA Guidelines"). It analyzes construction and operation of the proposed project and project variant at a project-specific level.

Before any discretionary project approvals may be granted for the proposed project or project variant, the San Francisco Planning Commission (Planning Commission) must certify the EIR as adequate, accurate, and objective. This Draft EIR will undergo a public comment period (from November 8, 2018 to Monday December 24, 2018) as noted on the cover of this EIR, during which time the Planning Commission will hold a public hearing on the Draft EIR. Following the close of the public comment period, the Planning Department will prepare and publish a Responses to Comments document, containing all comments received on the Draft EIR and the Planning Department's responses to substantive environmental comments. It may also contain specific changes to the Draft EIR text and/or figures. The Draft EIR, together with the Responses to Comments document, including revisions to the Draft EIR, if any, will be considered for certification by the Planning Commission at a public hearing and certified as a Final EIR if deemed adequate, accurate, and objective.

ANTICIPATED APPROVALS

Implementation of the proposed project or project variant would require changes to existing development controls for the project site through planning code, and zoning map amendments including changes to allow office and retail as permitted uses and changes to allow increased heights along California Street (increasing from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses), and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building. The project sponsor would seek to create a new Special Use District (SUD), which would require a recommendation by the Planning Commission and approval by the Board of Supervisors. The project sponsor would also seek approval of a conditional use authorization/planned unit development to permit development of buildings with heights in excess of 50 feet and to provide for minor deviations from the provisions for measurement of height, to allow for more residential units than principally permitted in the RM-1 Zoning District, and to allow certain planning code

2. Project Description

3111

exceptions. It is anticipated that the project sponsor would seek approval of a development agreement between the City and the project sponsor (which requires recommendation for approval by the Planning Commission and approval by the Board of Supervisors) with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space, and would vest the project's entitlements for a 15-year period.

The following is a preliminary list of San Francisco agencies' anticipated approvals for the proposed project and the project variant and is subject to change. These approvals may be reviewed in conjunction with the required environmental review, but may not be granted until after the required environmental review is completed.

Actions by the City Planning Commission

- Certification of Environmental Impact Report (EIR) and adoption of findings under CEQA.
- Adoption of Findings of Consistency with the general plan and priority policies of Planning Code section 101.1.
- Recommendation to the Board of Supervisors of an amendment to the Height and Bulk Map to increase height limits along California Street from 40 to 45 feet to accommodate higher ceilings for ground-floor retail uses, and at the center of the site (from 40 feet to 80 and 92 feet) for the renovated buildings resulting from the adaptive reuse of the existing office building.
- Recommendation to the Board of Supervisors of an amendment to the Special Use District Map to designate the boundaries of the Special Use District.
- Recommendation to the Board of Supervisors of a Special Use District to reflect other planning code compliance issues, including to allow office and retail uses at the project site and to modify or waive the requirements of Resolution 4109.
- Conditional Use/Planned Unit Development authorization to permit development of buildings with height in excess of 50 feet and provide for minor deviations from the provisions for measurement of height, to provide for additional dwelling unit density under the project variant, and to provide other exceptions to the planning code requirements applicable to the project site.
- Approval of office allocation for up to 49,999 square feet (Planning Code section 321).
- Recommendation to Board of Supervisors to approve a Development Agreement with respect to, among other community benefits, the project sponsor's commitment to the amount of affordable housing developed as part of the proposed project or project variant and to develop and maintain privately owned, publicly accessible open space and vesting the project's entitlements for a 15-year period.
- Approval of a Transportation Demand Management Plan (Planning Code section 169).

November 7, 2018 Case No. 2015-014028ENV 3333 California Street Mixed-Use Project
Draft EIR

Actions by the San Francisco Board of Supervisors

- Adoption of findings under CEQA
- Adoption of Findings of Consistency with the General Plan and priority policies of Planning Code section 101.1
- Approval of planning code and zoning map amendments, including Special Use District
- Approval of Development Agreement
- Approval of sidewalk widening legislation
- Adoption of resolution to modify or waive Planning Commission Resolution 4109

Actions by Other City Departments

- San Francisco Public Works
 - Approval of Subdivision Map
 - Public hearing and approval of permits to remove and replace street trees on California Street and to remove protected trees on the project site within 10 feet of the public right-of-way
 - o Approval of permits for streetscape improvements in the public right-of-way, including new curb cuts on Masonic Avenue (two) and Laurel Street (eight)
 - o Approval of encroachment permit for the proposed development of the Corner Plaza at Masonic and Euclid avenues, the Pine Street Steps and Plaza at the Masonic/Pine/Presidio intersection, curb bulb-outs and associated streetscape improvements on the west side of Presidio Avenue at the intersection with Pine Street and Masonic Avenue, on the west side of Masonic Avenue at the intersection with Euclid Avenue, and on the east side of Laurel Street at the intersection with Mayfair Drive, and for sidewalk widening
 - o Approval of a street space permit from the Bureau of Street Use and Mapping if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - o Recommendation to Board of Supervisors to approve legislation for sidewalk widening
- San Francisco Municipal Transportation Agency
 - Approval of request for on-street commercial truck (yellow) and passenger (white) loading zones on Laurel Street, California Street, Masonic Avenue, and Euclid Avenue
 - O Approval of a special traffic permit from the Sustainable Streets Division if sidewalk(s) are used for construction staging and pedestrian walkways are constructed in the curb lane(s)
 - o Approval of construction within the public right-of-way (e.g., bulbouts and sidewalk extensions) to ensure consistency with the Better Streets Plan
 - Approval of the placement of bicycle racks on the perimeter sidewalks and within the project site

November 7, 2018 Case No. 2015-014028ENV 3333 California Street Mixed-Use Project

2.107

2. Project Description

- San Francisco Department of Building Inspection
 - o Review and approval of demolition, excavation, and site/building permits
 - o Review and approval of construction permit for non-potable water system
 - O Approval of a permit for nighttime construction if any night construction work is proposed that would result in noise greater than five dBA above ambient noise levels, as applicable.
 - Review and approval of plumbing plans for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Public Utilities Commission
 - o Review and approval of Erosion and Sediment Control Plan, in accordance with article 4.1 of the public works code
 - Review and approval of any changes to sewer laterals (connections to the City sewer system)
 - Review and approval of any changes to existing publicly-owned fire hydrants, water service laterals, water meters, and/or water mains
 - Review and approval of the size and location of new fire, standard, and/or irrigation water service laterals
 - Review and approval of post-construction stormwater design guidelines including a Stormwater Control Plan, in accordance with City's 2016 Stormwater Management Requirements and Design Guidelines
 - o Review and approval of Landscape Plan per the Water Efficient Irrigation Ordinance
 - o Approval of the use of dewatering wells per article 12B of the health code (joint approval by the health department)
 - o Review and approval of documentation for non-potable water reuse system per the Non-potable Water Ordinance
- San Francisco Department of Public Health
 - o Review and approval of Site Mitigation Plan, in accordance with San Francisco Health Code article 22A (Maher Ordinance)
 - Review and approval of a Construction Dust Control Plan, in accordance with San Francisco Health Code article 22B (Construction Dust Control Ordinance)
 - o Approval of the use of dewatering wells per article 12B of the health code (joint approval by the San Francisco Public Utilities Commission)
 - o Review and approval of design and engineering plans for non-potable water reuse system and testing prior to issuance of Permit to Operate

Actions by Other Government Agencies

- Bay Area Air Quality Management District
 - O Approval of any necessary air quality permits for installation, operation, and testing (e.g., Authority to Construct/Permit to Operate) for individual air pollution sources, such as boilers and emergency standby diesel generator
 - Approval of Asbestos Dust Mitigation Plan for construction and grading operations

EXHIBIT C



Block Book Notice

Planning Department 1650 Mission Street Suite 400 San Francisco, CA 94103-9425

T: 415.558.6378 F: 415.558.6409 A complete application is necessary for the Planning Department to process your application. The instructions for this application should be read carefully before the application form is completed to ensure a proper submission.

Planning Department staff are available to advise you in the preparation of this application. Call (415) 558-6377 for further information.

WHAT IS A BLOCK BOOK NOTICE?

A Block Book Notice (BBN) is a request made by a member of the public to be provided notice of permits on any property within the City and County of San Francisco that is subject to the San Francisco Planning Code. Applications that do not require San Francisco Planning Department Review WILL NOT be subject to a BBN (examples include applications for plumbing permits, electrical permits and building permits that do not require Planning Department review). BBNs are intended to provide the requestor notice of applications reviewed by the Planning Department that they may not otherwise receive.

WHEN CAN AN APPLICATION FOR A BLOCK BOOK NOTICE BE FILED?

An application for a BBN may be filed at any time. The Planning Department requires an annual fee for the first Assessor's Parcel, plus an additional fee for each additional parcel included in the same request. While legislation does not allow a fee exemption for any individual or groups, neighborhood organizations (defined as having been in existence for 24-months prior to the request and listed on the Planning Department's neighborhood organization notification list) require an annual fee for the first Assessor's Block, plus an additional fee for each additional block included in the same request. If you are an authorized representative of a neighborhood organization (as defined above), please also include the organization name and your title on this application form.

HOW DOES THE PROCESS WORK?

To file a request for BBN on properties within the City and County of San Francisco and subject to the San Francisco Planning Code please complete the attached Application to Request a Block Book Notice and submit a check in the appropriate amount payable to the San Francisco Planning Department. Those wishing more specific or more detailed information may call 558-6392.

Once an Application is filed on a property, a notice of the application that requires San Francisco Planning Department review is provided to the BBN Requestor. The Planning Department notifies a Requestor under a BBN, or if another notice is otherwise required, the Requestor is also included in the required notice. Please note that should a particular Planning Code Section (e.g. Sections 303, 305, 311, 312) require a notice, the BBN Requestor may not receive notice immediately following submittal of a permit to the Planning Department but rather through notice requirements in accordance with the specific Planning Code Section. The Department is required to hold a permit for 10 days so that the BBN Requestor may review it. The BBN procedure is a notification process only and any individual receiving notice has the options available to any citizen and no more. If the BBN Requestor has a concern regarding approval of the subject permit they may ultimately file a request for Discretionary Review.

If you are submitting a permit that requires
San Francisco Planning Department review and there
is a BBN filed on the subject property, you may ask
the Planning Department at the Planning Information
Center to call the BBN Requestor to determine if they
are willing to waive the notification requirement, in
which case the Planning Department may proceed
without sending a 10 day notice letter. The permit
applicant may also contact the BBN Requestor in
advance or during the 10 day notice period to obtain
their agreement to forego notice where the permit under
consideration is not of concern to them.

If the Requestor does not waive the notice requirement, the permit will be accepted for submittal and internally routed from the Building Department to the Planning Department for staff assignment. It may take a week or more for the routing, assignment and for the planner to be able to send out a notice, based upon their workload. The planner assigned to the case will send a notice to the Requestor indicating they have 10 days from the date of the Planning Department's letter to raise any concerns with the project and/or initiate Discretionary Review.

WHO MAY APPLY FOR A BBN?

Any member of the public may request a BBN on any lot within the City and County of San Francisco that is subject to the San Francisco Planning Code.

INSTRUCTIONS:

Please complete the attached Application to Request a Block Book Notice and submit your request with a check in the appropriate amount payable to the San Francisco Planning Department. Requests may be mailed or delivered to the San Francisco Planning Department, 1650 Mission Street, Ste. 400, San Francisco, CA 94103-2414. Please refer to the Planning Department Fee Schedule available at www.sfplanning.org or at the Planning Information Center (PIC) located at 1660 Mission Street, First Floor, San Francisco. For questions related to the Fee Schedule, please call the PIC at (415) 558-6377. Please note: All returned checks are subject to a \$50.00 bank fee.

CASE NUMBER For Staff Use on

APPLICATION TO REQUEST A Block Book Notice

Applicant Information		
APPLICANTS NAME:		•
MAILING ADDRESS:		
EMAIL:		TELEPHONE:
		()
2. BBN Property Location		
SUBJECT PARCEL ADDRESS		ASSESSORS BLOCK/LOT:
ADDITIONAL BLOCK/LOT(S):		
3. Notification Preference		
Please identify the type(s) of applications reviewer receiving notification (check all that apply):	d by the Planning Departi	ment for which you are interested in
☐ All Building Permit Applications (interior and	d exterior)	•
☐ Any Exterior Work (windows, garage doors	horizontal and vertical ad	iditions)
☐ Horizontal and / or Vertical Additions	•	
☐ Changes of Use		
☐ Conditional Use and Variance		
Other:		
4. Payment		
,	First Assessor's Parc	eel: \$
Additional Parcels: No. of Parcels x	\$	= \$,
	Total Enclos	sed: \$
Requestor Signature:		Date:

FOR MORE INFOOMATION: Call or visit the San Francisco Planning Daplotnesi

Central Reception 1650 Mission Street, Suite 400 San Francisco CA 94103-2479

TEL: **415.558.6378** FAX: **415.558.6409**

WEB: http://www.sfplanning.org

Planning Information Center (PIC) 1660 Mission Street, First Floor San Francisco CA 94103-2479

TEL: 415.558.6377

Planning staff are available by phone and at the PIC counter. No appointment is necessary.

EXHIBIT D

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

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Fireman's Fund Insurance Company	San Francisco, CA
Name of Property	County and State
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Service Building	
Landscape	

SETTING

The Fireman's Fund Home Office property is located in a central area of the north half of the City of San Francisco near the intersection of two principal streets, California and Presidio. The property occupies almost all of a large irregular block bound by California Street on the north, (continuing clockwise) Presidio Avenue on the east, Masonic Avenue on the southeast, Euclid Avenue on the south, and Laurel Street (in straight and curved sections) on the west. Fireman's Fund occupies about 10.2 acres – the entire block except for a small triangular parcel at the corner of California and Presidio. (See Map 1 and Map 4)

The site itself slopes down from about 300 feet in elevation in the southwest corner to about 225 feet in the northeast corner. It is part of a cluster of low hills associated with Lone Mountain whose several high points were developed as cemeteries in the nineteenth century. The Fireman's Fund site was previously a portion of the Laurel Hill Cemetery, and was long recognized for its views. Today there are distant views from the property to the southeast and downtown, to the northwest and a partial view of the Golden Gate Bridge, and to the west into the Richmond District.

The property is surrounded on all sides by thoroughly developed parts of the City of San Francisco. The site itself is at a junction of several different historical developments. To the east and north, the streets are laid out in a modified extension of the original grid of the city. Across Presidio Avenue on the east the neighborhood is called the Western Addition, characterized by a mix of middle-class homes built in the nineteenth century, and by flats and apartments built in the years after the earthquake and fire of 1906. To the north, Presidio Avenue is the dividing line between two of San Francisco's wealthiest late-nineteenth- and early twentieth-century neighborhoods, Pacific Heights to the east and Presidio Heights to the west. To the west along California Street is Laurel Village, a post-World War II strip shopping center. To the west and south is Laurel Heights, a post-World War II residential development of houses and apartments. To the southeast across Masonic Avenue is Station 10 of the San Francisco Fire Department.

BUILDINGS

There are two buildings on the Fireman's Fund property. The Office Building, which is by far the larger of the two and is sometimes referred to as the main building, is located in the center of the property and is surrounded by lawns, gardens, and landscaped parking lots. The Service Building, referred to as the Annex since 1985 under a new owner, is a relatively small structure located at the northwest corner of the property. Although different in size and function, the two

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.

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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

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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

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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).

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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."

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 [}bid., 44.

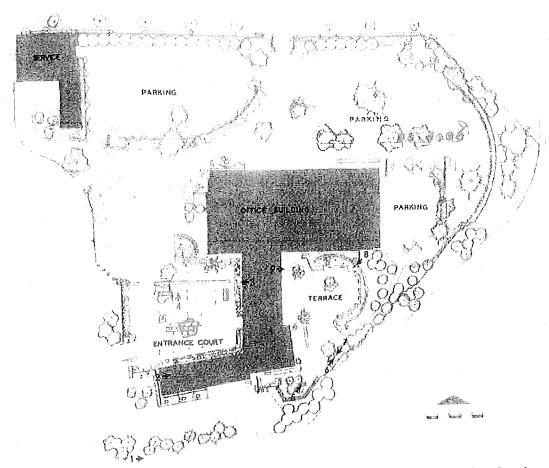
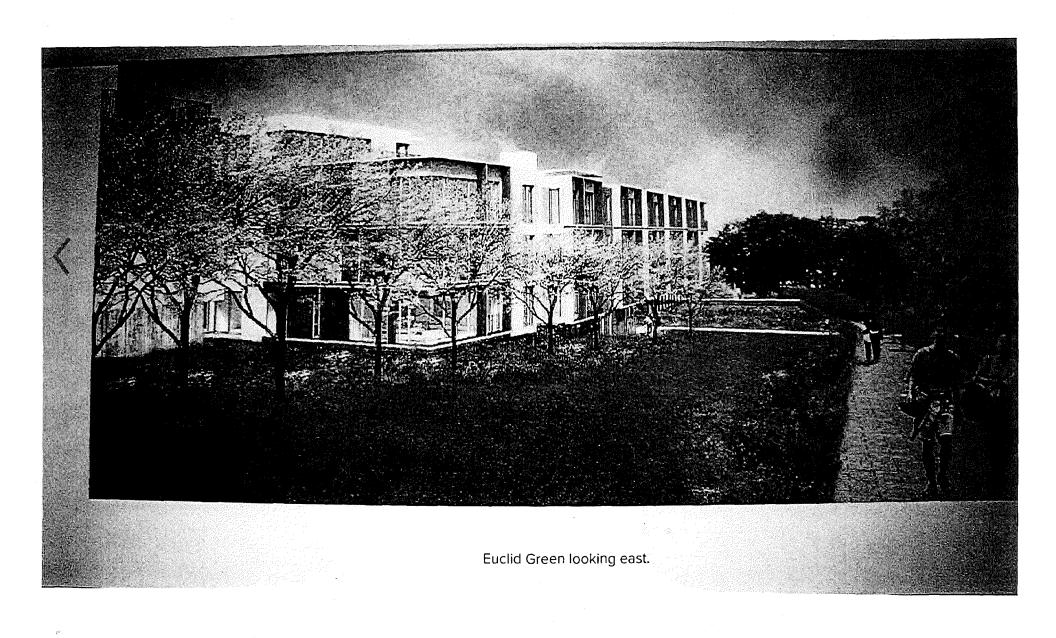
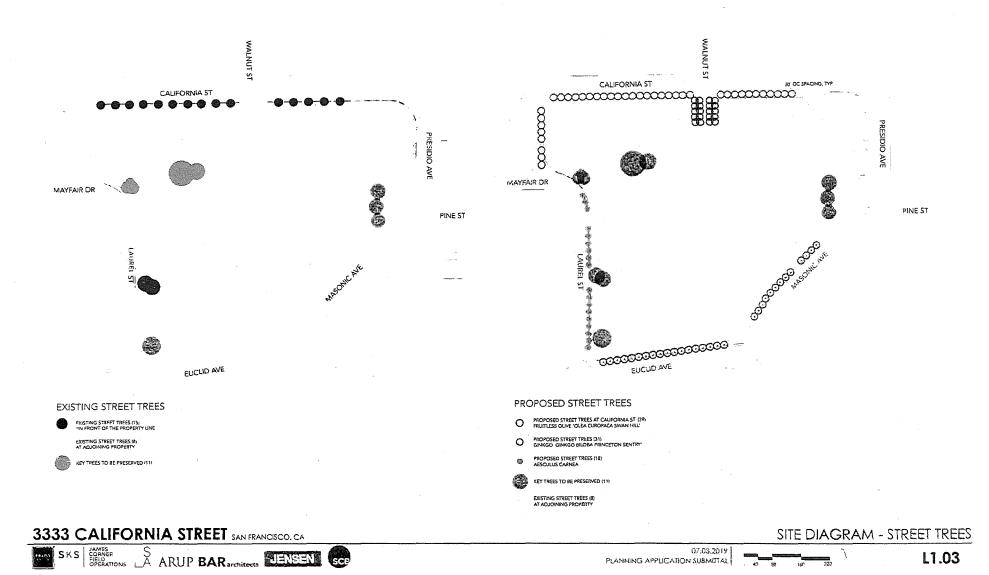


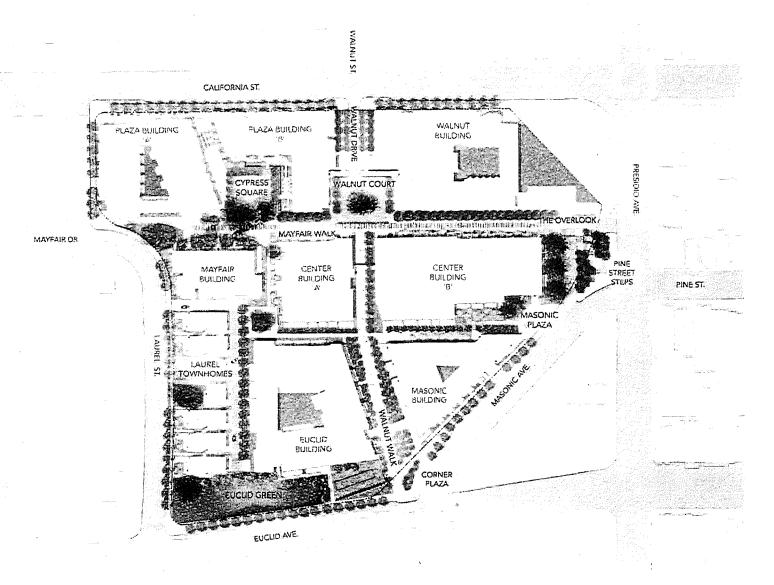
Figure 2. Site Plan showing features ca. 1957–1963. Source: Garrett Eckbo, *Urban Landscape Design*, 1964

EXHIBIT E





PLANNING APPLICATION SUBMITTAL



3333 CALIFORNIA STREET SAN FRANCISCO CA

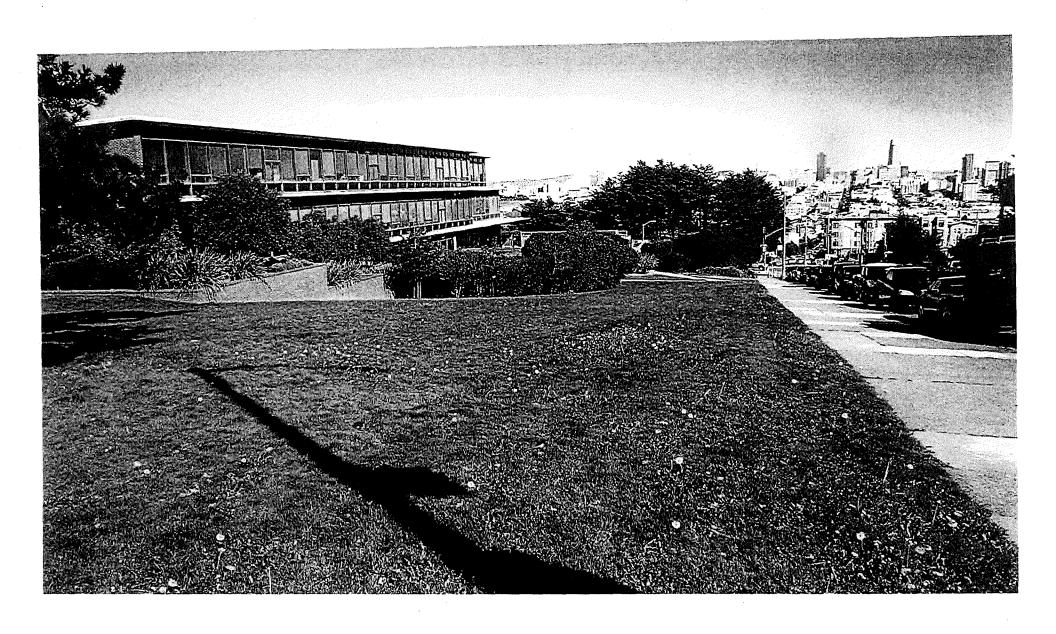
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VAR.04

EXHIBIT F







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

Kathiya 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) 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 Deveneenze

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

EXHIBIT A

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

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SETTING	6
BUILDINGS Office Building Plan Structure, Materials, and Mechanical Systems Architecture Service Building	6 7 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	1111121212
INTEGRITY Buildings Landscape Combined Buildings and Landscape	16

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National Park Service / National Regis.... of Historic Places Registration Form
NPS Form 10-900

OMB No. 1024 0018

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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

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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

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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

Section 7 page 18

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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).

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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 fbid , 34.

¹⁰⁵ Ibid., 44.

Fireman's Fund Insurance Company Name of Property

San Francisco, CA County and State

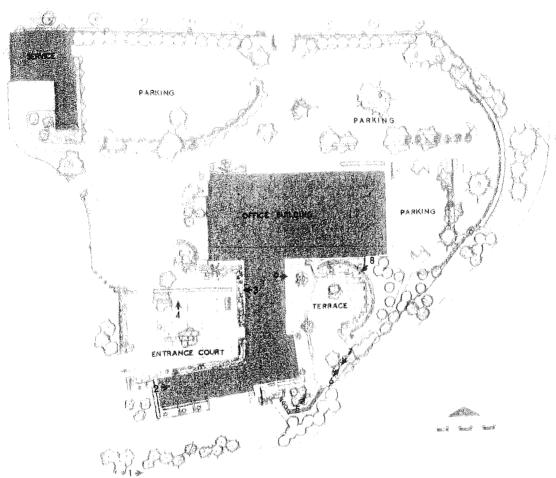


Figure 2. Site Plan showing features ca. 1957–1963. Source: Garrett Eckbo, *Urban Landscape Design*, 1964

EXHIBIT B

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.

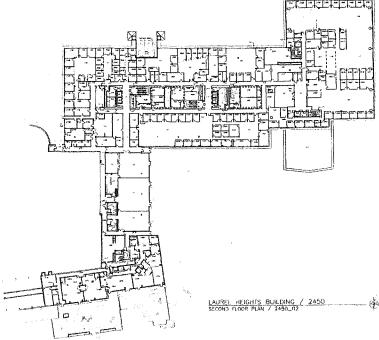


Figure 1. The red dashed boxes identify proposed location of light courts in the Preservation Alternative and Community Variant.

- 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.

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						2-Bed	900 1.450	40 17	36,000 24,650	2-Bed 3-Bed	1,300	47 42,300 14 18,200								
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Average Unit SF:	809 NSF		Average Unit SF:	733 NSF		TOTAL	70	118	95,975	TOTAL	7,-00	228 167,825								
							24	NAME OF THE PARTY	96 to the serve like											
HISTORIC MAIN BUILDING - POR	TICO RETAINED (BASE)		HISTORIC MAIN BUILDING - PORTIC	O RETAINED (VARIANT)		Full Preserva	tion Unit B	reakdown			Variant Uni	t Breakdown								
Floor Plate Area:	SF		Floor Plate Area:	SF		Total NSF:			253,610	Total NSF:		253,610								
Number of Floors	Floors		Number of Floors:	Floors		Total # Units.			292	Total # Unit:	S:	340								
Total Gross SF	362,300 SF	drawings A6.00	Total Gross SF:	362,300 SF					Territ		SE	Units Total								
				2.75		lunio-	<u>SF</u> 550	<u>Units</u>	<u>Total</u> 5,500	Junior	5 <u>1</u> 0	10 5,100								
Efficiency Factor	0.70		Efficiency Factor:	0.70		Junior 1-Bea	650	145	94,250	1-Bed	600	204 122,400								
Total NSF:	253,610 NSF		Total NSF:	253,610 NSF		2-Bed	1,000	97	97,000	2-Bed	900	92 82,800								
			Community Variant Unit # Total:	340		3-8ed	1,410	40	56,400	3-Bed	1,275	34 43,350								
Full Preservation Unit # Total	292 869 NSF		Average Unit SF:	746 NSF		4-Bed	-,			4-Bed		0								
Average Unit SF:	909 N2F		Average offic ar.	7.70 1.51		TOTAL	7	292	253,150	TOTAL	39	340 253,650								
BASE			VARIANT																	
Proposed Project Unit Count	Preservation Alternative	Unit Count	Proposed Project Unit Count	Preservation Alternat																
Junior 27	Junior 21	7	Junior 27	Junior	27															
1-Bed 207	1-Bed 20		1-Bed 392		392															
2-Bed 194	2-Bed 194		2-8ed 195		195 103															
3-Bed 103	3-8ed 10	-	3-Bed 103 4-Bed 27	3-Bed 4-Bed	27															
4-Bed 27	4-Bed 2 Total 55		4-Bed 27 Total 744		744															
Total S58	Total 55	8	1000 /444																	

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Exhabit

FIREMAN'S FUND INSURANCE COMPANY

3333 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA

FRED H. MERRILL
PRESIDENT

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,

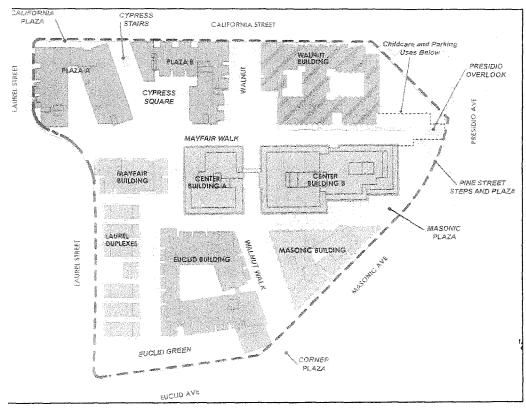
Fred H. Merrill

President

EXHIBIT C

Developers Variant 7/3/2019

Community Preservation Lookalike Variant



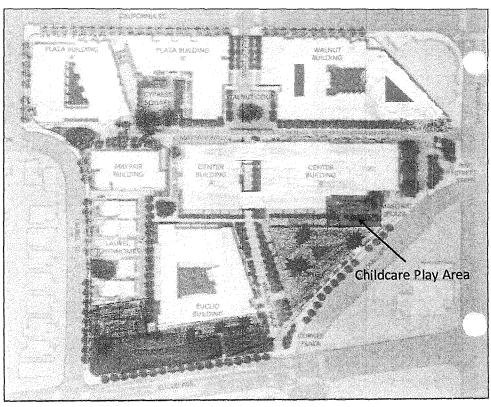


EXHIBIT D

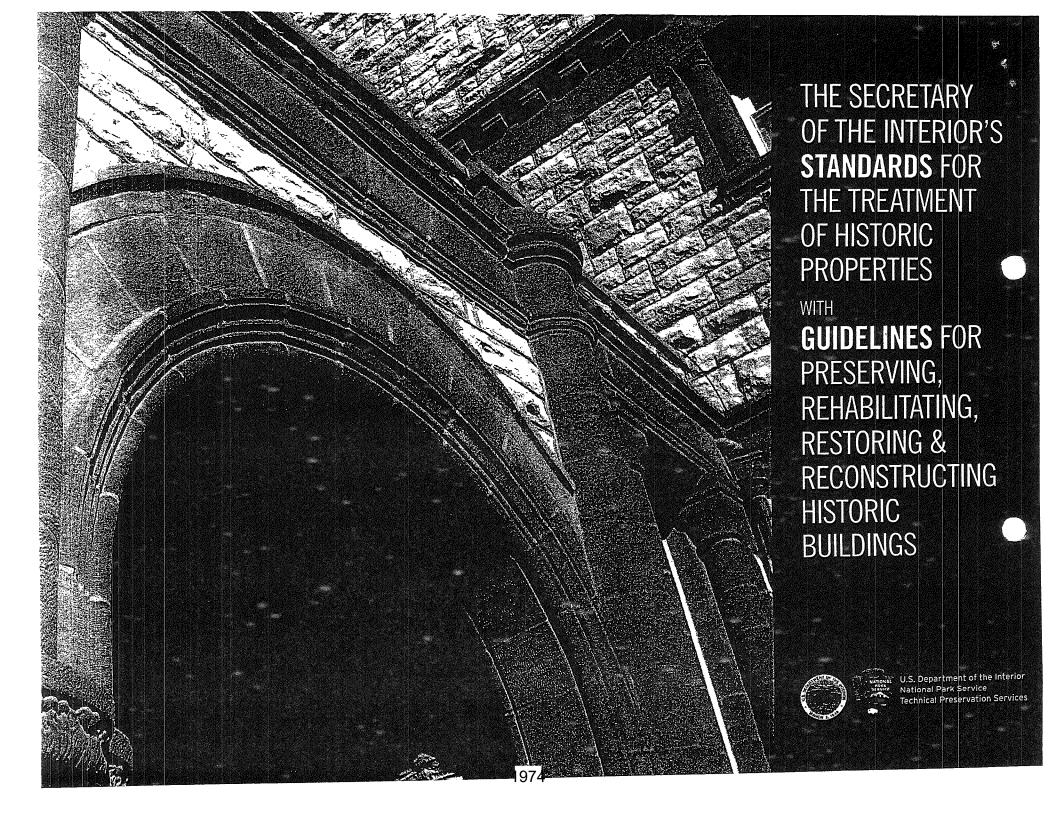
IMPACT OF PSKS 3333 DEVELOPMENT PLAN ON LAUREL VILLAGE

- 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

EXHIBIT E



NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

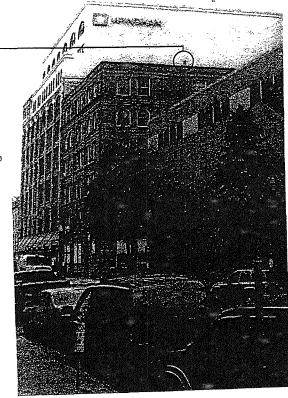
NOT RECOMMENDED

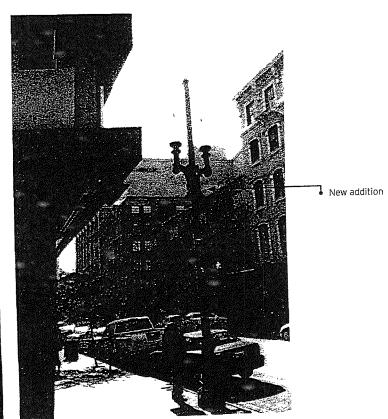
Rooftop Additions

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.

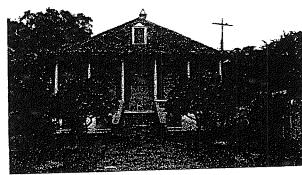
Locating new construction far enough away from the historic building, when possible, where it will be minimally visible and will not negatively affect the building's character, the site, or setting.

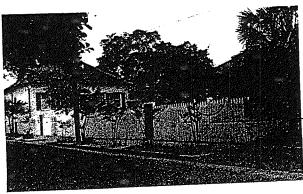
Adding a new building to a historic site or property when the project requirements could be accommodated within the existing structure or structures.

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

Katheyn Derwenzi

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

EXHIBIT A

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 1984

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

<mjins/@compast net>; Richard Frisbie <irfoeagle@gmail.com>

[Quoted text hidden]

EXHIBIT B

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 <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

the cured event of default shall terminate.

11. AMENDMENT; TERMINATION; EXTENSION OF TERM

- 11.1 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

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. <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 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

EXHIBIT C

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.

L			s Partners LLC mited liability company
	Ву:	a Delawa	fornia LP, re limited partnership, ring member
		a Dela	PSKS LH LLC, ware limited liability company, heral partner
		Ву:	Prado LH LLC, a California limited liability company, its managing member
			By:
			By:
STATE OF CALIFORNIA)) ss.)	,	
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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 STrut

APN: Block 1032, Lot 003 CTC ESC #15604460-TR 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. Saffer

APN: Lot 003, Block 1032

(Space above this line for Recorder's use)

Address: 3333 California Street, San Francisco, CA

CTC ELL #15604930 - TE/JM

GRANT DEED

The Documentary Transfer Tax is: \$12,090,00 ·

Unincorporated

☐ Computed on full value of property conveyed.
 ☐ Computed on full value less liens and encumbrances assumed.
 ☐ City of San Francisco

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]

pa-1838076

IN WITNESS WHEREOF, the Grantor 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, Lyla 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 feregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

LEYLA KHAFELMAN
Commission @ 2117278
Notary Public - California
San Francisco Gounty
My Comm. Expires Jun 28, 2019

ps-1838076

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

EXHIBIT D



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

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also voiced by his pre essor, Bevan Dufty, who said, "They've be 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,

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Senior Director of De pment: "We recently met with Duboce T gle 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."



EXHIBIT E



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 serpiopraffordable 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.

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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.

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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.

ıld the new Special Use District

If the Developer terminates the Doopment Agreement under this provision, 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 20 th 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.

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RESIDENTIAL APARTMENTS / CONDOMINIUMS AND WALNUT SENIOR HOUSING

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	Fotal Development Costs Market Rate Units	\$	188.9M	\$	78.2M	\$ 95.2M	\$ 252.6M	\$	106.3M	\$ 100.9M	9	113.2M	\$	60.1M	\$	52.1M	\$	47.5M
	Market Rate Units BMR Units - 15% AMI		139 0		57 0	51 0	139		67	61		1		14		30		 559
	BMR Units - 50% AMI		0		ō	0	0		0	0		23 51		0		0		23 51
,	BMR Units - 60% AMI BMR Units - 80% AMI		0		0	0	0		0	0		74		0		0		74
25.) T	Total Units		139		57	51	139	+	67	0 61	╁	37 186		0 14		0	<u> </u>	 37
					L							100		14		30		744

^{***} All financial and programmatic estimates are preliminary in nature, subject to change, and for illustrative purposes only. *** Notes:

^[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.

EXHIBIT F

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.

1	(c) Use of Fees. MOHCD shall designate and separately account for all fees that it
2	receives under this Section. The funds shall be used exclusively to acquire and construct a 100%
3	affordable housing building on a site located within Supervisorial District 2, as it exists as of the date
4	of the effective date of this Ordinance XXX.
5	(2) On-site Inclusionary Units. On-site units pursuant to Section 415.6 in the following
6	amounts and income levels:
7	(a) In a rental project, at least 10% of units must be affordable to very low-
8	income households, at least 4% must be affordable to low-income households, at least 4%
9	must be affordable to moderate-income households and at least 5% must be affordable to
10	middle-income households. For purposes of this section, rental units for very low-income
11	households shall have an affordable rent set at 55% of Area Median Income or less, with
12	households earning up to 65% of Area Median Income eligible to apply for very low-income
13	units. For purposes of this section, rental units for low-income households shall have an
14	affordable rent set at 80% of Area Median Income or less, with households earning up from
15	65% to 90% of Area Median Income eligible to apply for low-income units. For purposes of
16	this section, rental units for moderate-income households shall have an affordable rent set at
17	110% of Area Median Income or less, with households earning from 90% to 120% of Area
18	Median Income eligible to apply for moderate-income units. For purposes of this section,
19	rental units for middle-income households shall have an affordable rent set at 120% of Area
20	Median Income or less, with households earning from 120% to 140% of Area Median Income
21	eligible to apply for middle-income units. For any affordable units with rental rates set at 110%
22	of Area Median Income or above, the units shall have a minimum occupancy of two persons.
23	(2) (b) In an ownership project, at least 11% of units must be affordable to very
24	low-income households, at least 5% must be affordable to low-income households, at least
25	5% must be affordable to moderate income households and at least 5% must be affordable

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	е
or less, with households earning up to 100% of Area Median Income eligible to apply for ve	ery
low-income units. For purposes of this section, ownership units for low-income households	3
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 househo	lds
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 le	SS,
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 Media	ın
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

1	the official title of the ordinance.
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3	
4	
5	APPROVED AS TO FORM:
6	DENNIS J. HERRERA, City Attorney
7	Ву:
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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

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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

From:

Zarin Randeria <zranderia@sbcglobal.net>

Sent:

Wednesday, October 16, 2019 11:23 PM

To:

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

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,

From: Anne Harvey <annetharvey@hotmail.com>
Sent: Wednesday, October 16, 2019 5:01 PM

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

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 10plus 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

Kathup Devicenze

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

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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

Kathup Devencenzi

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

EXHIBIT A

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 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.

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

<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 <johnrothmann2@yahoc.com>; Dan Kingsley <dkingsley@sksre.com>

Cc: Kathy Devincenzi krdevincenzi@gmail.com; Catherine Carr catherine Carr krdevincenzi@gmail.com; M.J. Thomas

<mijosi@compast.net>; Richard Frisbie <irfoeagle@gmail.com>

[Quoted text hidden]

EXHIBIT B

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 <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

2. EFFECTIVE DATE; TERM

Exhibit I.

- 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 <u>Termination and Vesting</u>. 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. <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. <u>Housing Entity</u>. 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

EXHIBIT C

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:	Laurel Heights Partners LLC a Delaware limited liability company By: 3333 California LP, a Delaware limited partnership, its managing member		
	a Del	PSKS LH LLC, laware limited liability company, eneral 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)	i.		
to me that he/she/they executed the same	e in his/her/the ent the person(, a Notary Public, personally to me on the basis of satisfactory evidence the within instrument and acknowledged authorized capacity(ies), and that by (s), or the entity upon behalf of which the	
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.			
WITNESS my hand and official seal.			
Signature of Notary Public			

Exhibit B – Page 3

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 Strut APN: Block 1032, Lot 003 CTC ESC #15604980-TR

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:

- 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.
- The Loan is evidenced by that certain Promissory Note Secured By Deed of Trust dated March 11, 2015 (as amended, the "Note").
- 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").
- 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).
- 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").

Lean 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 - TK/ 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]

pa-1838076

IN WITNESS WHEREOF, the Grantor has executed this Grant Doed 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, deyla 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 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 ø 2117278 Notsry Public - California San Fransisco County My Comm. Expiras Jun 26, 2019

ра-1838076

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

EXHIBIT D



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 reut 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 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

info@48hills.org

EXHIBIT E



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

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3333 California Summary - 8-23-19.pdf

. DE 1888 i Servitado tras attri i estatis, en aproduci estatuario especia i antinggarando un estata appezo en isio esta especia

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

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Water Williams											
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

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4.)	Unlevered IRR		5.0%		4.8%	1	4.8%	1	4.2%	1		46.4%			5.7%
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7.)	Net Operating Income	\$	8.2M	S	3.3M	NA NA	NA NA	4	4.2 % 4.5M	\$ 4.2M	NA NA	NA NA	NA NA	•	NA 20.2M
8.)	Total Development Costs	\$	188.9M	\$	78.2M		\$ 252.6M	\$	106.3M	\$ 100.9M	\$ 113.2M	\$ 60.1M	\$ 52.1M	\$	1,047.5M
9.)	Market Rate/Mgr Units		139		57	51	139		67	61	1	14	30		559
10.)	BMR Units - 15% AMI		0		0	0	0		0	0	. 23	0	0		23
11.)	BMR Units - 50% AMI	ĺ	0		0	0	0		0	0	51	0	0		51
12.)	BMR Units - 60% AMI	,	0		0	0	0]	0	0	74	0			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

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15.)	Unlevered IRR		5.7%		5.5%	6.0%	4.8%	4.9%	5.0%	NA	46.4%	20.3%		6.2%
16.)	Levered IRR		6.2%	1	5.8%	5.8%	4.1%	4.6%	í	1			-	6.7%
17.)	Trended Return-On-Cost	-	4.3%		4.2%	NA	. NA	4.2%	1		1	NA NA		NA
18.)	Net Operating Income	\$	8.2M	\$	3.3M	NA	NA	\$ 4.5M	\$ 4.2M		1			
19.)	Total Development Costs	\$	188.9M	\$	78.2M	\$ 95.2M	\$ 252.6M	\$ 106.3M	\$ 4.2M \$ 100.9M	NA \$ 113.2M	NA COTA	NA	\$	20.2M
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	Market Rate Units		139		57	51	139	67	61	1	14	30		559
21.)	BMR Units - 15% AMI		0		0	0	0	0	0	23	0	0		23
22.)	BMR Units - 50% AMI		0		0	0	0	0	0	51	0	١	İ	51
23.)	BMR Units - 60% AMI		0		0	0	0	1 0	0	74	1			74
24.)	BMR Units - 80% AMI		0		0	0	0	0	0	37	0	0		
25.)	Total Units		139		57	51	139	67	61	186	11	0	<u> </u>	37
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^{***} 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.

EXHBIT F

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. 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) On-site Inclusionary Units. On-site units pursuant to Section 415.6 in the following

g amounts and income levels:

(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 to moderate income households and at least 5% must be affordable

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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

1	the official title of the ordinance.
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5	APPROVED AS TO FORM:
6	DENNIS J. HERRERA, City Attorney
7	Ву:
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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

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

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

From:

Barbara Cohrssen <sfbarb@mcn.org>

Sent:

Wednesday, October 16, 2019 3:05 PM

To:

Major, Erica (BOS)

Subject:

3333 California Street

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Barbara Cohrssen 2970 Pine Street

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: Attachments: October 21, 2019 BOS Land Use and Transportation Committee

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 Deveneenie

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

EXHIBIT A

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

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SETTING	б
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United States Department of the Interior
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NPS Form 10-900
OMB No. 1024 0018

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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

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United States Department of the Interior
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NPS Form 10-900
OMB No. 1024,0018

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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

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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

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United States Department of the Interior National Park Service / National Register of Historic Places Registration Form NPS Form 10-900 OMB No 1024-0018

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Name of Property

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, customdesigned 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).

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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."

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." 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

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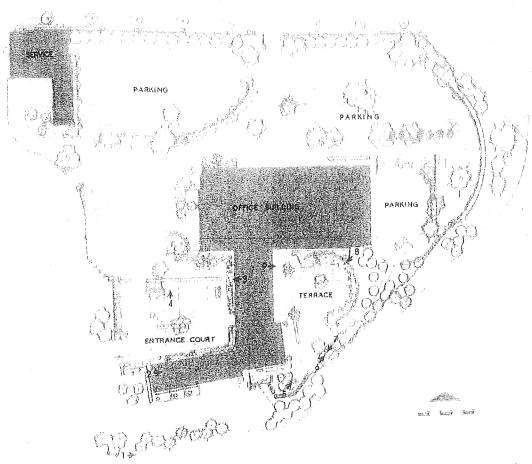


Figure 2. Site Plan showing features ca. 1957-1963. Source: Garrett Eckbo, *Urban Landscape Design*, 1964

Sections 9 and page 87

EXHIBIT B

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.

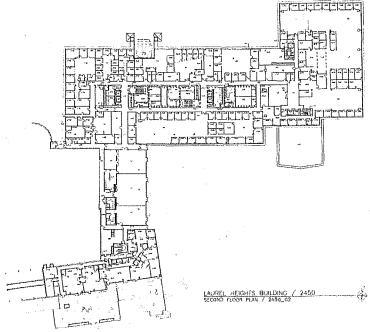


Figure 1. The red dashed boxes identify proposed location of light courts in the Preservation Alternative and Community Variant.

treanorhl.com

- 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.

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Total Gross SF	77,172 SF		Total Gross SF	77,172 SF		74-0711 07114	-					***						
	,						SF -	Units	Total		SE	Units Total		5E	Units Total		SF	Units Total
Efficiency Factor	0.75	0.85	Efficiency Factor:	0.75	0.85	Junior			No.	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
70107110	21,221.2.4		1000	37,073 01	40,550 01	2-Bed	896	20		2-Bed	896	15 13,440	2-Bed	1,000	20 20,000	2-Bed	925	15 13,875
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Average Unit SF:	1,113 SF	1,261 SF	Average Unit SF:	965 SF	1,093 SF	4-Bed	••		- ,	4-Bed	2,000	7 14,000	4-Bed			4-Bed	2,000	7 . 14,000
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ine, Kind Meeting 7/4/64

Expeditor

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,

End, red meet 114164

-2-

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

EXHIBIT C

Developers Variant 7/3/2019

CALIFORNIA PLAZA CYPRESS STAIRS CAUFORNIA STREET Uses Below PRESIDIO OVERLOOK CYPRESS SQUARE MAYFAIR WALK MAYFAIR BUILDING CENTER! PINE STREET STEPS AND PLAZA LAUREL DUPLEXES PLAZA MASONIC BUILDING EUCLIO BUILDING PLAZE EUCLID AVE

Community Preservation Lookalike Variant

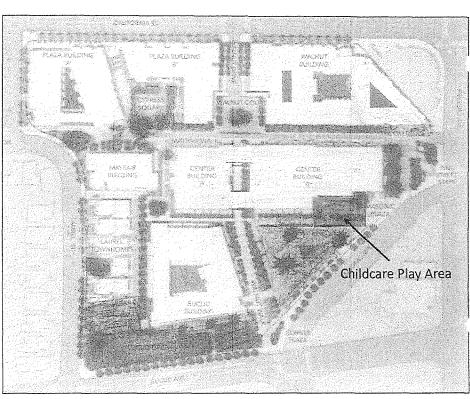


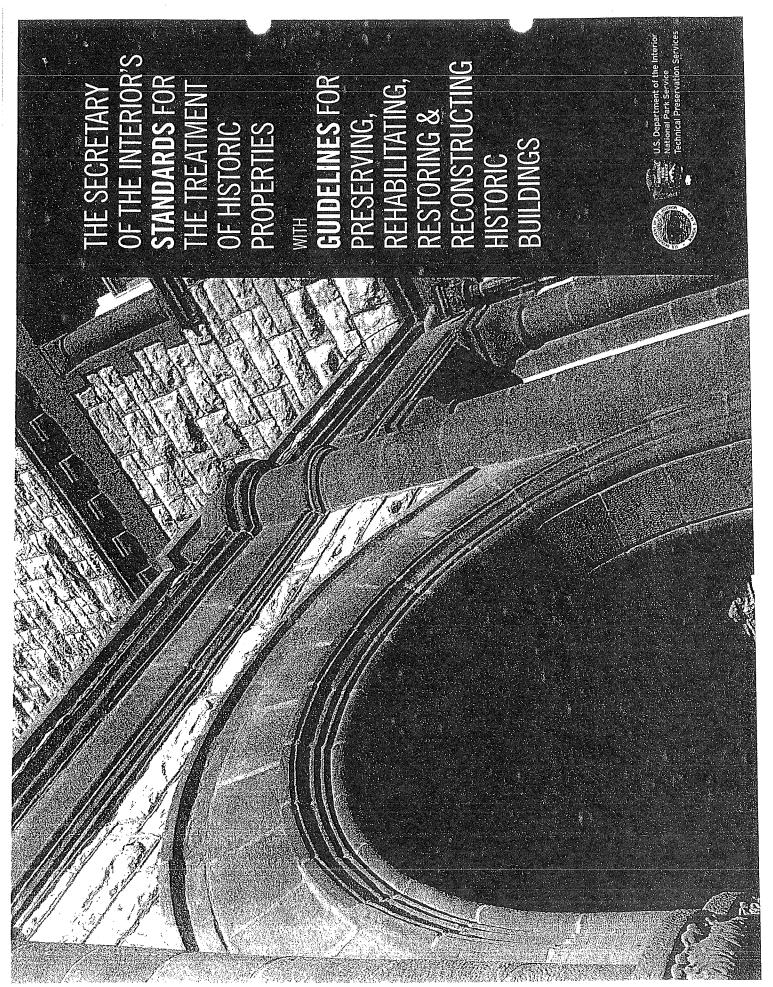
EXHIBIT D

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.

TU	. Bryan's and Cal Mart are unique and iconic stores t	hat serve Customers from all parts of the city. The
	loss of one or both would immeasurably impoveris	h the surrounding neighborhoods.
	Ronald Hismpsoli	
	James Company	

EXHIBIT E



NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

RECOMMENDED

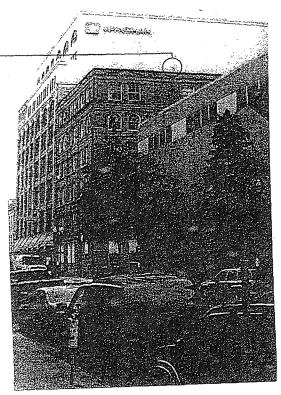
NOT RECOMMENDED

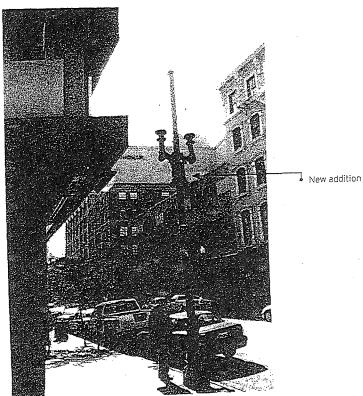
Rooftop Additions

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.





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NEW EXTERIOR ADDITIONS TO HISTORIC BUILDINGS AND RELATED NEW CONSTRUCTION

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

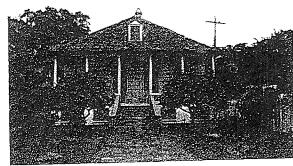
Adding a new building to a historic site or property only if the requirements for a new or continuing use cannot be accommodated within the existing structure or structures.

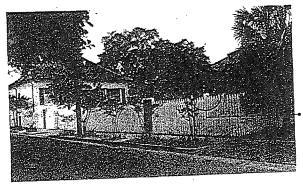
Locating new construction far enough away from the historic building, when possible, where it will be minimally visible and will not negatively affect the building's character, the site, or setting. Adding a new building to a historic site or property when the project requirements could be accommodated 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

161

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)

Attachments:

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

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

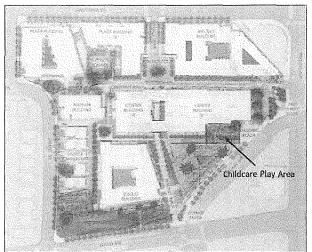
Community Preservation Lookalike Variant or Community Full Preservation Alternative Variant 2.

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



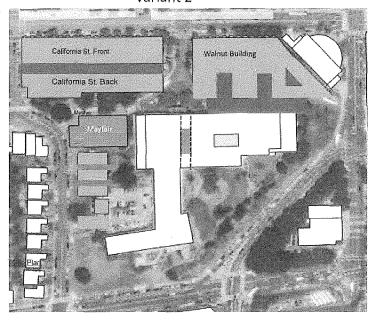


One can easily see that the Community Lookalike Variant follows the Developer's Variant closely while still retaining key characteristics sought be the Community.

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.

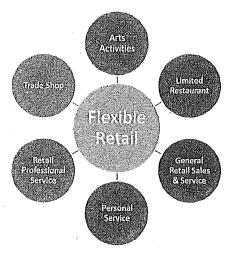
Español: Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 415.575.9010. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder

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.

PAGE 1. PLANNING APPLICATION - FLEXIBLE RETAIL SCREENING FORM AND APPLICANT

Member, Board of Supervisors District 4



City and County of San Francisco

KATY TANG

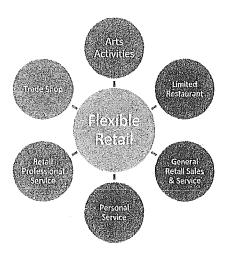
Flexible Retail Legislation

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:
 - 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.



City Hall 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco, California 94102-4689 (415) 554-7460 TDD/TTY (415) 554-5227 E-mail: Katy.Tang@sfgov.org www.sfbos.org/Tang

MEC 713. NC-S - NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT.

Table 713. NEIGHBORHOOD COMMERCIAL SHOPPING CENTER DISTRICT NC-S

ZONING CONTROL TABLE

Zoning Calagony STOCKE OF FEMALES OF F Banonishberhoussark haeminished Entertainment, Arts and § 102 NP NP NP Recreation Uses* С NP Amusement Game Arcade § 102 NP § 102 NP(6) NP(7)NP(7) Arts Activities C C NP Cannabis Retail §§ 102, 202.2(a)

(6) P in the geographic area described as Flexible Retail Zones in Section 202.9.

NP (6)

NP

\$ 102

(7) C in the geographic area described as Flexible Retail Zones in Section 202.9.

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Flexible Retail

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Supervisors Tang, Safai, Fewer, Brown, and Cohen-BOARD OF SUPERVISORS

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SEC. 724. SACRAME	NTO STREET NEIGHBO	RHOOD (OMMERC	IAL DISTRI
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	ZONING CONTROL T.	ABLE		
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Zoning Category	\$ References		Conno	ls 🦠
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Silesind Simpellsection	900W			
* * * *				
Cannabis Retail	§§ 102, 202.2(a)	C	C	NP
Flexible Retail	<u>§ 102</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>
* * * *				
* * * *				
SEC. 725. UNION ST	REET NEIGHBORHOOD	COMME	RCIAL DIS	TRICT.
SEC. 725. UNION STR	REET NEIGHBORHOOD	COMME	RCIAL DIS	TRICT.
* * * *	REET NEIGHBORHOOD			

:: Zonng Category. SiReferences: Controls :: Noneresidential strandards and uses:

ZONING CONTROL TABLE

Supervisors Tang; Safai, Fewer, Brown, and Cohen BOARD OF SUPERVISORS

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Sales and Service Use Category		기 기 기 기 기 기 기 기 기 기 기 기 기 기 기 기 기 기 기		
* * * *				
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>
* * * *				

SEC. 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

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Table 760. FILLMORE STREET NEIGHBORHOOD COMMERCIAL TRANSIT

DISTRICT ZONING CONTROL TABLE

Zoning Category	§ References		Contro	olle
NON-RESIDENTIAL STANDAR	RDS AND USES			
* * * *				
Sales and Service Use Catego	ıry			Fig. 1.
* * * *				
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>
* * * *				

Supervisors Tang; Safai BOARD OF SUPERVISORS

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

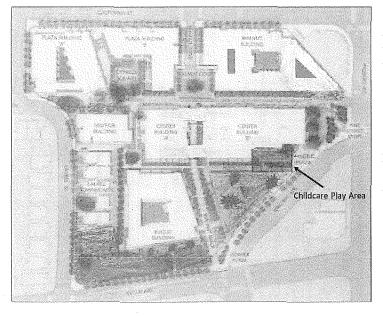
OVERVIEW

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	
LaurelTownhomes	55,300	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 GSP	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

4

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.

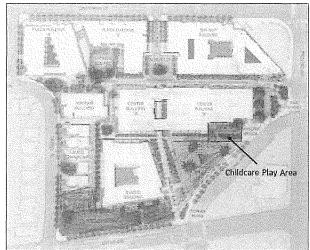
To this day, these green spaces are used by families, friends, children, moon-watchers, etc. The historically green space is preserved by modifying the south side of the Euclid Building (removing 30 ft.) and eliminating two Laurel St. townhomes at the top of Laurel St. as noted above.

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

Community Full

Preservation

Alternative

Variant 2

Residential GSF

N/A

N/A

34,935 46,680

120,000

76,952

336,350

371,734

986,653

N/A

N/A

83,505

184,170

55,300

46,680

66,755

72,035

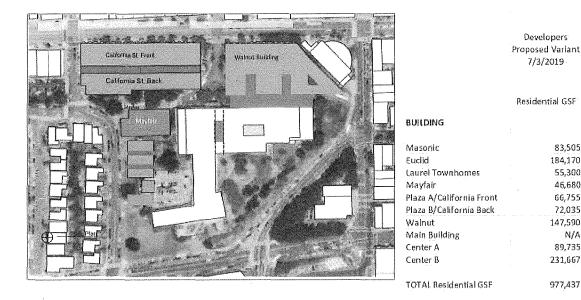
147,590

89.735

231,667

977,437

N/A



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.

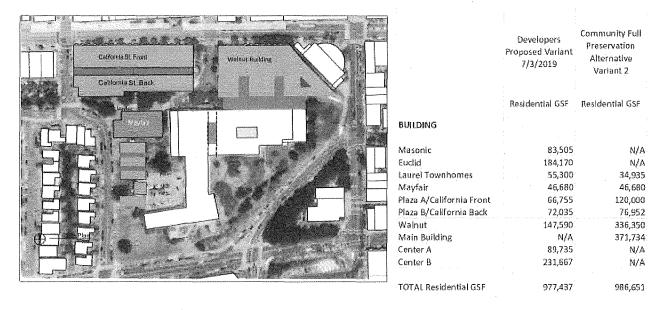
The Community Full Preservation Alternative Variant 2 would:

- (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

October 14, 2019

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).

"Flexible Retail Legislation" File 180806 under Katy Tang was drafted principally as a permitted use in **District 4**.

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 <u>95 will be BMR</u>.

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

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

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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.

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Angela Calvillo, Clerk of the Board

By: Erica Major, Assistant Clerk

Land Use and Transportation Committee

John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
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BOARD of SUPERVISORS



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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
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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.

Angela Calvillo, Clerk of the Board

DATED/PUBLISHED/MAILED/POSTED: October 11, 2

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 9/3/1005:39pm

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
Please check the appropriate boxes. The proposed legislation should be forwarded to the following:
☐ 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 Form.
Sponsor(s):
Stefani
Subject:
Development Agreement - Laurel Heights Partners, LLC - 3333 California Street Project - California Street at Presidio Avenue
The text is listed:
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
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Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOATO OF SUPERVISOR -SAM FLAMOISOO 2019 Pime stamp or meeting date

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5. City Attorney Request.	
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	mmission
Note: For the Imperative Agenda (a resolution not on the printed agenda), use the I	mperative Form.
Sponsor(s):	
Stefani	
Subject:	
Development Agreement – Laurel Heights Partners, LLC – 3333 California Street Proje Presidio Avenue	ect – California Street at
The text is listed:	
Ordinance approving a Development Agreement between the City and County of San Francers, LLC, a Delaware limited liability company, for the development of an approximate California Street at Presidio Avenue, with various public benefits, including 25% afforcenter comprised of approximately 14,690 square feet, and approximately 4.47 acres of under the California Environmental Quality Act, findings of conformity with the City's eight priority policies of Planning Code, Section 101.1(b); approving certain development and waiving certain Planning Code fees and requirements; and confirming compliance we provisions of Administrative Code, Chapter 56, and ratifying certain actions taken in confirming compliance was accounted to the confirming compliance was accounted to the complex confirming compliance was accounted to the confirming confirming compliance was accounted to the confirming confirming compliance was accounted to the confirming confirmin	mately 10.25-acre site located ordable housing, a child care open space; making findings General Plan, and with the ent impact fees for the Project with or waiving certain
Signature of Sponsoring Supervisor:	2