DRAFT 3/4/11

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OF THE CITY AND COUNTY OF SAN FRANCISCO

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

AND WHEN RECORDED MAIL TO:

Gloria L. Young
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 PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARKMERCED INVESTORS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE PARKMERCED DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this _____ day of _____, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and PARKMERCED INVESTORS, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the San Francisco Administrative Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Determination of Public Benefits. The City has determined that as a result of the development of the Project Site in accordance with this Agreement, the Basic Approvals and the Implementing Approvals, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. These public benefits to be provided by Developer at its cost include, without limitation:

A.1 One-for-one replacement of 1,538 rent-controlled dwelling units currently existing on the Project Site that will be demolished by Developer as part of the Project (the "**Existing Units**") with new rent-controlled units (*i.e.*, units that are subject to the provisions of the San Francisco Rent Ordinance), each with the same or greater number of bedrooms and bathrooms as the Existing Unit being replaced (each, a "**Replacement Unit**" and collectively, the "**Replacement Units**"). Although none of the Existing Units have a washing machine or dryer, each Replacement Unit will have a washing machine, a dryer and a dish washer installed by Developer before occupancy. All Existing Tenants shall be entitled to relocate to a Replacement Unit of approximately similar or greater size and with the same or greater number of bedrooms and bathrooms as their Existing Unit in the manner further described in Article 4 of this Agreement;

A.2 The non-applicability of certain provisions of the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 *et seq.*; the "**Costa-Hawkins Act**"), and Developer's waiver of any and all rights under the Costa-Hawkins Act and the Ellis Act (California Government Code section 7060 et seq.; the "**Ellis Act**") and any other laws or regulations so that (i) each Replacement Unit will be subject to rent control and other provisions protecting tenants under the City's Rent Ordinance, and (ii) each BMR Unit will be subject to the City's BMR Unit requirements as set forth in Planning Code section 415;

A.3 Relocation by Developer of Existing Tenants from their Existing Units to the Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the Existing Tenant for his or her Existing Unit at the time of relocation to the Replacement Unit, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the San Francisco Rent Ordinance, and with no pass through charges added to rent of the Replacement Unit for the capital costs of the Project;

A.4 Construction of two new transit stations, relocation of an existing transit station, and construction of a new alignment for the SFMTA light rail "M" Oceanview that will leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core in Parkmerced as further described in the Transportation Plan, each integrated into the SFMTA transit system, and the provision of a free (to Project residents and employees) low emissions shuttle bus from Parkmerced to the Daly City BART station and to the Stonestown retail center;

A.5 Reconfiguration of the street grid within the Project Site to conform to the City's Better Streets design guidelines, including the realignment of existing streets and the creation of new publicly-owned streets and privately-owned but publicly-accessible streets that accommodate bicycles, pedestrians and motor vehicles;

A.6 Improvement and reconfiguration of streets and intersections on the periphery of the Project Site to improve access and safety for all modes of transportation;

A.7 Creation and implementation of a Transportation Demand Management ("**TDM**") program (including, but not limited to, transit pass subsidies for residents of and employees in the Project Site) to facilitate and encourage the use of transportation modes other than the private automobile, to minimize the amount of automobile traffic originating from Parkmerced and to improve traffic flow on adjacent roadways such as 19th Avenue and Brotherhood Way, as further described in the Transportation Plan;

A.8 Reconfiguration of the existing open space at Parkmerced to provide more usable open spaces and related public benefits such as a new park, athletic fields, an organic farm, walking and bicycling paths, and community gardens;

A.9 Construction of a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. The filtered stormwater will either percolate into the groundwater that feeds the Upper Westside Groundwater Basin and Lake Merced or (if appropriate permits are obtained) be released directly into Lake Merced. This feature of the Project will reduce the amount of stormwater flows directed to the Oceanside Water Pollution Control Plant and help reduce the chance of combined sewage overflows to the ocean; and,

A.10 Zoning of a parcel within the Project Site that does not principally permit any use except a school, which may be publicly or privately owned and operated.

B. Code Authorization. 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 San Francisco Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement with a private developer pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

C. Property Subject to this Agreement. The real property subject to this Agreement is the approximately 152-acre site located in the Lake Merced District in the southwest corner of San Francisco and is generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue, and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west. The Project Site is located at 3711 19th Avenue on Assessor's Blocks and Lots 7303-001, 7303-A-001, 7308-001, 7309-001, 7309-A-001, 7310-001, 7311-001, 7315-001, 7316-001, 7317-001, 7318-001, 7319-001, 7320-003, 7321-001, 7322-001, 7323-001, 7325-001, 7326-001, 7330-001, 7331-004, 7332-004, 7333-001, 7333-003, 7333-A-001, 7333-B-001, 7333-C-001, 7333-D-001, 7333-E-001, 7334-001, 7335-001, 7336-001, 7337-001, 7338-001, 7339-001, 7340-001, 7341-001, 7342-001, 7343-001, 7344-001, 7345-001, 7345-A-001, 7345-B-001, 7345-C-001, 7356-001, 7357-001, 7358-001, 7359-001, 7360-001, 7361-001, 7362-001, 7363-001, 7364-001, 7365-001, 7366-001, 7367-001, 7368-001, 7369-001, and 7370-001 (the "**Project Site**"). The Project Site is generally diagrammed on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto. Developer owns fee title to the Project Site, subject to the rights of [_____] (the "**Existing Lender**"). On or before the Effective Date, the Existing Lender and City shall have entered into a consent and subordination agreement satisfactory to both.

D. Permitted Development; Intent of the Parties. The Project is a long-term mixed-use development program to comprehensively replan and redesign the Project Site. The Project will, upon implementation, increase residential density, provide a neighborhood core with new commercial and retail services, reconfigure the street network and public realm, improve and enhance the open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities within the Project Site. Developer intends to retain approximately half of the existing apartments as part of the Project. The remaining half would be demolished over time and replaced with the Replacement Units. Approximately 5,679 net new residential units would be added to the Project Site over time. In total, upon completion of the Project, there will be up to 8,900 residential units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with a mixed-use residential and commercial development with accessory parking and loading, as more particularly described in Article 3 below. The Parties wish to ensure appropriate development of the Project Site, to provide for the replacement of the 1,538 rent-controlled units and tenant amenities in the residential structures currently existing on the Project Site and proposed to be demolished, and to protect the tenants of the existing residential structures from displacement due to the proposed development of the

Project Site. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement.

E. Compliance with All Legal Requirements. 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 Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable laws and regulations. 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. The City agrees to rely on the FEIR, to the greatest extent possible in accordance with applicable laws, in all future discretionary actions relating 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 Implementing Approvals to the extent that such additional environmental review is required by CEQA.

F. Project's Compliance with CEQA. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on _____, together with the CEQA Findings adopted concurrently therewith (the "**CEQA Findings**"), comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. The FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR has been considered by all City departments that have reviewed and approved this Agreement.

G. Public Review. The Project has been presented and reviewed by the Parkmerced community and other stakeholders in over 250 public meetings, including those held before the Planning Commission, the SFMTA Board of Directors, the SFPUC Commission, the Board of Supervisors, and in other local forums.

H. Planning Commission Hearing and Findings. On _____, 2011 the Planning Commission held a public hearing on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Commission made the CEQA Findings and adopted the Mitigation Measures, and determined that the Project and this Agreement are, as a whole and taken in their entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Planning Principles set forth in Section 101.1 of the Planning Code (together, the "**General Plan Consistency Findings**"). With respect to any Implementing Approval that includes a proposed change to the Project, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable laws; *provided*, *however*, that nothing shall prevent or limit the discretion of the City in connection with any Implementing Approvals that, as a result of amendments to the Basic Approvals, require new or revised General Plan consistency findings.

I. Board of Supervisors Hearing and Findings. On _____, 2011 the Board, having received the Planning Commission's final recommendation, held a public hearing on this Agreement, duly noticed and conducted pursuant to the Development Agreement Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by

CEQA and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

J. Enacting Ordinance. On _____, 2011, the Board adopted Ordinance No. _____, approving this Agreement and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2011. The following land use approvals, entitlements, and permits relating to the Project were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. _____), the Planning Code text amendment (Board of Supervisors Ord. No. _____), the Zoning Map amendment (Board of Supervisors Ord. No. _____; the "**Zoning Map Amendment**"), the Coastal Zone Permit (Board of Supervisors Ord. No. _____), and the Parkmerced Plan Documents.

Now therefore, incorporating the foregoing recitals, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2 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:

1.2.1 "**Acceptance Period**" shall have the meaning set forth in Section 4.4.4(b).

1.2.2 "**Adjoining Landowners**" shall have the meaning set forth in Section 3.6.9(e).

1.2.3 "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.4 "**Affiliated Project**" shall have the meaning set forth in Section 4.2.2.

1.2.5 "**Affiliate**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "control" shall mean the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.2.6 "**Agency Design Standards**" shall have the meaning set forth in Section 2.4.

1.2.7 "**Agreement**" shall have the meaning set forth in the preamble paragraph.

1.2.8 "**Alternate Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.9 "**Assignment and Assumption Agreement**" shall have the meaning set forth in Section 11.3.1.

1.2.10 "**Basic Approvals**" shall mean the following land use approvals, entitlements, and permits relating to the Project that were approved by the Board concurrently with this Agreement: the General Plan amendment (Board of Supervisors Ord. No. _____), the Planning Code text amendment (Board of Supervisors Ord. No. _____), the Zoning Map amendments (Board of Supervisors Ord. No. _____), the Coastal Zone Permit (Board of Supervisors Ord. No. _____), and the Parkmerced Plan Documents, all of which are incorporated by reference into this Agreement.

1.2.11 "**BMR Requirement**" shall have the meaning set forth in Section 4.2.1.

1.2.12 "**BMR Units**" shall mean inclusionary affordable units required by the City's Inclusionary Affordable Housing Program, as set forth in Planning Code section 415 *et seq*.

1.2.13 "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.14 "**Building Code**" shall mean the San Francisco Building Code.

1.2.15 "**Building Vacancy Date**" shall have the meaning set forth in Section 4.4.4(b).

1.2.16 "**Caltrans**" shall have the meaning set forth in Section 3.6.1.

1.2.17 "**CC&Rs**" shall have the meaning set forth in Section 3.5.3.

1.2.18 "**CEQA**" shall have the meaning set forth in Recital E.

1.2.19 "**CEQA Findings**" shall have the meaning set forth in Recital F.

1.2.20 "**CEQA Guidelines**" shall mean California Code of Regulations, title 14, section 15000 *et seq*.

1.2.21 "**CFD**" shall have the meaning set forth in Section 3.8.

1.2.22 "**Chapter 56**" shall have the meaning set forth in Recital B.

1.2.23 "**Chapter 83**" shall have the meaning set forth in Section 6.6.1.

1.2.24 "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors. Any other City Agency's approval will be evidenced by its written consent, which will be attached to and be a part of this Agreement, but a City Agency's failure to consent to this Agreement will not cause this Agreement to be void or voidable. The Parties understand and agree that City Agencies are not separate legal entities, and that the City may dissolve a City Agency and/or transfer jurisdiction or responsibilities from one City Agency to another City Agency. With respect to commitments made by a City Agency under this Agreement, the City shall keep Developer informed of any jurisdictional transfer or change in the City Agency that will be responsible, as the successor agency, for such commitment.

1.2.25 "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over any Development Phase on the Project Site, or any Community Improvement or Public Improvement located on or off the Project Site, including the City Administrator, Planning Department, DBI, MOH, OEWD, SFMTA, SFPUC, DPW, SFFD, and the Rent Board, together with any successor City agency, department, board, or commission.

1.2.26 "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.27 "**City Costs**" shall mean the actual and reasonable costs incurred by a City Agency in performing its obligations under this Agreement, as determined on a time and materials basis, including any defense costs as set forth in Section 8.3, but excluding work and fees covered by Processing Fees.

1.2.28 "**Coastal Zone**" shall have the meaning set forth in the California Coastal Act (California Public Resources Code section 30000 *et seq.*).

1.2.29 "**Community Improvements**" shall mean any capital improvement or facility, on-going service provision or monetary payment, or any service required by the Basic Approvals and this Agreement for the public benefit that is not: (1) a Mitigation Measure for the Project required by CEQA; (2) a public or private improvement or monetary payment required by Existing Standards or Uniform Codes (including, for example, utility connections required by Uniform Codes, the payment of Impact Fees and Exactions, and Planning Code-required open space); (3) Stormwater Management Improvements; or (4) the privately-owned residential and commercial buildings constructed on the Project Site, with the exception of the fitness/community center and the school, which are Community Improvements and may be privately-owned. Furthermore, Community Improvements shall not include: (1) any units constructed by Developer or fee paid by Developer in compliance with the BMR Requirement, or (2) the

Replacement Units, which also provide the City with a negotiated benefit of substantial economic value and are subject to the provisions of Article 4 of this Agreement.

With the exception of Alternate Community Improvements, all Community Improvements required by the Basic Approvals and this Agreement are shown on the Phasing Plan. Section 3.5 of this Agreement sets forth the ownership and maintenance responsibilities of the City and Developer for the Community Improvements. Community Improvements include the following types of infrastructure or facilities:

(1) **Publicly-Owned Community Improvements.** These facilities are listed on Exhibit C attached hereto. Because these improvements shall be dedicated to and accepted by the City, they also fall within the definition of Public Improvements. They may be publicly-maintained or privately-maintained based on the specific terms of Section 3.5 of this Agreement.

(2) **Privately-Owned Community Improvements.** These are facilities or services, defined in Section 1.2.103 and listed on Exhibit C.

1.2.30 "**Complete**" and any variation thereof shall mean, as applicable, that (i) a specified scope of work has been substantially completed in accordance with approved plans and specifications, (ii) the City Agencies or Non-City Responsible Agencies with jurisdiction over any required permits have issued all final approvals required for the contemplated use, and (iii) with regard to any Public Improvement, (A) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed, (B) releases have been obtained from all contractors, subcontractors, mechanics and material suppliers or adequate bonds reasonably acceptable to the City posted against the same, (C) copies of all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance within Developer's possession or control, and all other close-out items required under any applicable authorization or approval have been provided, and (D) the City Agencies or Non-City Responsible Agencies have certified the work as complete, operational according to the approved specifications and requirements, and ready for its intended use, and the City has agreed to initiate acceptance of the Public Improvement.

1.2.31 "**Construction Contract**" shall have the meaning set forth in Section 6.13.

1.2.32 "**Contractor**" shall have the meaning set forth in Section 6.13.

1.2.33 "**Continuing Obligation**" shall have the meaning set forth in Section 3.6.3.

1.2.34 "**Cost Estimator**" shall have the meaning set forth in Section 3.6.8.

1.2.35 "**Costa-Hawkins Act**" shall have the meaning set forth in Recital A.2.

1.2.36 "**CPUC**" shall have the meaning set forth in Section 3.6.1.

1.2.37 "**DBI**" shall mean the San Francisco Department of Building Inspection.

1.2.38 "**Design Review Application**" shall have the meaning set forth in Section 3.3.1.

1.2.39 "**Design Review Approval**" shall have the meaning set forth in Section 3.3.1.

1.2.40 "**Developer**" shall have the meaning set forth in the preamble paragraph, and, subject to the provisions of Article 11, any and all Transferees (with respect to the rights and obligations under this Agreement that are Transferred to such Transferee).

1.2.41 "**Development Agreement Statute**" shall have the meaning set forth in Recital B.

1.2.42 "**Development Phase(s)**" shall have the meaning set forth in Section 3.3.2.

1.2.43 "**Development Phase Application**" shall have the meaning set forth in Section 3.4.4.

1.2.44 "**Development Phase Approval**" shall have the meaning set forth in Section 3.4.4.

1.2.45 "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.46 "**DPW**" shall mean the San Francisco Department of Public Works.

1.2.47 "**Effective Date**" shall have the meaning set forth in Section 1.3.

1.2.48 "**Ellis Act**" shall mean California Government Code section 7060 *et seq*.

1.2.49 "**Enacting Ordinance**" shall have the meaning set forth in Recital J.

1.2.50 "**Event of Default**" shall have the meaning set forth in Section 12.3.

1.2.51 "**Excusable Delay**" shall have the meaning set forth in Section 10.2.2.

1.2.52 "**Existing Lender**" shall have the meaning set forth in Recital C.

1.2.53 "**Existing Standards**" shall have the meaning set forth in Section 2.1.

1.2.54 "**Existing Tenant**" shall have the meaning set forth in Section 4.3.2.

1.2.55 "**Existing Unit(s)**" shall have the meaning set forth in Recital A.1.

1.2.56 "**Extension Period**" shall have the meaning set forth in Section 3.6.5.

1.2.57 "**Federal or State Law Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.58 "**FEIR**" shall have the meaning set forth in Recital F.

1.2.59 "**First Certificate of Occupancy**" shall mean the first certificate of occupancy (such as a temporary certificate of occupancy) issued by DBI for a portion of the building that contains residential units or leasable commercial space. A First Certificate of Occupancy shall not mean a certificate of occupancy issued for a portion of the residential or commercial building dedicated to a sales office or other marketing office for residential units or leasable commercial space.

1.2.60 "**First Construction Document**" shall mean, with respect to any building, the first building permit issued for such building, or, in the case of a site permit, the first building permit addendum issued or other document that authorizes construction of the development project. Construction document shall not include permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

1.2.61 "**Future Changes to Existing Standards**" shall have the meaning set forth in Section 2.2.1.

1.2.62 "**General Plan Consistency Findings**" shall have the meaning set forth in Recital H.

1.2.63 "**Gross Floor Area**" shall have the meaning set forth in Planning Code section 102.9.

1.2.64 "**Horizontal Obligation**" shall have the meaning set forth in Section 12.3.

1.2.65 "**Impact Fees and Exactions**" shall mean the fees, exactions and impositions charged by the City in connection with the development of the Project under the Existing Standards as of the Effective Date, as more particularly described on Exhibit E attached hereto, including but not limited to transportation improvement fees, water capacity charges and wastewater capacity charges, child care in-lieu fees, affordable housing fees, dedication or reservation requirements, and obligations for on- or off-site improvements. Impact Fees and Exactions shall not include Mitigation Measures, Processing Fees, permit and application fees, taxes or special assessments, and water connection fees. Water connection fees shall be limited to the type of fee assessed by the SFPUC for installing metered service for each building or units within such building.

1.2.66 "**Implementing Approval**" shall mean any land use approval, entitlement, or permit (other than the Basic Approvals, a Design Review Approval, or a Development Phase Approval) that are consistent with the Basic Approvals and that are necessary for the implementation of the Project or the Community Improvements,

including without limitation, demolition permits, grading permits, site permits, building permits, lot line adjustments, sewer and water connection permits, encroachment permits, street improvement permits, certificates of occupancy, subdivision maps, and re-subdivisions. An Implementing Approval shall also mean any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Basic Approvals that are sought by Developer and approved by the City in accordance with the standards set forth in this Agreement, and that do not represent a Material Change to the Basic Approvals.

1.2.67 "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.68 "**Infrastructure Plan**" shall mean the Parkmerced Infrastructure Plan, dated as of _____, as amended from time to time.

1.2.69 "**Lease Termination Notice**" shall have the meaning set forth in Section 4.4.5(a).

1.2.70 "**Losses**" shall have the meaning set forth in Section 6.10.

1.2.71 "**Low Income Household**" shall mean a household whose combined annual gross income for all members does not exceed sixty percent (60%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.72 "**Major MUNI Project Permits**" shall have the meaning set for in Section 3.6.9.

1.2.73 "**Market Rate Units**" shall mean housing units constructed on the Project Site that are not Replacement Units or BMR Units.

1.2.74 "**Master HOA**" shall have the meaning set forth in Section 3.5.3.

1.2.75 "**Material Change to the Basic Approvals**" shall mean any substantive and material change to the Project, as defined by the Basic Approvals, as reasonably determined by the Planning Director and/or an affected City Agency. Without limiting the foregoing, the following shall each be deemed a Material Change to the Basic Approvals: (i) any reduction in the number of Replacement Units for each To-Be-Replaced Building; (ii) any change in the permitted uses or building heights contained in the Planning Code text amendment and the Zoning Map amendment; (iii) any increase in the parking ratio above that of one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses as set forth in Section 3.3.2 below; (iv) any reduction of more than ten percent (10%) in the size of any park or open space designated as a Community Improvement, unless such change is approved as an Alternate Community Improvement in accordance with the

terms of this Agreement; and (v) any material change to the Parkmerced Plan Documents, as reasonably determined by the affected City Agency and the Planning Director.

1.2.76 "**Median Income Household**" shall mean a household whose combined annual gross income for all members does not exceed one hundred percent (100%) of the median income for the City and County of San Francisco, as calculated by MOH using data from the United States Department of Housing and Urban Development (or, if unavailable, alternative data used by MOH for such purposes) and adjusted for household size.

1.2.77 "**Mitigation Measures**" shall mean the mitigation measures (as defined by CEQA) applicable to the Project by the FEIR or other environmental review document. Mitigation Measures shall include any mitigation measures that are identified and required as part of an Implementing Approval.

1.2.78 "**Mitigation Monitoring Program**" shall mean that certain mitigation monitoring program applicable to the project by the FEIR or other environmental review document.

1.2.79 "**Modified Tier 5 MUNI Realignment**" shall have the meaning set forth in Section 3.6.9(b).

1.2.80 "**MOH**" shall mean the San Francisco Mayor's Office of Housing.

1.2.81 "**MUNI Project**" shall have the meaning set forth in Section 3.6.9(b).

1.2.82 "**MUNI Realignment**" shall have the meaning set forth in Section 3.6.9.

1.2.83 "**Municipal Code**" shall mean the San Francisco Municipal Code.

1.2.84 "**New Tenant**" shall have the meaning set forth in Section 4.4.6.

1.2.85 "**Non-City Regulatory Approval**" shall have the meaning set forth in Section 3.6.1.

1.2.86 "**Non-City Responsible Agency**" or "**Non-City Responsible Agencies**" shall have the meaning set forth in Section 3.6.1.

1.2.87 "**Notice of Default**" shall have the meaning set forth in Section 12.3.

1.2.88 "**Objective Requirements**" shall have the meaning set forth in Section 3.3.1.

1.2.89 "**Occupied Floor Area**" shall have the meaning set forth in Planning Code section 102.10 as of the Effective Date, as follows: the floor area devoted to, or capable of being devoted to, a principal or conditional use and its accessory uses. For purposes of computation, "occupied floor area" shall consist of the gross floor area, as

defined in the Planning Code, minus the following: (a) nonaccessory parking and loading spaces and driveways, and maneuvering areas incidental thereto; (b) exterior walls of the building; (c) mechanical equipment, appurtenances and areas, necessary to the operation or maintenance of the building itself, wherever located in the building; (d) restrooms, and space for storage and services necessary to the operation and maintenance of the building itself, wherever located in the building; (e) space in a retail store for store management, show windows and dressing rooms, and for incidental repairs, processing, packaging and stockroom storage of merchandise for sale on the premises; and (f) incidental storage space for the convenience of tenants.

1.2.90 "**OEWD**" shall mean the San Francisco Office of Economic and Workforce Development.

1.2.91 "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.92 "**Parkmerced**" shall mean the Project Site.

1.2.93 "**Parkmerced Design Standards and Guidelines**" shall mean the Parkmerced Design Standards and Guidelines dated as of ___, as amended from time to time.

1.2.94 "**Parkmerced Plan Documents**" shall mean the Parkmerced Vision Plan, the Phasing Plan, the Parkmerced Design Standards and Guidelines, the Transportation Plan, the Sustainability Plan, and the Infrastructure Plan, all dated as of _____ and approved by the Board of Supervisors, as each may be revised or updated in accordance with this Agreement. A copy of each of the approved Parkmerced Plan Documents, including any approved amendments, will be maintained and held by the Planning Department.

1.2.95 "**Parkmerced Special Use District**" shall have the meaning set forth in Section 3.3.1.

1.2.96 "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

1.2.97 "**Permitted Change**" shall have the meaning set forth in Section 11.5.

1.2.98 "**Phasing Plan**" shall mean the Phasing Plan attached hereto as Exhibit F.

1.2.99 "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.100 "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.101 "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.2.102 "**Principal Project**" shall have the meaning set forth in Section 4.2.2.

1.2.103 "**Prior Approvals**" shall mean, at any specific time during the Term, the applicable provisions of each of the following: this Agreement, the Basic Approvals, the then-existing Implementing Approvals (including any Development Phase Approval), the Existing Standards and permitted Future Changes to Existing Standards.

1.2.104 "**Privately-Owned Community Improvements**" shall mean those facilities and services that are privately-owned and privately-maintained for the public benefit, with varying levels of public accessibility, that are not dedicated to the City. The Privately-Owned Community Improvements are listed on Exhibit C. Privately-Owned Community Improvements will include certain streets, paseos, pedestrian paths and bicycle lanes, storm drainage facilities, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer. Exhibit D sets forth the provisions pertaining to the use, maintenance, and security of the Privately-Owned Community Improvements.

1.2.105 "**Processing Fees**" shall mean the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee and Exaction, in accordance with the then-current City practice on a City-wide basis.

1.2.106 "**Project**" shall mean the development project at the Project Site as described in this Agreement and the Parkmerced Plan Documents, including the Public Improvements and the Community Improvements, which development project is consistent with the Basic Approvals and the Implementing Approvals.

1.2.107 "**Project Site**" shall have the meaning set forth in Recital C.

1.2.108 "**Proportionality, Priority and Proximity Requirement**" shall have the meaning set forth in Section 3.4.2.

1.2.109 "**Public Health and Safety Exception**" shall have the meaning set forth in Section 2.5.1.

1.2.110 "**Public Improvements**" shall mean the facilities, both on- and off-site, to be improved, constructed and dedicated to (and, upon Completion in accordance with this Agreement, accepted by) the City by Developer. Public Improvements include streets within the Project Site, sidewalks, bioswales and other Stormwater Management Improvements in the public right-of-way, all public utilities within the streets (such as gas, electricity, water and sewer lines but excluding any non-municipal utilities), bicycle lanes and paths in the public right of way, off-site intersection improvements (including but not limited to curbs, medians, signaling, traffic controls devices, signage, and striping), and SFMTA Infrastructure. The Public Improvements do not include Privately-Owned Community Improvements, including paseos, pedestrian paths within the Project

Site, parks and open spaces, and community or recreation facilities to be built on land owned and retained by Developer.

1.2.111 "**Recognized Residents' Association**" shall mean an organization with more than ten (10) members (defined as tenants of the Project Site, each occupying a separate unit), that has been in existence for not less than twenty four (24) months and that has notified or notifies Developer and the Planning Department of its existence in writing.

1.2.112 "**Recorded Restrictions**" shall have the meaning set forth in Section 3.10.2.

1.2.113 "**Relocation Notice**" shall have the meaning set forth in Section 4.4.4(c).

1.2.114 "**Rent Board**" shall mean the San Francisco Rent Stabilization and Arbitration Board.

1.2.115 "**Rent Ordinance**" shall mean the City's Residential Rent Stabilization and Arbitration Ordinance (Chapters 37 and 37A of the Administrative Code) or any successor ordinance designated by the City.

1.2.116 "**Replacement Building**" shall have the meaning set forth in Section 4.3.1.

1.2.117 "**Replacement Unit**" shall have the meaning set forth in Recital A.1.

1.2.118 "**Replacement Unit Acceptance Notice**" shall have the meaning set forth in Section 4.4.4(c).

1.2.119 "**Replacement Unit Availability Notice**" shall have the meaning set forth in Section 4.4.3(b).

1.2.120 "**Replacement Unit Preference Notice**" shall have the meaning set forth in Section 4.4.3(c).

1.2.121 "**Replacement Unit Rejection Notice**" shall have the meaning set forth in Section 4.4.4(b).

1.2.122 "**Replacement Unit Notice**" shall have the meaning set forth in Section 4.4.4(a).

1.2.123 "**Second Replacement Unit Notice**" shall have the meaning set forth in Section 4.4.4(b).

1.2.124 "**Selection Period**" shall have the meaning set forth in Section 4.4.3(c).

1.2.125 "**SFFD**" shall mean the San Francisco Fire Department.

1.2.126 "**SFMTA**" shall mean the San Francisco Municipal Transportation Agency.

1.2.127 "**SFMTA Infrastructure**" shall mean the Public Improvements to be designed and constructed by Developer that the Parties intend the SFMTA to accept, operate, and maintain in accordance with this Agreement.

1.2.128 "**SFPUC**" shall mean the San Francisco Public Utilities Commission.

1.2.129 "**Stormwater Management Improvements**" shall mean the facilities, both those to remain privately-owned and those to be dedicated to the City, that comprise the infrastructure and landscape system that is intended to manage the stormwater runoff associated with the Project, as described in the Infrastructure Plan. Stormwater Management Improvements include but are not limited to: (i) swales and bioswales (including plants and soils), (ii) bio-gutters and grates (including plants and soils), (iii) tree wells, (iv) ponds, wetlands, and constructed streams, (v) stormwater cisterns, (vi) permeable paving systems, (vii) stormwater culverts, (viii) trench drains and grates, (ix) stormwater piping, (x) stormwater collection system, and (xi) other facilities performing a stormwater control function.

1.2.130 "**Stormwater Management Ordinance**" shall mean Article 4.2 (Sewer System Management) of the San Francisco Public Works Code.

1.2.131 "**Subdivision Code**" shall mean the San Francisco Subdivision Code, with such additions and revisions as set forth in Section 2.6.

1.2.132 "**Substitute Community Improvement**" shall have the meaning set forth in Section 3.6.4.

1.2.133 "**Sustainability Plan**" shall mean the Parkmerced Sustainability Plan, dated as of _____, as amended from time to time.

1.2.134 "**TDM**" shall have the meaning set forth in Recital A.7 and as further defined in the Transportation Plan.

1.2.135 "**Tenant Relocation Plan**" shall have the meaning set forth in Section 4.4.2.

1.2.136 "**Term**" shall have the meaning set forth in Section 1.4.

1.2.137 "**Third-Party Challenge**" shall have the meaning set forth in Section 8.3.1.

1.2.138 "**Tier 5 Improvements**" shall have the meaning set forth in Section 3.6.9(a).

1.2.139 "**Tier 5 Modification Process**" shall have the meaning set forth in Section 3.6.9.

1.2.140 "**To-Be-Replaced Building(s)**" shall have the meaning set forth in Section 4.3.2.

1.2.141 "**Traffic Improvements**" shall have the meaning set forth in Section 3.7.1.

1.2.142 "**Transfer**" shall mean the transfer all or any portion of Developer's rights, interests, or obligations under this Agreement, together with the conveyance of the affected real property.

1.2.143 "**Transferee**" shall mean the developer to whom Developer transfers all or a portion of its obligations under this Agreement under an Assignment and Assumption Agreement. A Transferee shall be deemed "Developer" under this Agreement with respect to all of the rights, interests and obligations assigned to and assumed by Transferee under the applicable Assignment and Assumption Agreement.

1.2.144 "**Transferred Property**" shall have the meaning set forth in Section 11.1.2.

1.2.145 "**Transportation Plan**" shall mean the Parkmerced Transportation Plan, dated as of _____, as amended from time to time.

1.2.146 "**Uniform Codes**" shall have the meaning set forth in Section 2.4.

1.2.147 "**Vertical Obligation**" shall have the meaning set forth in Section 12.3.

1.2.148 "**Zoning Map Amendment**" shall mean have the meaning set forth in Recital J.

1.3 Effective Date. Pursuant to Section 56.14(f) of the Administrative Code, this Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties, (ii) the execution and delivery of a consent and subordination agreement between the City and the Existing Lender, and (iii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is _____.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for thirty (30) years thereafter so as to accommodate the phased development of the Project, unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. APPLICABLE LAW

2.1 Existing Standards. Except as expressly provided in this Article 2, the City shall process, consider, and review all Developer requests for Implementing Approvals in accordance with (i) the Basic Approvals, (ii) the San Francisco General Plan, the Municipal Code (including the City's 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**"), (iii) any permitted Future Changes to Existing Standards, (iv) any applicable laws, including CEQA and (v) this Agreement.

2.2 Future Changes to Existing Standards.

2.2.1 Future changes to Existing Standards and any other ordinances, laws, rules, regulations, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**Future Changes to Existing Standards**") 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 Basic Approvals. In the event of such a conflict, the terms of this Agreement and the Basic Approvals shall prevail, subject to the terms of Section 2.4 below.

2.2.2 Future Changes to Existing Standards shall be deemed to "conflict with this Agreement" and the Basic 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 (including number of residential dwelling units) or other improvements from that permitted under this Agreement, the Existing Standards and the Basic 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 proposed buildings or other improvements from that permitted under this Agreement, the Existing Standards and the Basic Approvals;

(c) change or limit any land uses of the Project Site that are permitted under this Agreement, the Existing Standards and the Basic Approvals;

(d) materially change the Project site plan as shown in the Parkmerced Plan Documents;

(e) except as provided in this Agreement, limit or control in more than an insignificant manner the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project, including the demolition of existing buildings at the Project Site, so long as all requirements of this Agreement are satisfied and all necessary infrastructure to serve such development is constructed by Developer as required by the Basic Approvals;

(f) require the issuance of permits or approvals by the City other than those required under the Existing Standards. Any permits or approvals that replace (but do not expand the purpose or scope of) a permit or approval shall apply to the Project, and shall not be considered new categories of permits or approvals;

(g) 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 as contemplated by the Parkmerced Plan Documents and FEIR (*provided* nothing in the foregoing shall limit Developer's obligation to Complete the Community Improvements and/or Public Improvements as contemplated and required under this Agreement);

(h) impose any ordinance or regulation that controls commercial or residential rents or purchase prices charged within the Project or on the Project Site, except as such imposition is expressly required by this Agreement;

(i) materially limit or delay the processing or procuring of applications and approvals of Implementing Approvals that are consistent with Basic Approvals; or,

(j) impose any new Impact Fees and Exactions on the Project (not including permitted increases or replacements as set forth in Section 2.3 of this Agreement).

2.2.3 Developer may, with the concurrence of any affected City Agencies, elect to have a Future Change to Existing Standards that conflicts with this Agreement applied to the Project or the Project Site by giving the City written notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard.

2.2.4 The Parkmerced Plan Documents may be amended with Developer's consent from time to time without the amendment of this Agreement as follows: (a) nonmaterial amendments may be agreed to by the Planning Director and the Director of any affected City Agency (as appropriate), each in their reasonable discretion, and (b) material amendments may be agreed to by the Planning Commission, the City Administrator and the affected City Agency (either by its Director or, if existing, its applicable Commission), each in their sole discretion, provided that any material amendment to a Parkmerced Plan Document that requires an amendment to this Agreement shall also be subject to the approval of the Board of Supervisors in accordance with Section 10.1. Without limiting the foregoing, the Parties agree that any change to the Transportation Plan must be approved by DPW and the SFMTA, any change to the Infrastructure Plan must be approved by DPW, the SFMTA and the SFPUC, and any change to Sustainability Plan must be approved by DPW and the SFPUC.

2.3 Impact Fees and Exactions.

2.3.1 The Project shall only be subject to the Impact Fees and Exactions, as set forth in Exhibit E, and the City shall not impose any new impact fees or 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; *provided*, *however*, that Developer shall pay the Impact Fees and Exactions in the dollar amount that applies, on a City-wide basis, at the time that Developer applies for a permit or approval in connection with the Project. Accordingly, Developer shall be subject to all increases in the Impact Fees and Exactions as established by the City from time to time during the Term and that are generally-applicable to all development of the same type in the City. However, Developer shall not be subject to new categories of impact fees or exactions, or the imposition of new development conditions, that are adopted by the City from and after the Effective Date in connection with the development of the Project. Any substitute impact fees or exactions that replace (but do not expand the purpose or scope of) an Impact Fees and Exaction shown on Exhibit E shall apply to the Project, and shall not be considered new categories of impact fees as set forth above.

2.3.2 The City shall assess Impact Fees and Exactions only against the net new Gross Floor Area for each use at the Project Site. Notwithstanding the foregoing, the City shall not assess Impact Fees and Exactions against the Replacement Units regardless of whether the Replacement Units have a larger Gross Floor Area than the Existing Units that they are replacing. In addition, the City shall not assess Impact Fees and Exactions against a percentage of the Gross Floor Area of the common area of the Replacement Building, which percentage shall be the percentage of Gross Floor Area of all Replacement Units compared to the Gross Floor Area of all of the residential units in the Replacement Building. The foregoing shall be calculated in the following manner: (i) the total Gross Floor Area of the Replacement Building comprised of residential units (both Replacement Units and non-Replacement Units) shall be subtracted from the total Gross Floor Area of the Replacement Building, the result of which shall represent the common area; and (ii) the Gross Floor Area of the Replacement Units shall be compared to the Gross Floor Area of the non-Replacement Units to determine the percentage of common area that shall not be subject to Impact Fees and Exactions. For example, for a Replacement Building that contains 20,000 Gross Floor Area of Replacement Units and 40,000 Gross Floor Area of non-Replacement Units, one-third (1/3) of the common area (20,000/60,000) shall not be subject to Impact Fees and Exactions. As water connection fees are excluded from the definition Impact Fees and Exactions, payment of the water connection fees shall be paid for installing new water service connections on the Project Site.

2.4 Applicability of Uniform Codes to All Permit Activity within the Project, including all Buildings and Community Improvements. The Parties acknowledge that, in addition to submitting Design Review Applications and Development Phase Applications, Developer must submit a variety of applications for Implementing Approvals before commencement of construction of the Project, including building permit applications for the

construction of the residential and commercial buildings on the Project Site, and street improvement permits, encroachment permits, and building permit applications for the construction of Community Improvements. Developer shall be responsible for obtaining all Implementing Approvals required under applicable law before commencement of construction. When considering any such application for Implementing Approvals, the City shall apply the provisions, requirements, rules, or regulations applicable City-wide that are contained in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes (collectively, the "**Uniform Codes**"). In addition, upon submittal of the Design Review Application, the City Agencies shall apply their then-existing technical design standards and specifications with respect to Public Improvements to be dedicated to that City Agency, including any applicable standards or requirements of Non-City Responsible Agencies with jurisdiction (the "**Agency Design Standards**"), so that Public Improvements integrate and function with existing City systems and applicable law; *provided*, *however*, that (i) the City cannot impose standards or requirements on Developer that it would not apply to itself if the Public Improvement was to be constructed by the City on its own in a different location in the City and (ii) such Design Review Application shall not materially alter the location and dimensions of the streets and easement and walks as set forth in the Parkmerced Design Standards and Guidelines. The Parties understand and agree that any Public Improvement identified in this Agreement or the Parkmerced Plan Documents, including the Stormwater Management Improvements and the SFMTA Infrastructure, may become part of a larger City system and that the proposed Public Improvements must be constructed so as to integrate and work with the existing City systems in every material respect.

2.5 Changes in State and Federal Rules and Regulations.

2.5.1 Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its sole 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 to comply with changes in Federal or State law, including applicable federal and state regulations (the "**Federal or State Law Exception**"), including the authority to condition or deny an Implementing Approval or to adopt a new City regulation applicable to the Project so long as such condition or denial or new regulation is limited solely to addressing a specific and identifiable issue related to the protection of the public health and safety or compliance with a Federal or State law and not for independent discretionary policy reasons that are inconsistent with this Agreement. 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.

2.5.2 Pursuant to Section 65869.5 of the Development Agreement Statute, in the event that state or federal laws or regulations enacted after this Agreement have gone

into effect and preclude or prevent compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such law or regulation. In the event that Developer believes in its reasonable judgment that such modifications render the Project economically infeasible for Developer or the City believes in its reasonable judgment that such modifications materially reduce the economic value of the Community Improvements or other public benefits to the City, then the Parties may negotiate additional amendments to this Agreement as may be necessary to satisfy both Developer and City, each in their reasonable discretion. If the Parties cannot reach agreement on additional amendments despite good faith negotiations, the Parties shall seek to resolve such dispute in accordance with the provisions of Section 12.7 herein.

2.5.3 This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights to Developer hereunder, or increase the obligations or diminish the benefits to the City, 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. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project consistent with all of the terms of this Agreement.

2.6 Subdivision Code Requirements for Public Improvements. For purposes of the design, review, permitting, approval and acceptance of the Public Improvements, the Parties agree to follow the Subdivision Code subject to revisions in Exhibit M and Section 2.2 of this Agreement.

2.7 Compliance with Applicable Federal and State Laws. Developer shall comply, at no cost to the City, with all applicable federal or state laws relating to the Project or the use, occupancy or development of the Project Site under this Agreement, including but not limited to any applicable tenant relocation laws and the Development Agreement Statute. Developer shall Indemnify the City against any and all Losses resulting from Developer's failure to comply with any applicable state or federal law.

2.8 General. The Parties acknowledge that the provisions contained in this Article 2 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.

3. DEVELOPMENT OF PROJECT SITE

3.1 Development Rights. Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement, the Basic Approvals, and any Implementing Approvals, and the City shall process all Implementing Approvals related to development of the Project Site in accordance with and subject to the provisions of this Agreement. Developer agrees that all improvements it constructs on the Project Site shall be done in accordance with this Agreement, the Basic Approvals (including but not limited to the Parkmerced Plan Documents), and any Implementing Approvals, and in accordance with all applicable laws.

3.2 Compliance with CEQA. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (i) the FEIR and CEQA Findings contain a thorough analysis of the Project and possible alternatives to the Project, (ii) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Project, and (iii) the Board of Supervisors adopted a statement of overriding considerations in connection with the Project Approvals, pursuant to CEQA Guidelines section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Project vested by this Agreement, as more particularly described by the Basic Approvals, except as may be required by applicable law in taking future discretionary actions relating to the Project.

3.3 Vested Rights; Demolition; Permitted Uses and Density; Building Envelope. By approving the Basic Approvals, the City has made a policy decision that the Project, as currently described and defined in the Basic Approvals, is in the best interest of the City and promotes the public health, safety and general welfare. Accordingly, the City in granting the Basic Approvals and vesting them through this Agreement is limiting its future discretion with respect to Project approvals that are consistent with the Basic Approvals. Consequently, the City shall not use its discretionary authority in considering any application for an Implementing Approval to change the policy decisions reflected by the Basic Approvals or otherwise to prevent or to delay development of the Project as set forth in the Basic Approvals. Instead, Implementing Approvals that substantially conform to or implement the Basic Approvals, subsequent Development Phase Approvals, and subsequent Design Review Approvals shall be issued by the City so long as they substantially comply with and conform to this Agreement (including the requirements and limitations set forth in Article 2 and Section 6.2), the Basic Approvals, Existing Standards and permitted Future Changes to Existing Standards, if applicable. Nothing in the foregoing shall impact or limit the City's discretion with respect to (i) Design Review Approvals (as provided in Section 3.3.1 of this Agreement), (ii) Implementing Approvals that seek a Material Change to the Basic Approvals, (iii) Board of Supervisor approvals of subdivision maps, as required by law, or (iv) requests for approval that may materially impair, alter or decrease the scope and economic benefit of the Community Improvements described in the Parkmerced Plan Documents, the Phasing Plan and this Agreement.

3.3.1 Design Review Approvals. The Basic Approvals include a Planning Code text amendment that creates a special use district for the Project Site (the "**Parkmerced Special Use District**"). The Parkmerced Special Use District and the

Parkmerced Design Standards and Guidelines were created and adopted to ensure that the urban, architectural and landscape design of the buildings, public realm and Community Improvements at Parkmerced will be of high quality and appropriate scale, include sufficient open space, and promote the public health, safety and general welfare. To ensure that all new buildings, the public realm associated with each new building and any Community Improvements related to implementation of the Project meet the Parkmerced Design Standards and Guidelines, Developer must submit a design review application (a "**Design Review Application**") and obtain design review approval (a "**Design Review Approval**") before obtaining separate permits consistent with Section 2.4 of this Agreement to commence construction of any proposed building or Community Improvement within or adjacent to the Project Site (as more particularly described in the Parkmerced Special Use District). The City shall review and approve, disapprove, or approve with recommended modifications each Design Review Application in accordance with the requirements of this Agreement, the Parkmerced Plan Documents and the procedures specified in the Parkmerced Special Use District section of the Planning Code, as the same may be amended from time to time. Notwithstanding anything to the contrary in this Agreement, the City may exercise its reasonable discretion in approving the aspects of a Design Review Application that relate to the qualitative or subjective requirements of the Parkmerced Design Standards and Guidelines, including the choice of building materials and fenestration. Also notwithstanding anything to the contrary in this Agreement, in considering a Design Review Application for those aspects of a proposed building or Community Improvement that meet the quantitative or objective requirements of the Parkmerced Design Standards and Guidelines and the other Parkmerced Plan Documents (the "**Objective Requirements**"), including without limitation, the building's proposed height, bulk, setbacks, streetwalls, location of uses and size of such uses, and amount of open space and parking, the City acknowledges and agrees that (i) it has exercised its discretion in approving the Parkmerced Special Use District, the Parkmerced Design Standards and Guidelines, and the other Parkmerced Plan Documents, and (ii) any proposed Design Review Application that meets the Objective Requirements shall not be rejected by the City based on elements that conform to or are consistent with the Objective Requirements, so long as the proposed building or Community Improvement meets the Uniform Codes and Agency Design Standards as required by Section 2.4 above.

3.3.2 Subject to the terms of this Agreement, Developer shall have a vested right to develop the Project at the Project Site, including 5,679 net new residential units, 1,538 rent-controlled Replacement Units, 310,000 square feet of commercial use, 64,000 square feet of recreational/fitness center/community center use, 100,000 square feet of building and property maintenance use, 25,000 square feet of educational use, and net new off-street parking for up to 6,252 vehicles, all as more particularly described in the Basic Approvals. The Project shall be built in phases ("**Development Phases**") in the manner described in Section 3.4. At all times during the phased construction, the parking ratio shall not be less than 0.25 off-street parking spaces per residential unit or greater than one (1) parking space per residential dwelling unit, one (1) parking space per 500 square feet of occupied grocery store use, one (1) parking space per 1,000 square feet of occupied school, fitness or community center use and one (1) parking space per 750 square feet of occupied space for all other non-residential uses. Any off-street parking

constructed that would result in the cumulative off-street parking in the Project exceeding the above ratios may not be used for any parking purpose and must be physically separated to preclude use of such spaces for any duration of time to the satisfaction of the Planning Department until such time that sufficient additional residential or non-residential development is completed to bring the overall parking ratio into conformance with the parking ratios listed above. At the Completion of the Project, the number of off-street parking spaces accessory to the residential units shall not exceed the lesser of (i) the ratios described above applied to the Completed Project and (ii) 8,900 residential parking spaces and 550 non-residential parking spaces.

3.3.3 Provided that Developer constructs and develops the Project as described in the Basic Approvals, Developer shall have a vested right to construct buildings on the Project Site up to the maximum heights permissible under the Zoning Map Amendment and in a manner consistent with building envelope requirements, including but not limited to bulk, as set forth in the Parkmerced Special Use District.

3.3.4 Each Basic Approval or Implementing Approval shall remain in effect during the Term of this Agreement. Notwithstanding anything to the contrary above, each street improvement, building, grading, demolition or similar permit shall expire at the time specified in the permit or the applicable public improvement agreement approved under the City's Subdivision Code, with extensions as normally allowed under the Uniform Codes or as set forth in such public improvement agreement.

3.4 Commencement of Construction; Development Phases; Development Timing.

3.4.1 Development Phases. The Parties currently anticipate that the Project will be constructed in Development Phases over approximately twenty (20) to thirty (30) years. The Parties acknowledge that Developer cannot guarantee the exact timing in which Development Phases will be constructed, whether certain development will be constructed at all, or the characteristics of each Development Phase (including without limitation the number of units constructed during each Development Phase and the parcels included within each Development Phase). Such decisions depend on numerous factors that are not within the control of Developer or the City, such as market absorption and demand, interest rates, availability of project financing, competition, and other similar factors. To the extent permitted by this Agreement, Developer shall have the right to develop the Project in Development Phases in such order and time, and with such characteristics (subject to the Proportionality, Priority and Proximity Requirements of this Agreement), as Developer requests, as determined by Developer in the exercise of its subjective business judgment, but subject to the City's approval of each Development Phase, which approval shall not be unreasonably withheld, conditioned, or delayed

3.4.2 Proportionality, Priority and Proximity Requirement. Because (i) the Project will be built over a long time period, and future portions of the Project may not, in fact, be developed after Developer completes a Development Phase, and (ii) Developer has requested and the City has agreed to allow Developer flexibility in the order and timing of the proposed development included in the Project, including allowing discretion in the amount of net new development included in a Development Phase, the City must

approve each Development Phase Application to ensure that (A) the Community Improvements for each Development Phase (or Sub-Phase, if applicable) are proportional to the cumulative amount of private development to occur in that Development Phase (or Sub-Phase, if applicable), (B) the Community Improvements are implemented in order of public policy priority as set forth in the Phasing Plan, (C) to the extent that the priority requirement in the immediately preceding subsection is satisfied and a choice exists with regard to Community Improvements to be included in that Development Phase or Sub-Phase, that such Community Improvements are selected with reference to geographic proximity to the proposed Development Phase or Sub-Phase, and (D) the timing and phasing of the Community Improvements are consistent with the operational needs and plans of the affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City, except for scheduled work agreed to by an affected City Agency in the course of the construction of the Project (the "**Proportionality, Priority and Proximity Requirement**"). With regard to those Public Improvements subject to a street improvement permit (including but not limited to any major or minor encroachment permit) that must be completed to obtain First Certificates of Occupancy for a building, the Proportionality, Priority and Proximity Requirement shall be deemed to be satisfied by virtue of the requirement that, pursuant to existing Municipal Code, all such improvements must be substantially complete before issuance of a First Certificate of Occupancy for each and every building within the Project. With regard to any proposed Community Improvements not associated with any individual building permit application, the City must review the proposed Development Phase Application to ensure that the Proportionality, Priority and Proximity Requirement is satisfied. Without limiting the foregoing, the Parties agree that any Community Improvement to be located within one thousand (1,000) feet of any new proposed building of over forty thousand (40,000) square feet in size shall be deemed to bear a reasonable geographic proximity to the parcels proposed for development in that Development Phase. The foregoing notwithstanding, nothing in this Section or other provisions of this Agreement shall affect the Mitigation Measures, which must be completed as and when required based upon the trigger dates established with respect to each applicable Mitigation Measure.

3.4.3 Phasing Plan. The Community Improvements and certain Public Improvements to be constructed by Developer are listed in the Phasing Plan, attached hereto as Exhibit F. The Phasing Plan reflects the Parties' mutual acknowledgement that (i) the content and boundaries of each Development Phase (including sub-phases within such Development Phase), the exact number of net new residential units and the exact amount of commercial floor area in each Development Phase (and sub-phases therein) is currently unknown, and (ii) the need for certain Community Improvements and certain Public Improvements is related to the amount and location of net new residential units and commercial floor area proposed by each Development Phase (and the sub phases therein) combined with the cumulative amount of net new residential units and commercial floor area Completed to date. The Phasing Plan defines certain minimum requirements to aid in determining satisfaction of the Proportionality, Priority and Proximity Requirement described in Section 3.4.2. For example, the Phasing Plan requires that all sidewalks and bioswales be completed before the issuance of the First Certificate of Occupancy for the immediately adjacent building. In addition, for all

Community Improvements and Public Improvements related to transportation, the Phasing Plan sets forth the precise number of net new cumulative residential units and commercial square footage that can be constructed in relation to each Community Improvement. The Parties agree that the requirements of the Phasing Plan are generally representative of the Proportionality, Priority and Proximity Requirement but are not determinative such that the City must reasonably review and approve each Development Phase Application as consistent with the Proportionality, Priority and Proximity Requirement pursuant to Section 3.4.4. The Parties acknowledge and agree that (i) the minimum requirements of the Phasing Plan must be satisfied at each stage of development, including during and within each Development Phase (*i.e.*, the net amount of commercial floor area and/or residential units in each Development Phase must be equal to or less than the corresponding Community Improvements and/or Public Improvements shown on the Phasing Plan, as measured by the development metrics identified on the Phasing Plan), and (ii) the City cannot disproportionably burden a Development Phase in violation of the Proportionality, Priority and Proximity Requirement. The Parties acknowledge that certain transit, infrastructure or utility improvements may be required at an early stage of development in accordance with operational or system needs and the City may reasonably request Developer to advance certain Community Improvements at such earlier stage in order to achieve system functionality. The Parties shall cooperate in good faith to amend the Developer's originally proposed Development Phase Application to advance such improvements and to delay other improvements while maintaining the Proportionality, Priority and Proximity Requirement.

3.4.4 Development Phase Application and Approval. Prior to the commencement of the each Development Phase, Developer shall submit to the Planning Department an application (a "**Development Phase Application**") in substantial conformance with the sample attached hereto as Exhibit G. Each Development Phase Application shall include, at a minimum: (i) an overall summary of the proposed Development Phase; (ii) a site plan that clearly indicates the parcels subject to the proposed Development Phase (including sub-phases within such Development Phase); (iii) the amount of new residential and commercial square footage and the number of net new units in the proposed Development Phase (including sub-phases within such Development Phase); (iv) the existing buildings that would be demolished in the proposed Development Phase (including sub-phases within such Development Phase); (v) the number of BMR Units and Replacement Units to be Completed during the proposed Development Phase (including sub-phases within such Development Phase); (vi) a description and approximate square footage of any land to be dedicated to the City or vacated by the City in the proposed Development Phase (including sub-phases within such Development Phase); (vii) a brief description of each proposed Community Improvement and Mitigation Measure to be Completed during the proposed Development Phase (including sub-phases within such Development Phase) with specific references to the pages in the Parkmerced Plan Documents containing detailed descriptions and schematic drawings of each improvement, and calculations showing that the Proportionality, Priority and Proximity Requirements of the Phasing Plan will be satisfied; (viii) a description of the proposed Stormwater Management Improvements that comply with the submittal requirements and performance standards set forth in Appendix

E of the Infrastructure Plan; (ix) a general description of the proposed order of construction of the private development and Community Improvements within the proposed Development Phase (including sub-phases within such Development Phase); and (x) a statement describing any requested modification or deviation from the Parkmerced Plan Documents, if any. If Developer submits a Development Phase Application before the Completion of a previous Development Phase, then the Development Phase Application shall include a proposed order of development for all development in both Development Phases in its response to item (ix) above. In order to ensure that each Development Phase pertains to a portion of the overall development proposed by the Project, each Development Phase Application shall not propose the construction of not less than five-hundred (500) new residential units (both Replacement Units and non-Replacement Units) or more than twenty-five hundred (2,500) new residential units (both Replacement Units and non-Replacement Units) within such Development Phase. Sub-phases may include fewer than five-hundred (500) new residential units. Upon receipt, the Planning Director shall forward a copy of the Development Phase Application to each affected City Agency. The Planning Director and affected City Agencies shall have the right to request additional information from Developer as may be needed to understand the proposed Development Phase Application and to ensure compliance with this Agreement, including but not limited to the Parkmerced Plan Documents and the Proportionality, Priority and Proximity Requirement. If the Planning Director or any affected City Agency objects to the proposed Development Phase Application, it shall do so in writing, stating with specificity the reasons for the objection and any items that it or they believe may or should be included in the Development Phase Application in order bring the application into compliance with the Proportionality, Priority and Proximity Requirement and this Agreement. The Planning Director and affected City Agencies agree to act reasonably in making determinations with respect to each Development Phase Application, including the determination as to whether the Proportionality, Priority and Proximity Requirement has been satisfied. The Parties agree to meet and confer in good faith to discuss and resolve any differences in the scope or requirements of a Development Phase Application. If there are no objections, or upon resolution of any differences, the Planning Director shall issue to Developer in writing an approval of the Development Phase Application with such revisions, conditions or requirements as may be permitted in accordance with the terms of this Agreement (each, a "**Development Phase Approval**").

3.4.5 Commencement of Development Phase. Upon receipt of a Development Phase Approval, Developer shall submit a tentative subdivision map application (if not already submitted) covering all of the real property within the Development Phase or Sub-Phase. Following submittal of the tentative subdivision map application, Developer shall have the right to submit any individual Design Review Applications and associated permits required to commence the scope of development described in each Development Phase Approval; *provided*, *however*, that the City is not required to approve such Design Review Applications until approval of the tentative subdivision map. Each Development Phase (or Sub-Phase, if applicable) shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the buildings located in that Development Phase (or Sub-Phase, if applicable) and (ii) some identifiable construction, such as grading, of all or a portion of that

Development Phase (or Sub-Phase) has been initiated. Upon commencement of work in a Development Phase (or Sub-Phase, if applicable), Developer shall continue the work at a commercially reasonable pace in light of market conditions to Completion of that Development Phase (or Sub-Phase), including all Community Improvements and Public Improvements within the Development Phase (or Sub-Phase) in accordance with applicable permits and requirements under this Agreement to ensure that there are no material gaps between the start and Completion of all work within that Development Phase (or Sub-Phase), subject to any Excusable Delay or amendment of the Development Phase Approval as permitted by Section 3.4.6.

3.4.6 Amendment of a Development Phase Approval. At any time after receipt of a Development Phase Approval, Developer may request an amendment to the Development Phase Approval. Such amendment may include but is not limited to changes to the number and location of units proposed during that Development Phase, the substitution of a Community Improvement for another Community Improvement, or the elimination of a Community Improvement from the Development Phase due to a proposed reduction of net new private development proposed for that Development Phase. Any such requested amendment shall be subject to the review and approval process and the standards (including the Proportionality, Priority and Proximity Requirements) set forth above in Section 3.4.4 for a Development Phase Application. Notwithstanding anything to the contrary above, Developer shall not have the right to eliminate any Community Improvement for which construction or service has already commenced in that Development Phase.

3.4.7 Without limiting the foregoing, it is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties' agreement. Accordingly, the Parties hereto expressly acknowledge that except for the construction phasing required by this Section 3.4, a Development Phase Approval, the Parkmerced Plan Documents, the Phasing Plan, the Mitigation Measures, Section 3.6.9, and any express construction dates set forth in an Implementing Approval, 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.

3.5 Community Improvements and/or Public Improvements.

3.5.1 Developer Responsibilities. Developer shall undertake the design, development and installation of the Community Improvements. Public Improvements shall be designed and constructed, and shall contain those improvements and facilities, as reasonably required by the applicable City Agency that is to accept, and in some cases operate and maintain, the Public Improvement in keeping with the then-current Citywide standards and requirements of the City Agency as if it were to design and construct the Public Improvement on its own at that time, including the requirements of any Non-Responsible City Agency with jurisdiction. With regard to the Community Improvements that are ongoing programs or services, such as shuttles and transit services,

Developer shall consult with the relevant City Agencies before commencing such programs or services. Without limiting the foregoing, any Community Improvement, whether a Publicly-Owned Community Improvement or a Privately-Owned Community Improvement, shall obtain a Design Review Approval from the Planning Department as set forth in Section 3.3.1 of this Agreement before obtaining all necessary permits and approvals (including review of all design and construction plans) from any responsible agencies having jurisdiction over the proposed Community Improvement pursuant to Section 2.4 of this Agreement. Without limiting the foregoing, (i) the SFMTA must approve all of the plans and specifications for the SFMTA Infrastructure, (ii) the SFPUC must approve all of the plans and specifications for the Stormwater Management Improvements and all water and sewer facilities, and (iii) DPW must approve all of the plans and specifications for all Public Improvements unless the DPW Director waives this requirement. With the exception of any and all construction relating to the realignment of the SFMTA light rail "M" Oceanview, construction of Community Improvements must be Completed by Developer on or before issuance of the First Certificate of Occupancy for any building containing new residential units or commercial gross floor area permitted by the Phasing Plan in exchange for construction of such Community Improvement (or as otherwise described in a Development Phase Approval), subject to Excusable Delay. If Developer fails to complete the Community Improvement within such time frame, the City may cease issuing any further Project approvals, not accept any additional applications for the Project, and include in any estoppel certificate language reflecting Developer's failure to complete such Community Improvements. In addition, failure to continue to diligently prosecute such Community Improvement to Completion shall, following notice and cure as set forth in Article 12, be an Event of Default.

3.5.2 Dedication of Public Improvements. Upon Completion of each Public Improvement in accordance with this Agreement, Developer shall dedicate and the City shall accept the Public Improvement.

3.5.3 Maintenance and Operation of Community Improvements by Developer and Successors. The Parties agree that Developer shall, in perpetuity, own, operate and maintain in good and workmanlike condition, and otherwise in accordance with all applicable laws and any applicable permits, all Community Improvements and Public Improvements that are not accepted by the City for maintenance. A map of the Project Site identifying all Community Improvements and Public Improvements subject to this on-going service, maintenance and operations obligation, and the respective land area of each sub-category of space (including, for example, the shuttle service, the park and open space system, bio-swales, sidewalk and streetscape areas, etc.) is attached hereto as Exhibit H and incorporated herein. The provisions of this Section 3.5.3 shall survive the expiration of this Agreement. In order to ensure that the Community Improvements owned by Developer are maintained in a clean, good and workmanlike condition, Developer shall record a declaration of covenants, conditions, and restrictions against the entirety of the Project Site, but excluding any property owned by the City as and when acquired by the City ("**CC&Rs**"), that include a requirement that a master homeowner's association ("**Master HOA**") provide all necessary and ongoing maintenance and repairs to the Community Improvements and Public Improvements not accepted by the City for

maintenance, and all ongoing services, at no cost to the City, with appropriate homeowners' dues to provide for such maintenance and services. Notwithstanding anything to the contrary above or contained in any Master HOA governing document, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term. The CC&Rs identified herein shall be subject to reasonable review and approval by the City Attorney, OEWD, and the Planning Department and shall expressly provide the City with a third-party right to enforce the maintenance and repair provisions of the CC&Rs. On or before the recordation of the CC&Rs, OEWD and the Planning Department shall reasonably approve the proposed budget for the on-going maintenance and operations of the Community Improvements, based on a third-party consultant study verifying the commercial reasonableness of an initial and 20-30 year "build-out" budget.

(a) Maintenance of Stormwater Management Improvements. Pursuant to the requirements of Appendix E of the Infrastructure Plan and the Public Works Code, the SFPUC must approve a Stormwater Control Plan that describes the activities required by Developer to appropriately design, install, and maintain the Stormwater Management Improvements within each Development Phase. In order to ensure that the Stormwater Management Improvements installed by Developer are maintained in the manner described in the Stormwater Control Plan, Developer shall record CC&Rs that include a requirement that the Master HOA provide ongoing maintenance and repairs to the Stormwater Management Improvements not accepted by the City in the manner described in the Stormwater Control Plan, at no cost to the City, with appropriate homeowners' dues to provide for such maintenance. As set forth above, Developer shall make commercially reasonable efforts to enforce the maintenance and repair obligations of the Master HOA during the Term.

3.5.4 Permits to Enter City Property. Subject to the rights of any third-party and the City's reasonable agreement with respect to the scope of the proposed work and insurance or security requirements, and *provided* Developer is not then in default under this Agreement, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit and otherwise on commercially reasonable terms in order to permit Developer to enter City-owned property as needed to perform investigatory work, construct Public Improvements, and complete the Mitigation Measures as contemplated by each Development Phase Approval. Such permits may include release, indemnification and security provisions in keeping with the City's standard practices.

3.6 Non-City Regulatory Approvals for Community Improvements and/or Public Improvements.

3.6.1 Cooperation to Obtain Permits. The Parties acknowledge that certain Community Improvements and/or Public Improvements, most particularly the proposed intersection improvements to 19th Avenue, the outfall of stormwater from the Project Site to Lake Merced, the realignment of the SFMTA light rail "M" Oceanview and construction within the Coastal Zone, require the approval of federal, state, and local

governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Responsible Agencies**"), including but not limited to the California State Department of Transportation ("**Caltrans**") the California Public Utilities Commission ("**CPUC**"), and the California Coastal Commission. The Non-City Responsible Agencies may, at their sole discretion, disapprove installation of such Public Improvements, making such installation impossible. The City will cooperate with reasonable requests by Developer to obtain permits, agreements, or entitlements from Non-City Responsible Agencies for each Public Improvement, and as may be necessary or desirable to effectuate and implement development of the Project in accordance with the Basic Approvals (each, a "**Non-City Regulatory Approval**"). The City's commitment to Developer under this Section 3.6 is subject to the following conditions:

(a) Throughout the permit process for any Non-City Regulatory Approval, Developer shall consult and coordinate with each affected City Agency in Developer's efforts to obtain the Non-City Regulatory Approval, and each such City Agency shall cooperate reasonably with Developer in Developer's efforts to obtain the Non-City Regulatory Approval; and

(b) Developer shall not agree to conditions or restrictions in any Non-City Regulatory Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees to assume such obligations at the time of acceptance of the Public Improvements; or (2) any restrictions on City-owned property (or property to be owned by City under this Agreement), unless in each instance the City, including each affected City Agency, has previously approved the conditions or restrictions in writing, which approval may be given or withheld in its sole discretion.

3.6.2 Costs. Developer shall bear all costs associated with applying for and obtaining any necessary Non-City Regulatory Approval. Developer, at no cost to the City (excepting any City Cost approved by the City), shall be solely responsible for complying with any Non-City Regulatory Approval and any and all conditions or restrictions imposed as part of a Non-City Regulatory Approval, whether the conditions apply to the Project Site or outside of the Project Site. Developer shall have the right to appeal or contest any condition in any manner permitted by law imposed under any Non-City Regulatory Approval, but only with the prior consent of the affected City Agency if the City is a co-applicant or co-permittee or the appeal impacts the rights, obligations or potential liabilities of the City. If Developer demonstrates to the City's satisfaction that an appeal would not affect the City's rights, obligations or potential liabilities, the City shall not unreasonably withhold or delay its consent. In all other cases, the affected City Agencies shall have the right to give or withhold their consent in their sole discretion. Developer must pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of Developer's failure to comply with any Non-City Regulatory Approval, and Developer shall Indemnify the City for any and all Losses relating to Developer's failure to comply with any Non-City Regulatory Approval.

3.6.3 Continuing City Obligations. Certain Non-City Regulatory Approvals may include conditions that entail special maintenance or other obligations that continue

after the City accepts the dedication of Completed Public Improvements (each, a "**Continuing Obligation**"). Standard maintenance of Public Improvements, in keeping with City's existing practices, shall not be deemed a Continuing Obligation. Developer must notify all affected City Agencies in writing and include a clear description of any Continuing Obligation, and each affected City Agency must approve the Continuing Obligation in writing in its sole discretion before Developer agrees to the Non-City Regulatory Approval and the Continuing Obligation. Upon the City's acceptance of any Public Improvements that has a Continuing Obligation that was approved by the City as set forth above, the City will assume the Continuing Obligation and notify the Non-City Responsible Agency that gave the applicable Non-City Regulatory Approval of this fact.

3.6.4 Notice to City. In the event that Developer has not obtained, despite its good faith diligent efforts, a necessary Non-City Regulatory Approval for a particular Community Improvement within three (3) years of Developer's or the City's application for the same, Developer shall provide written notice to the City of its intention to (i) continue to seek the required Non-City Regulatory Approval from the Non-City Responsible Agency, (ii) substitute the requirement that Developer construct such Community Improvement with a requirement that Developer construct another Community Improvement listed on the Phasing Plan (a "**Substitute Community Improvement**") or (iii) substitute the requirement that Developer construct the Community Improvement with a requirement that Developer construct a new Community Improvement not listed on the Phasing Plan (an "**Alternate Community Improvement**"); *provided*, *however*, the provisions of this Section shall not apply to the SFMTA light rail "M" Oceanview, which are addressed separately in Section 3.6.9.

3.6.5 Extensions and Negotiations for Substitute or Alternate Community Improvements. If Developer provides notice to the City of its intention to continue to seek Non-City Regulatory Approval of the Community Improvement, as permitted by Section 3.6.4, the Parties shall continue to make good faith and commercially reasonable efforts to obtain the required Non-City Regulatory Approval for a reasonable period agreed to by the Parties (the "**Extension Period**"). The Parties shall meet and confer in good faith to determine what work within the Development Phase can continue during the Extension Period in light of the failure to obtain the Non-City Regulatory Approval, subject to the Mitigation Measures and the Proportionality, Priority and Proximity Requirement. If, after the expiration of the Extension Period, Developer has not yet obtained the required Non-City Regulatory Approval for the Community Improvement, Developer shall provide written notice to the City of its intention to (i) pursue a Substitute Community Improvement, or (ii) pursue an Alternate Public Improvement. The Parties, by mutual consent, may also agree in writing to an extension of the Extension Period to obtain required approvals for any Community Improvement, Substitute Community Improvement or Alternate Community Improvement, which shall not require an amendment to this Agreement.

3.6.6 Substitute Community Improvement. If Developer provides notice of its intention to pursue a Substitute Community Improvement pursuant to Section 3.6.4 or Section 3.6.5, the City shall review the proposed Substitute Community Improvement as set forth in an amendment to the Development Phase Approval (which amendment

process is set forth in Section 3.4.6 of this Agreement). Upon approval of such amended Development Phase Application, Developer shall continue to file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required in accordance with the amended Development Phase Approval. The time permitted for Developer to complete construction of the Substitute Community Improvement shall be established in writing (without the need for an amendment to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Substitute Community Improvement without delaying or preventing, or denying approvals for, any other development set forth in the amended Development Phase Approval.

3.6.7 Alternate Community Improvement. If Developer provides notice of its intention to pursue an Alternate Community Improvement pursuant to Section 3.6.4 or Section 3.6.5, the Parties shall make reasonable and good faith efforts to identify such Alternate Community Improvement in a timely manner. The Parties shall negotiate in good faith to reach agreement on the Alternate Community Improvement. The Parties acknowledge and agree that any Alternate Community Improvement should be designed so as to replicate the anticipated public benefits from the Community Improvement to be eliminated to the greatest possible extent but without increasing the cost to Developer of the original Community Improvement, thus maintaining the benefit of the bargain for both Parties. The estimated cost to Developer shall be determined by the methodology set forth in Section 3.6.8. In addition, any proposed Alternate Community Improvement should minimize disruptions or alterations to the Phasing Plan and Project design. The City shall review the proposed Alternate Community Improvement pursuant to the Development Phase Approval amendment process set forth in Section 3.4.6 of this Agreement. Upon City approval of such amended Development Phase Application, Developer may file Design Review Applications and obtain Design Review Approvals and any associated permits necessary to construct and complete the amended Development Phase in which the original Community Improvement would have been required. The time permitted for Developer to complete construction of the Alternate Community Improvement shall be established in writing (without need for an amendment to this Agreement), and the City shall allow a commercially reasonable time for Developer to Complete the Alternate Community Improvement without delaying, preventing or denying approvals for any other development set forth in the amended Development Phase Approval. The Parties understand and agree that any Alternate Community Improvement may require additional environmental review under CEQA, and Developer shall be responsible for any and all costs associated with such CEQA review. So long as the Parties continue to diligently work together to negotiate proposed adjustments relating to an Alternate Community Improvement, any delay caused thereby shall be deemed to be an Excusable Delay. In the event that the Parties are not able to agree upon an Alternate Community Improvement within a reasonable amount of time, the Developer shall pay to City the estimated cost to complete the original Community Improvement as determined by the methodology set forth in Section 3.6.8 below. The City shall use such payments to fund the design and construction of improvements or the provision of services that are proximate to the Project Site and that, as reasonably

determined by the City, replicate the public benefits of the original Community Improvement to the extent possible.

3.6.8 Methodology for Determining the Estimated Cost to Complete the Original Community Improvement. In the event a Community Improvement is replaced with an Alternate Community Improvement or payment of an in lieu payment is required as set forth in Section 3.6.7, an economic value must be assigned to the original Community Improvement so that the benefit of the bargain of this Agreement may be preserved for both the City and Developer. Accordingly, Developer shall select one construction manager, contractor or professional construction cost estimator (the "**Cost Estimator**"), who shall develop an estimate of the total costs remaining to complete the original Community Improvement as of the date of the cost estimate. The Cost Estimator shall be qualified to prepare cost estimates for the applicable Community Improvement (*e.g.*, transportation engineer, landscape architect, etc.). The Cost Estimator shall be provided with plans, designs, and construction specifications for the original Community Improvement to the extent completed as of such date. The cost estimate shall include both hard construction costs and soft costs, with as much cost detail for individual cost line items as possible. After the Cost Estimator completes the cost estimate, the City shall have forty-five (45) days to review and consider the cost estimate. If the City rejects the cost estimate in its reasonable discretion, the City shall select a Cost Estimator with the qualifications required by this Section. After completion of the City's cost estimate, the Parties agree to meet and confer in good faith to reach agreement on the cost. If the Parties are not able to reach such agreement within twenty (20) days, then the two Cost Estimators shall select a third Cost Estimator who shall decide which of the two original cost estimates shall be used as the cost. The determination of the third Cost Estimator shall be binding and final. When an in lieu payment is required, the cost that results from the process detailed in this Section shall represent the value of the in lieu payment.

3.6.9 SFMTA Light Rail "M" Oceanview Light Rail Line Realignment and Tier 5 Improvements.

(a) Generally. The Parties acknowledge that the future extension and realignment of the SFMTA light rail "M" Oceanview as shown in the Parkmerced Plan Documents (the "**MUNI Realignment**") through the Project Site represents a fundamental component of the Project's land use program and environmental sustainability goals, and represents a major public benefit of the Project. The Parties further acknowledge that the MUNI Realignment requires approval of Non-City Responsible Agencies, including but not limited to Caltrans and the CPUC, and that Non-City Responsible Agencies may, at their sole discretion, disapprove the MUNI Realignment, making such installation impossible. The Parties further acknowledge that the design of the MUNI Realignment may be affected by further conceptual transportation improvements identified in the 19th Avenue Corridor Study "Tier 5" analysis (the "**Tier 5 Improvements**"). The City has not refined or selected any of the conceptual Tier 5 Improvements at this time and therefore the timing of implementation of any such improvements is speculative. The Parties acknowledge that, over time, a continued lack of

certainty about whether Non-City Responsible Agencies will approve the MUNI Realignment or whether the Tier 5 Improvements may affect the MUNI Realignment may create significant Project Site planning challenges for the Project and capital planning challenges for SFMTA and the City. The Parties further acknowledge that the disapproval of the MUNI Realignment by Non-City Responsible Agencies may materially affect the Project and the City's community benefit program by compromising the Project's land use plan and environmental sustainability goals.

(b) Good Faith Efforts; Notice by City; Tier 5 Modification of the MUNI Realignment, Termination of MUNI Realignment Requirement and Selection of Alternate Community Improvement. In recognition of the foregoing, promptly following the Effective Date, the Parties shall make good faith and commercially reasonable efforts to study, refine and design the conceptual Tier 5 Improvements to a level of detail required to determine whether the City wishes to pursue approval of any of the potential Tier 5 Improvements (the "**Tier 5 Modification Process**"). Developer shall participate in such discussions and shall cooperate with the City to coordinate design proposals. On or before the date two (2) years from the Effective Date, the City acting through the SFMTA shall provide notice to Developer indicating whether the City intends to (i) seek approval from Non-City Responsible Agencies of the original MUNI Realignment, (ii) seek approval of a modified MUNI Realignment to allow for any proposed Tier 5 Improvements (the "**Modified Tier 5 MUNI Realignment**") or (iii) seek approval of both simultaneously from Non-City Responsible Agencies (collectively, the "**MUNI Project**"). If the City fails to give such notice, Developer shall request such notice from the City, and City shall respond to such request within thirty (30) days. Upon notice by the City, the Parties agree to make good faith and commercially reasonable efforts to seek approval of the MUNI Project from City and Non-City Responsible Agencies, which shall include the diligent preparation and submittal by both Parties of all permit applications and information required to obtain the necessary permits or approvals. In light of the challenges created for both the SFMTA and Developer by continued uncertainty about the approval and construction of the MUNI Project, the Parties agree that, if the MUNI Project has not been approved by all necessary Non-City Responsible Agencies within five (5) years from the date of City's notice to Developer regarding the MUNI Project, any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the MUNI Project shall no longer be of any force or effect provided the City and Developer have selected an Alternate Community Improvement of equivalent economic value to replace the former MUNI Project (which could include, for example, the enlargement of the existing MUNI platform at the intersection of 19th Avenue and Holloway Avenue), following the procedures set forth in Section 3.6.7 for selection of Alternate Community Improvements. Notwithstanding anything to the contrary in Section 3.6.7, the Parties shall take into consideration the net present value of any adverse economic impacts to the Project caused by the failure to extend the SFMTA light rail "M" Oceanview into the Project Site (and add the then-net present value of any positive economic impacts to the Project

caused by the Alternate Community Improvement) in determining economic equivalency as set forth above. To determine economic equivalency, the Parties shall determine the reasonably estimated cost to Developer of completing the MUNI Project and the Alternate Community Improvement, each as determined by the methodology set forth in Section 3.6.8. Any adjustments for the reasonably estimated economic loss attributable to the elimination of the MUNI Project and the reasonably estimated economic benefit attributable to the inclusion of the Alternate Community Improvement shall be determined by the methodology set forth in Section 3.6.8 except instead of using a Cost Estimator, the Parties shall select an appraiser or real estate professional who (A) is practicing and has worked for at least ten (10) years in either a national firm or a regional firm based in California, (B) is not an affiliate of the Developer and has no equity investment in Developer, (C) has particular experience in California real property transactions involving similar developments, and (D) has no conflict of interest as evidenced by contractual relationships with Developer at that time or in the immediately preceding twelve (12) months. Once an Alternate Community Improvement for the MUNI Project has been selected and agreed upon by both Parties, the Parties shall prepare an addendum to this Agreement to define the terms and conditions of the Alternate Community Improvement and the termination of any MUNI Project requirements. Any such addendum shall not be deemed an amendment to this Agreement, but shall be subject to the approval of the Executive Director of the SFMTA and the Planning Director.

(c) Permitted Tier 5 Improvements. Developer's contribution to any Modified Tier 5 MUNI Realignment shall equal the reasonably estimated cost of the MUNI Realignment contemplated by this Agreement and set forth in the Infrastructure Plan. The reasonably estimated cost shall be determined by the methodology set forth in Section 3.6.8.

(d) Commencement of Construction of the MUNI Project. Developer shall commence construction of the MUNI Project before or upon Completion of twenty-five hundred (2,500) net new residential units at the Project Site. Construction shall be deemed to have commenced if (i) site or building permits have been issued by the City for all or a portion of the MUNI Project, and (ii) some identifiable construction, such as grading, of all or a portion of the MUNI Project has occurred. Notwithstanding the foregoing, Developer may commence construction and Complete more than 2,500 net new residential units before commencement of construction of the MUNI Project: if (A) SFMTA requests a delay to the commencement of construction of the MUNI Project, provided that SFMTA shall not request such a delay to a date that is later than seven (7) years from the Effective Date, or if (B) Developer has submitted all applications to both City Agencies and Non-City Agencies for all approvals and permits required to commence and Complete construction of the physical rail facilities of the MUNI Project (including the alignment and grading of the track but excluding ancillary facilities the permitting of which will not affect the alignment, grading, or subsurface infrastructure work of the MUNI Project, such as signage, station architecture, and finishing of pavements) (the "**Major MUNI**

Project Permits") but has not yet received final and binding approval of all the Major MUNI Project Permits; *provided, however*, that Developer shall commence construction of the MUNI Project promptly following final and binding approval of the Major MUNI Project Permits. For the purposes of this Section, "final and binding approval" shall mean that all Major MUNI Project Permits have been issued, and no appeal has been filed within 90 days thereafter (or, if such an appeal has been filed, then the final adjudication of such appeal). Upon commencement of construction, Developer shall continue the work at a commercially reasonable pace to Completion of the MUNI Project in accordance with applicable permits to ensure that there are no material gaps between the start and Completion of all work, subject to any Excusable Delay. Notwithstanding anything to the contrary above, in no event shall Developer commence construction of more than 4,000 net new residential units until the MUNI Project is Complete (or, if Developer is constructing an Alternate Community Improvement to the MUNI Project in accordance with Section 3.6.9(b), then Developer shall have the right to continue constructing new residential units so long as Developer continues to meet the schedule of performance for such Alternative Community Improvement as set forth in Section 3.6.7).

(e) Phased Construction to preserve the option of a Modified Tier 5 MUNI Realignment. After one or both of the options described in subsection (b) above for the MUNI Project have been approved (i.e., the original MUNI Realignment and/or the Modified Tier 5 MUNI Realignment), the City shall allow Developer to begin construction of the MUNI Realignment if the City has not yet obtained the separate approvals and funding necessary to implement the Modified Tier 5 MUNI Realignment. However, the Parties acknowledge that the Modified Tier 5 MUNI Realignment represents a significant opportunity to the City and Developer to substantially improve the performance of the SFMTA light rail "M" Oceanview above and beyond the public benefits provided by the MUNI Realignment. Specifically, the Modified Tier 5 MUNI Realignment has the potential to decrease travel times and operating costs of the SFMTA light rail "M" Oceanview, improve pedestrian safety and accessibility throughout the 19th Avenue corridor, and provide a future link to the Daly City BART station. The Parties further acknowledge that the City may simultaneously pursue approval of both variants, the MUNI Realignment and the Modified Tier 5 MUNI Realignment, with Caltrans and the CPUC, while also meeting with San Francisco State University and the owners of the Stonestown Shopping Center (collectively, the "**Adjoining Landowners**") to secure the rights to develop the Modified Tier 5 MUNI Realignment. In the event that Caltrans and the CPUC approve both variants but the City has not obtained funding or approvals from the Adjoining Landowners to commence the Modified Tier 5 MUNI Realignment, the City may require that Developer delay commencement of construction of two key portions of the proposed MUNI Realignment to preserve the City's option to develop the Modified Tier 5 MUNI Realignment, while allowing the remainder of the MUNI Realignment to proceed. These two key portions are separately identified in the diagram attached hereto as Exhibit I and are: (i) the "Felix Avenue Rail Extension" and (ii) the "Transit Plaza", each as shown on Exhibit I. The City

may require such delayed commencement for a period of no longer than two (2) years from Developer's commencement of construction of the MUNI Project.

3.6.10 Stormwater Management System Discharge Alternatives

(a) Generally. The Project includes a series of bioswales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets in accordance with the Infrastructure Plan and the Sustainability Plan. As shown in the Basic Approvals, the Project further proposes to disconnect the stormwater infrastructure from the City's combined sewer system, so that the stormwater either (i) percolates into the aquifer beneath the Project Site or (ii) is discharged into Lake Merced though existing pipes or a newly-constructed outfall (the "**Outfall to Lake Merced**") (collectively, the "**Stormwater Discharge Alternatives**"). The Parties acknowledge that construction of the Outfall to Lake Merced may require Non-City Regulatory Approvals, including but not limited to the Regional Water Quality Control Board and the U.S. Army Corps of Engineers, and that Non-City Responsible Agencies may, at their sole discretion, disapprove some aspect of the Outfall to Lake Merced, making such disconnection impossible. The Parties further acknowledge that the design and advisability of the Stormwater Discharge Alternatives may be affected by other related processes and projects, including the SFPUC's efforts to maximize the utility of the Westside groundwater aquifer and to manage the water level and quality in Lake Merced. The City has not selected one of the Stormwater Discharge Alternatives studied in the Infrastructure Plan and the FEIR at this time and therefore the timing of implementation of any such improvement is speculative.

(b) Good Faith Efforts. In recognition of the foregoing, immediately upon the Effective Date, Parties shall make good faith and commercially reasonable efforts to study, refine and design the Stormwater Discharge Alternatives, to a level of detail required to determine whether the City wishes to pursue approval of any of the Stormwater Discharge Alternatives.

(c) Notice by City. On or before the date that is nine (9) months after the Effective Date, the SFPUC shall provide notice to Developer indicating (i) support for one of the Stormwater Discharge Alternatives (the "**Preferred Stormwater Discharge Alternative**") or (ii) direction to Developer to convey stormwater flows back into the City's combined sewer system. If the SFPUC fails to give such notice, Developer shall request such notice from the SFPUC, which must respond to such request within thirty (30) days.

(d) Implementation of the Preferred Stormwater Alternative. Upon notice by the SFPUC as described in subsection (c) above indicating the Preferred Stormwater Discharge Alternative, the Parties agree to make good faith and commercially reasonable efforts to seek any necessary approvals of the Preferred Stormwater Discharge Alternative from Non-City Responsible Agencies. If applicable, the Outfall to Lake Merced shall be constructed and connected to the

areas where appropriately separated stormwater infrastructure has been completed at the earliest possible date, in part to avoid duplicative costs of upgrading combined sewers for increased flows in the interim before the Outfall to Lake Merced is fully implemented.

(e) Termination of Outfall to Lake Merced Requirement. In light of the challenges created to both the SFPUC and Developer by continued uncertainty about the approval and construction of the Outfall to Lake Merced, the Parties agree that, if the Outfall to Lake Merced is the Preferred Stormwater Discharge Alternative and if the Outfall to Lake Merced has not received all necessary final, binding and non-appealable approvals required for construction within five (5) years from the date of City's notice to Developer as described in Section 3.6.10(c), any requirement in this Agreement or any of the Basic Approvals to install or pay funds for the Outfall to Lake Merced shall no longer be of any force or effect. SFPUC and Developer shall then select one of the remaining alternatives described in Appendix C of the Infrastructure Plan. Once a new Stormwater Discharge Alternative has been selected and agreed upon by both Parties, the Parties shall execute an addendum to this Agreement to reflect such agreement. Any such addendum shall not be deemed an amendment to this Agreement, but shall require the prior approval of the SFPUC Commission and the DPW Director.

(f) Compliance with Stormwater Management Ordinance. Notwithstanding the foregoing, Developer agrees to comply with all requirements of the City's Stormwater Management Ordinance at all times during Project construction, including during the review of the Outfall to Lake Merced.

3.7 Design and Construction of SFMTA Infrastructure.

3.7.1 Design of Intersections and Traffic Improvements.

(a) Developer shall be responsible for the design of upgrades and reconfiguration of intersections and other infrastructure affecting traffic in the public right of way as set forth in the Parkmerced Plan Documents (the "**Traffic Improvements**"). The SFMTA and DPW shall review the designs of intersections and Traffic Improvements to confirm that the designs meet SFMTA and other applicable performance requirements and specifications in accordance with the terms of this Agreement. Developer shall not construct any Traffic Improvement without the SFMTA's prior written approval of the design. The design shall include the layout of the intersection, traffic calming infrastructure, medians, bulb outs, striping, signal lights, signal controllers and ancillary equipment, street lights, and all necessary support infrastructure, such as poles, equipment cabinets, cabling, conduits, and duct banks, and other elements listed in Exhibit P.

(b) Developer's intersection and Traffic Improvement designs must conform to the then-current design requirements and performance and equipment

specifications of the SFMTA, the CPUC and Caltrans in effect at the time the design is commenced.

(c) If requested by Developer and acceptable to SFMTA, SFMTA may design one or more of the intersections or Traffic Improvements, or elements thereof. The City shall have no liability whatsoever to Developer or its contractors and subcontractors for the accuracy or completeness of such designs. Said limitation of liability shall include, but is not limited to, delay to construction of the Public Improvements or delay to the Project.

3.7.2 Design of SFMTA Light Rail "M" Oceanview Relocation and Other Transit Improvements.

(a) Developer shall be responsible for the design of the extension of the SFMTA light rail "M" Oceanview and cutover from and to the existing alignment, as generally described in the Transportation Plan. Developer shall be responsible for the design of all elements of the light rail line extension, including but not limited to the station, trackway, signaling and control, and traction power elements listed in Exhibit P.

(b) Before starting any design work on the SFMTA light rail "M" Oceanview, Developer shall notify the SFMTA. At SFMTA's option, SFMTA may provide design services for the trackway and overhead traction power elements of the SFMTA light rail "M" Oceanview extension *provided* SFMTA can meet Developer's reasonable construction schedule and perform the design work at a commercially reasonable rate.

(c) At Developer's request, SFMTA may provide shelters, through its bus shelter contractor, for private shuttle bus stops. If Developer does not make such request, Developer shall be responsible for the design and construction of private shuttle bus stops within the development, in conformance with City, and Americans with Disabilities Act requirements. The SFMTA, through its bus shelter contractor, shall provide the shelters for SFMTA bus stops.

(d) Developer shall have no claim to revenue from advertising placed through SFMTA contractors on SFMTA bus shelters and SFMTA light rail "M" Oceanview platforms and stations. If the SFMTA provides shelters for private shuttle buses, Developer shall have no claim to advertising placed through SFMTA contractors on those shelters. Developer shall have the right, but not the obligation, to provide wayfinding and other non-commercial signage with SFMTA's agreement at bus shelters and SFMTA light rail "M" Oceanview stations.

3.7.3 Design Review.

(a) Within each Development Phase, SFMTA shall review and provide comments to Developer's designs of SFMTA Infrastructure upon completion of 35 percent, 90 percent and 100 percent of the design. SFMTA shall

use its best efforts to complete said reviews expeditiously and within twenty (20) business days of receipt of designs from Developer, but may require more time depending on the scope and complexity of the design. Developer shall incorporate SFMTA's comments and requested corrections into its designs to the extent that it does not disagree with them. If Developer disagrees or otherwise objects to SFMTA's comments or corrections, Developer shall provide SFMTA with a written explanation and shall confer with SFMTA to resolve said disagreements or objections.

(b) The SFMTA shall expend reasonable care and effort in expeditiously reviewing Developer's designs, providing comments and approval, and inspecting constructed SFMTA Infrastructure. The foregoing notwithstanding, SFMTA shall have no liability for delay to the construction of a Public Improvement or the Project.

(c) Developer shall at all times be responsible for the accuracy, completeness, and compliance of its designs with all applicable laws and regulations and requirements imposed by City and Non-City Responsible Agencies with jurisdiction over at-grade light rail design, construction, and operation, including but not limited to Caltrans and the CPUC. Developer shall at all times be responsible for the costs of any delay or damages arising from its designs. The City shall have no liability for said designs unless and until the Public Improvement has been fully constructed and tested and the City has accepted and assumed ownership of said Public Improvement pursuant to applicable requirements for government design immunity. Nothing in this Agreement shall affect the City's sovereign or other governmental immunities under applicable law.

3.7.4 Construction Responsibilities.

(a) Construction. Developer shall be responsible for the construction, installation, testing and commissioning of every element of the SFMTA Infrastructure.

(b) Contracting. Developer shall establish prerequisites as to experience, expertise, and resources for contractors that may bid on the construction of the SFMTA Infrastructure. Developer shall provide SFMTA an opportunity to review and comment on these prerequisites. Intersection/signal contractors must have previously performed similar work in San Francisco. Contractors for the SFMTA light rail "M" Oceanview work must have previous experience with light rail construction subject to CPUC and Caltrans jurisdiction.

(c) Compensation. The City shall have no liability for the payment of compensation to contractors under contract with Developer to construct the SFMTA Infrastructure (but the City shall be responsible for the payment of contractors for any contract entered into by the City). The Developer agrees and stipulates for all purposes that the design and construction of the SFMTA

Infrastructure are not public works and are not subject to stop notices or mechanics liens against the City. Developer agrees and stipulates for all purposes that the funds intended to reimburse the City for its costs of review and inspection of the design and construction of SFMTA Infrastructure are not contract funds subject to stop notices or other liens for Developer's refusal or failure (or that of any Developer contractor) to pay a subcontractor or material supplier.

(d) Access. Developer shall provide SFMTA access at all reasonable times to construction and job sites for review and inspection of SFMTA Infrastructure.

3.7.5 Financial Responsibility. Developer has prepared and SFMTA has reviewed design and construction cost estimates for the SFMTA Infrastructure. Developer is, and shall at all times be, wholly responsible for all of the costs of the SFMTA Infrastructure. The City has reviewed such cost estimates only as good faith effort to the support the Project and the City shall have no liability whatsoever for the accuracy of those estimates.

3.7.6 SFMTA Acceptance of SFMTA Infrastructure. SFMTA will accept each SFMTA Infrastructure only when Complete.

3.7.7 Warranty. All SFMTA Infrastructure shall have a two (2) year warranty provided by the construction contractor. The warranty period shall commence upon the City's acceptance of the SFMTA Infrastructure as Complete. All manufacturer warranties for equipment and materials used in SFMTA Infrastructure shall be transferred to the City upon the City's acceptance of the associated SFMTA Infrastructure.

3.7.8 Permits. Developer shall be responsible for obtaining all permits necessary for the construction of the SFMTA Infrastructure, including permits from Caltrans and the CPUC. SFMTA will assist Developer in obtaining such permits as necessary.

3.8 Financing of Any Public Improvements. At Developer's request, Developer and the City agree to use good faith efforts to pursue the creation of a Community Facilities District ("**CFD**") under the Mello-Roos Community Facilities Act of 1982 (California Government Code § 53311 *et seq.*) within the Project Site only to finance the capital costs for Public Improvements and maintenance and other costs for specified Community Improvements, including maintenance of the parks and open spaces in the Project Site and any ongoing commitments made by Developer such as the BART shuttle. Any and all costs incurred by the City in negotiating and forming a CFD shall be City Costs. The terms and conditions of any CFD must be agreed to by both Parties, each in their sole discretion. Upon agreement on the terms and conditions for a CFD, and subject to market conditions and fiscal prudence, Developer agrees to vote in favor of the formation of the CFD and the City shall use reasonable efforts to issue or cause issuance (potentially through the Association of Bay Area Governments) of bonds for the formed CFD in keeping with standard City practices. Failure to form a CFD or to issue CFD bonds or other debt shall not relieve Developer of its obligations under this Agreement, including but not limited to the obligation to Complete Public Improvements or Public Improvements as and when required.

3.9 Cooperation.

3.9.1 Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Basic Approvals, Development Phase Approvals, Design Review Approvals, Implementing Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Basic Approvals are fulfilled during the Term. Nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs that Developer must reimburse under this Agreement or costs that Developer must reimburse through the payment of Processing Fees. Subject to the requirements of Section 3.4.5, nothing in this Agreement obligates the Developer to proceed with the Project, including without limitation filing Development Phase Applications, unless it chooses to do so in its sole discretion. The Parties may agree to establish a task force, similar to the Mission Bay Task Force, to create efficiencies and coordinate the roles of various City departments in implementing this Agreement.

3.9.2 Role of Planning Department. The Parties agree that the Planning Department will act as the City's lead agency to facilitate coordinated City review of applications for Development Phase Approvals, Design Review Approvals, and Implementing Approvals. As such, Planning Department staff will: (i) work with Developer to ensure that all such applications are technically sufficient and constitute complete applications and (ii) interface with City Agency staff responsible for reviewing any application under this Agreement to ensure that City Agency review of such applications are concurrent and that the approval process is efficient and orderly and avoids redundancies.

3.9.3 City Agency Review of Individual Permit Applications. Following issuance of Design Review Approval as set forth in this Agreement, the Parties agree to prepare and consider applications for Implementing Approvals in the following manner:

(a) City Agencies. Developer will submit each application for Implementing Approvals, including applications for the design and construction of Community Improvements and Mitigation Measures, to the applicable City Agencies. Each City Agency will review submittals made to it for consistency with the Prior Approvals, and will use good faith efforts to provide comments and make recommendations to the Developer within thirty (30) days of the City Agency's receipt of such application. The City Agencies will not impose requirements or conditions that are inconsistent with the Prior Approvals, and will not disapprove the application based on items that are consistent with the Prior Approvals, including but not limited to denying approval of Community Improvements based upon items that are consistent with the Prior Approvals. Any City Agency denial of an application for an Implementing Approval shall include a statement of the reasons for such denial. Developer will work collaboratively with the City Agencies to ensure that such application for an Implementing Approval is discussed as early in the review process as possible and that Developer and the City Agencies act in concert with respect to these matters.

(b) SFMTA. Upon submittal of an application that includes any SFMTA Infrastructure or any transportation-related Mitigation Measure within the SFMTA's jurisdiction, the SFMTA will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFMTA's receipt of such application.

(c) SFPUC. Upon submittal of an application that includes any Stormwater Management Improvements or Public Improvements that fall under the jurisdiction of SFPUC or any public utility-related Mitigation Measure within the SFPUC's jurisdiction, the SFPUC will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFPUC's receipt of such application.

(d) SFFD. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of SFFD or any fire suppression-related Mitigation Measure within the SFFD's jurisdiction, the SFFD will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of the SFFD's receipt of such application.

(e) DPW. Upon submittal of an application that includes any Community Improvements that fall under the jurisdiction of DPW or any Mitigation Measure within the DPW's jurisdiction, DPW will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of DPW's receipt of such application.

(f) MOH. Upon submittal of an application that includes any BMR Units, MOH will review each such application, or applicable portions thereof, and use good faith efforts to provide comments to Developer within thirty (30) days of MOH's receipt of such application.

3.9.4 Specific Actions by the City. City actions and proceedings subject to this Agreement shall be processed through the Planning Department, as well as affected City Agencies (and when required by applicable law, the Board of Supervisors), and shall include:

(a) Street Vacation, Dedication, Acceptance, and Other Street Related Actions. Instituting and completing proceedings for opening, closing, vacating, widening, modifying, or changing the grades of streets, alleys, sidewalks, and other public rights-of-way and for other necessary modifications of the streets, the street layout, and other public rights-of-way in the Project Site, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, city utilities) within the public rights-of-way as specifically identified and approved in a Development Phase Approval, and as may be necessary to carry out the Basic Approvals and the Implementing Approvals.

(b) Acquisition. Acquiring land and Public Improvements from Developer, by accepting Developer's dedication of land and Public Improvements that have been Completed in accordance with this Agreement, the Basic Approvals, Implementing Approvals and approved plans and specifications.

(c) Release of Security. Releasing security as and when required under the Subdivision Code in accordance with any public improvement agreement.

(d) Environmental Review. Complying with and implementing Mitigation Measures for which the City is responsible, reviewing feasibility studies for Mitigation Measures, or completing any subsequent environmental review at Developer's sole cost.

3.10 Subdivision Maps.

3.10.1 Developer shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications) with respect to some or all of the Project Site, to subdivide or reconfigure the parcels comprising the Project Site as may be necessary or desirable in order to develop a particular Development Phase or Sub-Phase of the Project or to lease, mortgage or sell all or some portion of the Project Site, consistent with the density, block and parcel sizes set forth in the Parkmerced Design Standards and Guidelines. The City acknowledges that Developer intends to create and sell condominiums on the Project Site (excluding the Replacement Units), and that such intent is reflected in the Basic Approvals and Parkmerced Plan Documents.

3.10.2 Notwithstanding anything to the contrary set forth above, in any subdivision or condominium map placed on the Project Site, the Replacement Units shall not be subdivided into separate condominium units so as to ensure that the Replacement Units remain rental units, under common ownership, for the life of each building in which a Replacement Unit is located. Developer shall record restrictions running with the land, in form and substance satisfactory to the Planning Director and the City Attorney (the "**Recorded Restrictions**"), binding upon Developer and successor owners of all or part of the Replacement Units, that shall, without limitation: (i) require that the Replacement Units remain rental for the life of the buildings in which they are located; (ii) waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions; (iii) apply the terms of Rent Ordinance to the Replacement Units, and acknowledge the non-applicability of the Costa-Hawkins Act; and (iv) waive any other laws or regulations that would limit the ability of the City to enforce the rental-only requirements and the other benefits and amenities relative to the Replacement Units under this Agreement. Developer, on behalf of itself and successor owners, agrees that it shall not seek to challenge the applicability or enforceability of the Recorded Restrictions. Without limiting the City's rights and remedies as set forth in this Agreement, the Parties acknowledge and agree that the City shall have the right of specific performance to enforce the Recorded Restrictions against Developer and all successor owners. The City would not be willing to enter into this

Agreement, permit the demolition of Existing Units, or approve a subdivision or condominium map, without the agreement and understanding as set forth above.

3.10.3 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 California Subdivision Map Act (California Government Code § 66410 *et seq.*), or with the Subdivision Code, or that removes the Replacement Units from the rental market for the life of the buildings in which they are located, or that removes or renders ineffective or unenforceable the Rent Ordinance, or a similar successor ordinance, as applied against the Replacement Units, whether or not the initial Existing Tenant moves into the Replacement Unit. Developer's commitment to maintain the Replacement Units as rent controlled under the Rent Ordinance shall survive the termination or expiration of this Agreement for so long as the Rent Ordinance, or a similar successor ordinance remains in effect, and does not depend upon the initial occupancy of the Replacement Unit by an Existing Tenant or any other person, and such commitments shall be evidenced by the Recorded Restrictions. Developer shall, as part of the Recorded Restrictions or as part of a subdivision map, waive any and all rights to evict tenants under the Ellis Act and any other laws or regulations that permit owner move-in evictions for any of the Replacement Units.

3.10.4 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 Basic Approvals or any Implementing Approvals as set forth in Section 2.2.

3.10.5 Pursuant to Section 65867.5(c) of the Development Agreement Statute, any tentative map prepared for the Project shall comply with the provisions of California Government Code section 66473.7 concerning the availability of a sufficient water supply.

3.11 Interim Uses. Notwithstanding the zoning designations set forth in the Parkmerced Special Use District, Developer may install interim or temporary uses on sites for up to four (4) years that might be inconsistent with the underlying zoning yet consistent with the principally permitted uses elsewhere on the Project Site or other permissible temporary or interim uses allowed under the Planning Code. Developer also may use sites for temporary or interim Community Improvements even though such use may not be permitted under the Parkmerced Special Use District.

3.12 Renewable Energy Agreement. Developer shall comply with the terms and provision of the Parkmerced Power Generation Requirements and Implementation Plan attached hereto as Exhibit Q.

4. PUBLIC BENEFITS EXCEEDING THOSE REQUIRED BY EXISTING ORDINANCES, REGULATIONS, AND POLICIES RELATED TO HOUSING

4.1 Costa-Hawkins Rental Housing Act.

4.1.1 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 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)). Based upon the language of the Costa-Hawkins Act and the terms of this Agreement, the Parties understand and agree that Section 1954.52(a) of the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Replacement Units or the BMR Units. This Agreement falls within the express exception to the Costa-Hawkins Act because this 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 contributions and other forms of assistance include but are not limited to the following:

- Eliminating maximum density controls (which, before this Agreement, were set at one (1) unit per 800 square feet of lot area for the majority of the Project Site) such that density is limited only by other Code limitations, such as height, bulk, setbacks, open space, exposure, and unit mix as well as the Parkmerced Design Standards and Guidelines;

- Reducing the front setback from the lesser of fifteen (15) feet or fifteen percent (15%) of lot depth to approximately zero (0) to eight (8) feet;

- Increasing the permissible height and bulk envelope for new buildings in at least fifty percent (50%) of the existing Project Site. New height districts allow increases ranging from five (5) up to one hundred (100) feet in height;

- Reducing the size of required rear yards from approximately forty-five (45) percent of lot depth to approximately twenty-five percent (25%) of total lot area;

- Eliminating conditional use requirements for any new building exceeding forty (40) feet in height and for residential demolitions;

- Eliminating discretionary review for any vertical project consistent with the Development Agreement, Parkmerced Special Use District, and the Parkmerced Design Standards and Guidelines;

- Substantially increasing the amount of permitted commercial mixed-use development on the Project Site over that which would be permitted under

existing RM-1 and RM-4 zoning (for a total of approximately 310,000 square feet);

- Vesting the BMR Requirement, so that any future increase in the required percentage of BMR Units will not apply to the Project;
- Excluding the Replacement Units from the BMR Requirement;
- Not assessing the Impact Fees and Exactions against the Replacement Units;
- Vesting and freezing development rights to the Project for thirty (30) years, with no required milestones or schedules of performance;
- Committing to issue approvals and permits and take other implementation measures including the transfer of City-owned real property, consistent with the Project; and
- Limiting Impact Fees and Exactions as set forth in Section 2.3.

The City and Developer would not be willing to enter into this 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 Replacement Units or the BMR Units as a result of the exemption set forth in California Civil Code section 1954.52(b). In the alternative, Developer, on behalf of itself and all of its successors and assigns of all or any part of the Project Site, agrees not to challenge and expressly waives, now and forever, any and all rights to challenge the requirements of this Agreement related to the establishment of the initial and all subsequent rental rates for the BMR Units and the Replacement Units under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time. Developer shall include this agreement and waiver in any and all Assignment and Assumption Agreements and in any real property conveyance agreements for property that includes or will include BMR Units or Replacement Units. While each Replacement Unit shall be subject to the Rent Ordinance, including its supporting fee provisions, Developer does not waive its right to adjust the rent for a Replacement Unit when a tenant has voluntarily vacated or abandoned the premises or been evicted in accordance with California Code of Civil Procedure section 1161 *et seq.* or any successor statute; *provided*, *however*, following any such rate adjustment, all provisions of the Rent Ordinance, including but not limited to the rent control provisions, shall apply to the new tenant (and each subsequent tenant) during the length of his or her tenancy for the life of the Replacement Building.

4.2 BMR Units.

4.2.1 BMR Requirement. Except as expressly modified by this Agreement, the Project shall satisfy the requirements of Planning Code section 415 as of the Effective Date (including but not limited to the percentage of required BMR Units by building type and location of buildings on or off site) for all of the residential units constructed on the Project Site from and after the Effective Date excluding the Replacement Units (the "**BMR Requirement**"). The Parties shall calculate numerical amounts needed to

implement the BMR Requirement (including but not limited to household income eligibility requirements, permitted rental and sales prices, and in lieu fee amounts) using the formulas or methodologies provided by Planning Code section 415 as of the Effective Date but with then-current data (such as then-current household income data). Notwithstanding the foregoing, the Parties shall implement the BMR Requirement in accordance with the provisions of the San Francisco Affordable Housing Monitoring Procedures Manual, as published by the Mayor's Office of Housing and as updated from time to time, except for any updates or changes that conflict with the requirements of Planning Code section 415 as of the Effective Date. Not less than one-third (1/3) of the BMR Requirement shall be satisfied with BMR Units constructed on the Project Site. BMR Units constructed on the Project Site or within 1,000 feet of the boundary of the Project Site shall be considered units constructed on the Project Site. The exact number and location of BMR Units (per building) in each Development Phase, and the number of in lieu payments (if any), shall be identified in each Development Phase Approval. If Developer constructs or pays an in lieu fee equivalent to a greater number of BMR Units than is required within a Development Phase to meet the BMR Requirement, then such additional BMR Units shall be counted against the total number of BMR Units required in the next Development Phase Approval.

4.2.2 Satisfaction of BMR Requirement. The Parties acknowledge that the satisfaction of the BMR Requirement for the Project must occur in proportion to the construction of new Market Rate Units. However, the Parties further acknowledge and agree that it is desirable for the Project to maintain some flexibility as to the location of the BMR Units at the Project Site to permit the siting of BMR Units in buildings where the costs of homeowners association dues and other miscellaneous fees may be lower. To ensure the foregoing policy goals are met, Developer shall submit a proposal to MOH before the submittal of a building permit application for a residential building indicating the manner in which the BMR Requirement will be satisfied with respect to such residential building (the "**Principal Project**"), which may include (i) construction of BMR Units within the Principal Project, (ii) construction of BMR Units within a different building within that Development Phase (or, if applicable, within that Sub-Phase) (the "**Affiliated Project**"), such that the total number of BMR Units otherwise required for the Principal Project shall be added to the total number of BMR Units required in the Affiliated Project, and (iii) payment of an in lieu fee. If a Development Phase is divided into Sub-Phases, then the Parties agree that the BMR Requirement must be satisfied in each Sub-Phase. The location and the minimum and maximum number of BMR Units in each Principal Project and Affiliated Project (or the satisfaction of the BMR Requirement through payment of an in lieu fee as permitted by this Agreement) shall be subject to the review and approval of the Director of MOH, which approval shall not be unreasonably withheld but shall be consistent with the practices and policies of MOH in other areas of the City; *provided*, *however*, that no more than fifty percent (50%) of the units within a single building located within the boundaries of the Project Site may be BMR Units. If the approved manner of satisfying the BMR Requirement for a Principal Project includes the construction of units in an Affiliated Project or the payment of an in lieu fee, then the construction of such units in the Affiliated Project must be Completed or payment of such in lieu fee must be made concurrently with or before the issuance of the First Certificate of Occupancy for the Principal Project.

4.3 Replacement Units; Affordability.

4.3.1 Provision of Replacement Units. Developer shall replace each of the 1,538 Existing Units with a Replacement Unit located in a new residential building (each, a "**Replacement Building**") on a one-for-one basis. Each Replacement Unit shall contain one (1) washing machine, one (1) dryer and one (1) dishwasher and shall be wired for telephone, cable, and internet access (provided that such internet access may be provided by telephone or cable outlets). If the lease for the Existing Unit includes the right to park at a reserved off-street parking space or spaces, then the Replacement Unit shall include the same parking rights. The foregoing notwithstanding, the Parties acknowledge that a major component of the Project's parking strategy is to separate parking garages from the residential buildings at the Project Site, in order to concentrate parking spaces at the portion of the Project Site that is farthest from the MUNI light rail stations, and that such parking strategy furthers the City's Transit First policy. The Parties therefore agree that the parking space(s) associated with the Replacement Unit may not be located within the building or parcel in which the Replacement Unit is located and may be located in an underground garage and that such location shall not be considered a reduction in service under the Rent Ordinance. The foregoing notwithstanding, if the parking space(s) associated with a specific Replacement Unit are located at a farther distance from such Replacement Unit than the parking space(s) associated with an Existing Tenant's Existing Unit, such Existing Tenant shall have the right to petition the Rent Board for a determination that such additional walking distance to the parking space(s) for the Existing Unit represents a reduction in service pursuant to the Rent Ordinance. Not all of the residential units constructed by the Project will have patios and balconies. Accordingly, not all Replacement Units will have patios or balconies. The City agrees that, because of the improvement in the size and quality of the open space proposed by the Project compared to the existing open space at the Project Site, and due to the Project's provision of amenities in the Replacement Units that are not present in the existing units (such as a washing machine, dryer, and dishwasher), the lack of such patio or balcony shall not violate the Rent Ordinance. The Parties agree that leasing and occupancy of each such Replacement Unit shall be governed by the requirements of this Article 4 whether or not an Existing Tenant chooses to relocate to the Replacement Unit.

4.3.2 Definition of Existing Tenant. For purposes of this Agreement, "**Existing Tenant**" shall mean each person or persons recognized as a tenant under the Rent Ordinance with respect to an Existing Unit in an existing building which will be demolished as part of the Project (each a, "**To-Be-Replaced Building**") on the date that Developer delivers the Existing Tenant Notice, as defined in Section 4.4.3(a). For the purposes of this Agreement, any person or persons who meet the criteria above shall remain an Existing Tenant until they either (i) become a Relocating Tenant in accordance with Section 4.3.3, (ii) voluntarily vacate their Existing Unit before delivery of the Replacement Unit Availability Notice, or (iii) are evicted from their Existing Unit for a "just cause" reason under the Rent Ordinance other than Sections 37.9(a)(10) or 37.9(a)(15). Existing Tenants who decline an offer to relocate to a Replacement Unit in accordance with Section 4.4 shall retain all other rights afforded to tenants under the Rent Ordinance and, to the extent permitted by this Agreement, the right to relocation

payments in the amounts equal to those required by Rent Ordinance Section 37.9C. In the event of any dispute regarding whether a person or group of persons is an Existing Tenant, such person or persons may request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any further adjudication as allowed by law. Such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

4.3.3 Right of Existing Tenants to Relocate to Replacement Units. Each Existing Tenant shall have the right to relocate from an Existing Unit to a Replacement Unit in accordance with terms of this Article 4; *provided*, *however*, that if more than one person occupies an Existing Unit, the persons occupying the Existing Unit shall collectively be entitled to relocate to only one (1) Replacement Unit as further described in Section 4.4.3. Developer shall lease to each Existing Tenant who elects to and does relocate to a Replacement Unit in accordance with the terms of this Section 4.3 (each, a "**Relocating Tenant**") a Replacement Unit under the same terms and provisions as the Relocating Tenant's existing lease; *provided*, *however*, that (i) such lease shall be amended to reflect the changed location of the leased premises (and the changed location of any parking space, if applicable) and (ii) no other amendments to the lease shall be made (including but not limited to any provision regarding the permissibility of pets).

4.3.4 Size and Type of Replacement Units. The type and size of each Replacement Unit (including the size of dedicated storage space for that Replacement Unit) shall be determined by the type and size of the Existing Tenant's Existing Unit, as more particularly set forth on the Table 4.3.4. As shown on Table 4.3.4, Existing Tenants shall be offered a Replacement Unit of the same unit type (e.g., Medium 1-bedroom/1-bathroom) as their Existing Unit (e.g., Medium 1-bedroom/1-bathroom). The average size of that unit type of Replacement Unit in each Replacement Building shall be equal to or larger than the average size of that unit type of Existing Unit, as shown on Table 4.3.4. No Replacement Unit of a specific type shall be smaller than the minimum size of that type of Existing Unit. The average size of in-unit storage space for each type of Replacement Unit shall be equal to or larger than the average size of in-unit storage space of that type of Existing Unit, as shown on Table 4.3.4. Developer shall not provide fewer square feet of storage space for each type of Replacement Unit than the minimum amount of storage space of that type of Existing Unit. If an Existing Unit has associated off-site storage space, Developer shall provide an off-site storage space on the Project Site of equal or greater size for the Replacement Unit. At the completion of each Replacement Building, the average size of the Replacement Units and associated storage space constructed within that Replacement Building must meet the average size requirements shown on Table 4.3.4.

Table 4.3.4: Type and Size of Existing and Replacement Units

Number of Units	Unit Type	Average Size (Square Feet) of Existing and Replacement Units	Minimum Size (Square Feet) of Existing and Replacement Units	Average In-Unit Storage Space (Square Feet) of Existing and Replacement Units	Minimum In-Unit Storage Space (Square Feet) of Existing and Replacement Units
252	Small 1-bedroom/ 1-bathroom	688	682	45	39
172	Medium 1-bedroom/ 1-bathroom	713	691	48	44
120	Large 1-bedroom/ 1-bathroom	749	748	42	39
157	Small 2-bedroom/ 1-bathroom	873	873	41	41
407	Medium 2-bedroom/ 1-bathroom	888	888	42	42
114	Large 2-bedroom/ 1-bathroom	916	910	50	47
106	Extra Large 2-bedroom/ 1-bathroom	1,022	1,005	75	60
18	Jumbo 2-bedroom/ 1-bathroom	1,046	1,042	81	81
122	Regular 3-bedroom/ 2-bathroom	1,192	1,192	80	80
68	Small 3-bedroom/ 2.5-bathroom	1,330	1,328	78	77
2	Large 3-bedroom/ 2.5-bathroom	1,506	1,506	115	115

(a) Initial Rent. The initial rent payable by a Relocating Tenant for his or her Replacement Unit shall be the then-existing Base Rent (as defined by Section 37.2(a) of the Rent Ordinance) for the Existing Unit at the time of

relocation to the Replacement Unit, subject only to future increases permitted under the terms of the Rent Ordinance and the applicable lease. Developer shall not require a Relocating Tenant to pay a new or increased security deposit for the Replacement Unit, but shall transfer the Relocating Tenant's existing security deposit to his or her Replacement Unit. Each Replacement Unit shall be subject to the terms of the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect, whether or not the initial Relocating Tenant remains the tenant of the Replacement Unit. Developer shall not, and waives any and all rights to, petition the Rent Board for a rent increase as a result of the construction of, and the relocation of the Relocating Tenants into, the Replacement Units or the construction of the Community Improvements.

(b) Passthroughs. Developer shall not transfer any passthroughs assessed against an Existing Unit (including but not limited to utility passthroughs, bond measure passthroughs, water revenue bond passthroughs, capital improvement passthroughs) to the Replacement Unit. Developer shall have the right to assess new passthroughs to the Replacement Units as permitted by the Rent Ordinance; *provided, however,* that Developer shall assume all costs directly related to (i) the construction of the Project and (ii) the relocation of the Relocating Tenants, such that no passthroughs for these costs are permitted. Upon relocation, each Relocated Tenant shall be assigned a date of initial occupancy, which is the day, month and year that the relocation occurred and was completed. Such date of initial occupancy shall be considered the date of occupancy under Section 37.2(a) of the Rent Ordinance for purposes of any future increase or adjustment to Base Rent.

(c) New Tenants. Any Replacement Unit that is not leased to a Relocating Tenant may be leased to a new tenant; *provided*, *however*, that such Replacement Unit shall be subject to the Rent Ordinance (or a successor rent-control ordinance) for the life of the Replacement Unit and for so long as the Rent Ordinance (or a successor rent-control ordinance) remains in effect. Developer shall have the right to establish the initial rental rate for such Replacement Unit as if the Replacement Unit had been voluntarily vacated by the Relocating Tenant, and there shall be no limit on the initial rental rate that may be charged to a new tenant that occupies such Replacement Unit.

4.4 Relocation to Replacement Units.

4.4.1 Presentation of Development Phase. Following each Development Phase Approval by the City pursuant to Section 3.4.4, Developer shall hold at least one (1) duly noticed informational presentation to Existing Tenants regarding the details of the approved Development Phase, such that the Existing Tenants are informed of whether their Existing Units are proposed for replacement during such approved Development Phase and the anticipated schedule of construction within such approved Development Phase.

4.4.2 Tenant Relocation Plan. Before submitting the first building permit application for a Replacement Building, Developer shall submit to the Planning Director and the Executive Director of the Rent Board (i) a Tenant Relocation Plan in substantial conformance with the tenant relocated plan attached to this Agreement as Exhibit Q (the "**Tenant Relocation Plan**"), (ii) a site plan showing the location of the Replacement Building and the To-Be-Replaced Buildings occupied by Existing Tenants who will be offered the opportunity to relocate to a Replacement Unit in the Replacement Building, (iii) preliminary floor plans showing the location of the Replacement Units within the Replacement Building to be occupied by Existing Tenants, (iv) the address and names of Existing Tenants, (v) the date of initial occupancy of the Existing Unit for each Existing Tenant, (vi) the Unit Type as set forth in Table 4.3.4 for each Existing Tenant, and (vii) an approximate schedule for the proposed relocations. If Developer requests any changes to the form of Tenant Relocation Plan attached as Exhibit R, then Developer shall provide a clear statement of the proposed changes with the submittal. If Developer requests any such changes or if the Tenant Relocation Plan is otherwise not in substantial conformance with Exhibit R, then the Tenant Relocation Plan shall not become effective until it has been approved by the Planning Director and Executive Director of the Rent Board, which approval shall not be unreasonably withheld or delayed, and which shall not be based on anything that is in conformance with Exhibit R. In the event the Planning Director or Executive Director of the Rent Board disapproves the Tenant Relocation Plan, he or she shall provide to Developer a written statement of the reasons for the disapproval within thirty (30) days following Developer's submittal. Before submittal of each Tenant Relocation Plan, Developer shall hold at least one (1) duly noticed informational presentation with Existing Tenants of the To-Be-Replaced Buildings regarding the Tenant Relocation Plan and the information required in (ii) and (iii) above. The notice for such meeting shall include the information required in (ii) and (iii) above. Developer shall also make available copies of the materials required by this Section at the Parkmerced resident services office.

4.4.3 Notice.

(a) Existing Tenant Notice. Within sixty (60) days after commencement of construction of the Replacement Building, Developer shall deliver written notice (the "**Existing Tenant Notice**") to every occupied unit in the To-Be-Replaced Building(s) (regardless of whether Developer knows of an Existing Tenant to reside at such unit), to the Rent Board, and to each Recognized Residents' Association of the To-Be-Replaced Building of the following: (i) the name of each Existing Tenant known by Developer at such address; (ii) the Existing Tenant's numerical rank in seniority for the unit type for which the Existing Tenant qualifies (pursuant to Section 4.3.4 and Table 4.3.4 of this Agreement); (iii) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (iv) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement; (v) notice that further information regarding such rights can be obtained from the Rent Board, including but not limited to, notice that any party can file a request for determination of tenancy status with the

Rent Board if there is a dispute about whether an occupant is an Existing Tenant; (vi) the anticipated completion date for the Replacement Building; and (vii) the anticipated relocation dates for Existing Tenants who choose to become Relocating Tenants. At such time as the Existing Tenant Notice is delivered to the occupied units, Developer shall also deliver to the Rent Board and post in the commons areas (such as laundry rooms or exterior passageways) of the To-Be-Replaced Building(s) a notice indicating that the Existing Tenant Notices have been delivered to the occupied units.

The Existing Tenant Notice shall also request that the Existing Tenant complete and return an attached response form that notifies Developer of the Existing Tenant's preliminary intention to accept or reject a Replacement Unit. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the relocation process. Existing Tenant's response indicating interest in accepting or rejecting a Replacement Unit shall be non-binding and delivery or lack of delivery of such response form shall have no legal effect on an Existing Tenant's ability to later accept or reject a Replacement Unit in accordance with this Agreement.

In the event of any dispute regarding whether (i) a person or group of persons is an Existing Tenant, (ii) if a group of persons is an Existing Tenant, each person's seniority within such group of persons, and/or (iii) the Existing Tenant's seniority in the To-Be Replaced Building in relation to other Existing Tenants as stated in the Existing Tenant Notice, such person or persons shall have the right to request a determination of the Rent Board, which determination shall be final and binding on the Parties, subject to any other further adjudication as allowed by law. Such request must be submitted to the Rent Board within forty-five (45) days after delivery of the Existing Tenant Notice, provided the Rent Board may accept a late submission for cause but not later than ninety (90) days after delivery of the Existing Tenant Notice.

For the purposes of this section, commencement of construction shall have occurred when (i) site or building permits have been issued by the City for the Replacement Building in which the Replacement Units will be located, and (ii) some identifiable construction under the First Construction Document has commenced. Construction of residential buildings within a particular Development Phase or Development Sub-Phase shall be completed in commercially reasonable pace as set forth in Section 3.4.5.

(b) Replacement Unit Availability Notice. Not sooner than one (1) year and no later than six (6) months before the anticipated completion date of a Replacement Building, Developer shall deliver written notice to Existing Tenants and any Recognized Residents' Association of the To-Be Replaced Building (the "**Replacement Unit Availability Notice**") of the following: (i) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of this Agreement, including the requirements for qualifying as an Existing Tenant; (ii) notice that further information regarding

such rights can be obtained from the Rent Board; (iii) the anticipated completion date of the Replacement Building; (iv) the anticipated relocation dates for Relocating Tenants; (v) the final determination of the Existing Tenant's numerical rank in seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.4.3 and Table 4.3.4; (vi) if more than one person occupies an Existing Unit, the numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit; (vii) at least (3) three dates and times when Developer will arrange for an opportunity for the Existing Tenant to visit a model Replacement Unit (one of which shall be a time on Saturday between 9:00 am and 6:00 pm, Sunday between 10:00 am and 5:00 pm or on weekday evenings between 6:00 pm and 9:00 pm) *provided* that the first site visit offered by Developer shall be no sooner than ten (10) days after the delivery of the Replacement Unit Availability Notice (unless an earlier date is agreed to by Developer and the Existing Tenant) and the last site visit shall be no more than thirty (30) days after delivery of the Replacement Unit Availability Notice; (viii) notice that the Existing Tenant must deliver a Replacement Unit Preference Notice (in accordance with the terms of Section 4.4.3(c)), and the date by which such Replacement Unit Preference Notice must be delivered to Developer, in order to exercise his or her right to relocate to a Replacement Unit; and (ix) a floor plan of the Replacement Building indicating the Unit Type within such building that the Existing Tenant qualifies.

The site visit shall provide an opportunity for the Existing Tenant to visit a model Replacement Unit with completed finishes. The model Replacement Unit may be different than the Unit Type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4. The site visit shall include a tour of the exterior of the Replacement Building so that the Existing Tenant may understand the location of the Replacement Units in the building. The site visit shall also provide an opportunity for the Existing Tenant to tour the interior of the Replacement Building under construction, if such a tour can be accommodated in a safe manner as reasonably determined by Developer and appropriate waivers of liability are executed by such Existing Tenants. At such time as the Replacement Unit Availability Notice is delivered to Existing Tenants, Developer shall also deliver to the Rent Board and post in the common areas (such as laundry rooms or exterior passageways) of the To-Be-Replaced Building(s) a notice containing the information specified in (i) through (iv) above.

(c) Replacement Unit Preference Notice. Each Existing Tenant desiring to exercise his or her right to relocate to a Replacement Unit must, within twenty (20) days following the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of the model Replacement Unit (the "**Selection Period**"), deliver written notice to Developer of (i) his or her decision to relocate or not to relocate to a Replacement Building, and (ii) for Existing Tenants choosing to relocate, their selection of all available Replacement Units (of the unit type for which they qualify), ranked in the order of preference in accordance with the Tenant Relocation Plan (the "**Replacement Unit Preference Notice**"). Delivery of the Replacement Unit Preference Notice to Developer shall

determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants qualifying for relocation benefits under this Agreement. If an Existing Tenant (i) fails to return the Replacement Unit Preference Notice before the expiration of the Selection Period, or (ii) returns a Replacement Unit Preference Notice indicating a decision to not accept a Replacement Unit, such Existing Tenant shall no longer qualify for a Replacement Unit but shall instead have the right to remain in the Existing Unit until the Building Vacancy Date and shall qualify for relocation benefits under Section 4.4.4(b).

I) If more than one person occupies an Existing Unit (and thereby collectively constitute the Existing Tenant of that Existing Unit), then such persons shall be collectively entitled to relocate to one (1) Replacement Unit. Such persons shall qualify for a Replacement Unit only if the person with the most seniority of such persons occupying the Existing Unit submits a Replacement Unit Preference Notice indicating interest in relocating to a Replacement Building. If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to accept a Replacement Unit, then (A) all such persons within such Existing Unit shall collectively qualify for a single Replacement Unit and none shall qualify for relocation benefits under Section 4.4.4(b), and (B) any such persons who choose not to move to the Replacement Unit shall have the right to remain in the Existing Unit under the existing lease until the Building Vacancy Date. Any such persons electing to remain in the Existing Unit pursuant to (B) above shall not qualify for relocation benefits under Section 4.4.4(b). If the person with the most seniority of those persons residing in an Existing Unit submits a Replacement Unit Preference Notice indicating a choice to reject a Replacement Unit, then all such persons within such Existing Unit shall collectively qualify for relocation benefits under Section 4.4.4(b) and none of such persons shall qualify for a Replacement Unit.

(d) Notices and Responses. All notifications under this Section 4.4.2 shall be by Certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.3 shall be by Certified U.S. Mail to Developer.

4.4.4 Replacement Unit Assignment Process.

(a) Assignment of Replacement Units. Replacement Units shall be allocated in order of tenant seniority, as determined by the commencement date of the Relocating Tenant's lease. Developer shall first allocate a Replacement Unit to each Relocating Tenant who delivers a Replacement Unit Preference Notice before the end of the Selection Period based on the unit preference set forth in each Replacement Unit Preference Notice. Any conflict in such preferences shall be resolved by the Relocating Tenant's seniority status. Developer shall notify each Relocating Tenant who delivered a Replacement Unit Preference Notice of the location of his or her respective Replacement Unit (the "**Replacement Unit Notice**"), which notice shall also explain that the Relocating Tenant must deliver a Replacement Unit Acceptance Notice in accordance with the terms of Section 4.4.3(b) in order to exercise his or her right to relocate to the Replacement Unit. The Parties acknowledge that, as one Relocating Tenant's unit assignment affects all other Relocating Tenants' unit assignments, that fairness requires that disputes regarding the assignment of units be determined as expeditiously and fairly as possible. Furthermore, the Parties recognize that any disputes regarding a person's status as an Existing Tenant or an Existing Tenant's seniority shall have been previously filed and must be resolved in accordance with the procedures of Section 4.4.2(a). Accordingly, the Rent Board Administrative Law Judge shall be the sole arbiter of technical disputes concerning whether Developer has made a ministerial error in assigning a Replacement Unit. The decision of the Rent Board Administrative Law Judge shall be binding, final, and non-appealable to the Rent Board Commission. Any such request for review by the Rent Board Administrative Law Judge must be submitted to the Rent Board within thirty (30) days after delivery of the Replacement Unit Notice. The Rent Board Administrative Law Judge shall use good faith efforts to render a decision of such dispute within forty-five (45) days of the request for such hearing.

(b) Acceptance of Replacement Unit. Within thirty (30) days of delivery of the Replacement Unit Notice (the "**Acceptance Period**"), if the Relocating Tenant does not file a request for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.3(a), the Existing Tenant shall send written notification of acceptance or rejection of the specified Replacement Unit to Developer (the "**Replacement Unit Acceptance Notice**" or "**Replacement Unit Rejection Notice**" as applicable). In the event that the Existing Tenant does not respond within the Acceptance Period, Developer shall send a second written notice (the "**Second Replacement Unit Notice**") informing the Existing Tenant of his or her right to occupy the specified Replacement Unit and shall send a copy the Second Replacement Unit Notice to the Rent Board. The City acknowledges and agrees that any and all rights of an Existing Tenant to a Replacement Unit provided by this Agreement shall be waived if such Existing Tenant (i) fails to notify Developer of his or her intention to relocate to a Replacement Unit within ten (10) days of receipt of the Second Replacement Unit Notice (the "**Second Acceptance Period**") or (ii) delivers to Developer a Replacement Unit Rejection Notice. In such event, the Existing Tenant shall not be deemed a Relocating

Tenant and shall no longer qualify for a Replacement Unit but instead shall have the right to remain in their Existing Unit until the Building Vacancy Date and shall qualify for relocation benefits under Section 4.4.4(b). If a Relocating Tenant files for arbitration with the Rent Board's Administrative Law Judge under Section 4.4.3(a), then such Relocation Tenant's rights to select a Replacement Unit shall be as determined by the Administrative Law Judge in accordance with Section 4.4.3(a).

(c) Relocation Notice. Upon issuance of the Certificate of Occupancy for the Replacement Units, Developer shall deliver written notice of the completion of the Replacement Building (the "**Relocation Notice**") within thirty (30) days to each Existing Tenant who delivered a Replacement Unit Acceptance Notice. Such Relocation Notice shall indicate that Developer intends to relocate the Relocating Tenant to his or her Replacement Unit on a date reasonably agreed upon by Developer and the Relocating Tenant, which date shall be not sooner than thirty (30) days and not later than sixty (60) days after delivery of the Relocation Notice unless an earlier or later date is mutually acceptable to Developer and the Relocating Tenant.

(d) Relocation Obligations. Developer shall be responsible, at Developer's sole cost, for moving the possessions of each Relocating Tenant from the Relocating Tenant's Existing Unit to the applicable Replacement Unit; *provided*, *however*, that Developer shall not be responsible for packing or unpacking the Relocating Tenant's possessions into or out of moving boxes or other containers. Developer shall pay for any utility hook-up fees or charges incurred by a Relocating Tenant, including cable tv and internet service initiation fees, in relocating to a Replacement Unit, but only to the extent that the Relocating Tenant had such utility, cable television, or internet service activated in his or her Existing Unit. Upon the relocation of a Relocating Tenant and payment of the utility hook-up fees as set forth in this Agreement, Developer shall not be subject to the payment of relocation expenses under the Rent Ordinance for such Relocating Tenant.

(e) Notices and Responses. All notifications under this Section 4.4.3 shall be by Certified U.S. Mail to the applicable residential unit on the Project Site and any other notice address set forth in the lease, with copies submitted to the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.4 shall be by Certified U.S. Mail to Developer.

4.4.5 Rental of Units in To-Be-Replaced Buildings.

(a) Existing Tenants. If an Existing Tenant rejects or is deemed to have rejected a Replacement Unit pursuant to this Section 4.4, Developer shall continue to rent to the Existing Tenant his or her Existing Unit under the terms of his or her existing lease until such time as (i) the Existing Tenant voluntarily terminates his or her lease or (ii) each of the following has occurred:

(A) Developer stops leasing unoccupied units in the To-Be-Replaced Building to new tenants, and (B) Developer delivers a written notice of lease termination to the Existing Tenant, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein (a "**Lease Termination Notice**"). Once Developer delivers a Lease Termination Notice in a To-Be-Replaced Building (the "**Building Vacancy Date**"), (i) Developer shall no longer have the right to enter into any new leases for unoccupied units in the To-Be-Replaced Building, and (ii) Developer shall deliver a Lease Termination Notice to all remaining occupants in the To-Be Replaced Building. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease as provided herein and may lawfully evict such Existing Tenant on or after the lease termination date specified in the Lease Termination Notice. The City shall have no liability or responsibility in connection with any and all evictions of Existing Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any eviction.

I) Relocation Expenses. Although payment of relocation expenses is not required pursuant to Section 37.9(a)(15) of the Rent Ordinance, Developer agrees to pay relocation expenses to Existing Tenants who reject or are deemed to have rejected a Replacement Unit in accordance with the provisions of this Agreement in the amounts and manner set forth in Section 37.9C of the Rent Ordinance. An Existing Tenant who vacates a To-Be-Replaced Unit after receipt of the Replacement Unit Availability Notice is eligible for relocation expenses unless he or she was evicted for a "just cause" reason, excluding Section 37.9(a)(10) or Section 37.9(a)(15) of the Rent Ordinance.

(b) Notices and Responses. Developer shall notify the applicable Recognized Residents' Association at such time as Developer applies to the City for a demolition permit for each To-Be-Replaced Building. All notifications under this Section 4.4.5 shall be by Certified U.S. Mail to the residential unit on the Project Site and any other notice address set forth in the lease with copies sent to each Recognized Residents' Association and the Rent Board. Developer shall provide stamped Certified U.S. Mail envelopes with all notifications requiring responses by tenants. All responses by tenants under this Section 4.4.5 shall be by Certified U.S. Mail to Developer.

4.4.6 New Tenants. Developer may continue to rent unoccupied units in a To-Be-Replaced Building (whether vacated due to relocation or otherwise) to new tenants (each, a "**New Tenant**") after (i) the date on which Developer has delivered an Existing Tenant Notice to residents of that particular building or (ii) the relocation of the Existing Tenants from such building and before the Building Vacancy Date; *provided* Developer includes in a written lease agreement with each New Tenant a clear statement of (i) Developer's intent to demolish the To-Be-Replaced Building (including an

anticipated date for demolition) and (ii) Developer's right to terminate the lease upon sixty (60) days prior written notice to the New Tenant. Developer shall also inform each New Tenant, before entering into a lease with a New Tenant, of Developer's then-current estimate of the demolition date of the To-Be-Replaced Building. Developer may terminate any lease to a New Tenant by delivering to such New Tenant a Lease Termination Notice, which notice shall be delivered not less than sixty (60) days before the lease termination date specified therein. The City acknowledges and agrees that, in accordance with Section 37.9(a)(15) of the Rent Ordinance, Developer has the right to terminate the lease as provided herein and may lawfully evict such New Tenant on or after the lease termination date specified in the Lease Termination Notice. In accordance with Section 37.9(a)(15) of the Rent Ordinance, New Tenants shall not qualify for reimbursement of relocation expenses under the Rent Ordinance. The City shall have no liability or responsibility in connection with any and all evictions of New Tenants at the Project Site, and Developer shall Indemnify the City for any and all claims made in connection with any such eviction. No New Tenant who rents a unit in a To-Be-Replaced Building pursuant to this Section shall be considered an Existing Tenant under this Agreement.

4.4.7 Disputes. The rights of any occupant of the Project Site to challenge his or her status as an Existing Tenant, to challenge his or her numerical rank by seniority for the unit type for which the Existing Tenant qualifies pursuant to Section 4.3.4 and Table 4.3.4 (and, if applicable, a person's seniority within an Existing Tenant if the Existing Tenant is more than one person), or to challenge the assignment of Replacement Units under this Agreement shall be limited to the express procedural requirements set forth in this Article 4. Nothing in this Agreement shall affect the right of any occupant of the Project Site to seek judicial remedies at any time.

4.4.8 Housing Vouchers. Developer currently accepts "Section 8" vouchers from Existing Tenants (under the Housing Choice Voucher Program sponsored by the U.S. Department of Housing and Urban Development, Code of Federal Regulations, 24 CFR Section 982.4). Nothing in this Article 4 shall change Developer's acceptance of Section 8 vouchers from Existing Tenants, and Developer shall continue to accept Section 8 vouchers from Existing Tenants for the applicable Replacement Unit. Nothing in this Agreement shall require Developer to accept Section 8 vouchers from any new tenant or tenant applicant that is not an Existing Tenant participating in the Section 8 program at the time of relocation.

4.4.9 Newsletter; Meeting. In addition to the notices and other public meetings (including the public meetings regarding the approved Development Phase and Tenant Relocation Plan) required under this Article 4, upon submittal of the Development Phase Application for the first Development Phase (as defined in Section 3.4.5), Developer shall prepare and deliver to each residential unit on the Project Site a newsletter that includes a description of the Project, work completed to date and work anticipated to be completed in the following year, and addresses any commonly asked questions about the Project. Such newsletter shall also include the date, time and location of any known public hearings relating to the Project, contact information provided by the City for the Planning Department and the Rent Board, and information on how a group of

tenants can become a Recognized Resident's Association. The newsletter shall also include the time, date and location of a public meeting during which Developer's representatives will answer questions relating to the Project.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Interest of Developer; Due Organization and Standing. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware 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 has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

5.2 Priority of Development Agreement. Developer warrants and represents that there is no prior lien or encumbrance (other than mechanics or materialmen's liens, or liens for taxes or assessments, that are not yet due) against the Project Site that, upon foreclosure, would be free and clear of the obligations set forth in this Agreement and that, as of the date of execution of this Agreement, the only beneficiary under an existing deed of trust encumbering the Project Site is Existing Lender. On or before the Effective Date of this Agreement, the Developer shall provide title insurance in form and substance satisfactory to the Planning Director and the City Attorney confirming the absence of any such liens or encumbrances. If there are any such liens or encumbrance, then Developer shall obtain written instruments from the beneficiaries of any such liens or encumbrances, in a form approved by the Planning Director and the City Attorney, subordinating their interest in the Project Site to this Agreement. Developer shall ensure that all future liens and encumbrances affecting or encumbering the Project Site (other than liens for taxes or assessments that are not yet due) would, upon foreclosure, be subordinate to and free and clear of the obligations set forth in this Agreement.

5.3 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that 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.

5.5 Conflict of Interest. 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.

5.6 Notification of Limitations on Contributions. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's 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 the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. 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.

5.7 Other Documents. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

5.8 No Suspension or Debarment. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

5.9 No Bankruptcy. Developer represents and warrants to 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.

5.10 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

5.11 Notification. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

6. OBLIGATIONS OF DEVELOPER

6.1 Completion of Project. Upon commencement, Developer shall diligently prosecute to Completion all construction on the Project Site in accordance with the Basic Approvals and any Implementing Approvals. The foregoing notwithstanding, expiration of any building permit or other Project Approval shall not limit Developer's vested rights as set forth in this Agreement, and Developer shall have the right to seek and obtain subsequent building permits or approvals consistent with this Agreement at any time during the Term. Developer shall pay for all costs relating to the Project, including the Community Improvements, at no cost to the City.

6.1.1 Real Estate Transfers. In connection with the Project, the Parties agree that the City shall transfer certain real property to Developer and Developer shall transfer certain real property to the City in order to reconfigure the public rights-of-way as generally shown on Exhibit J. The actual real property transfers to be completed in each Development Phase shall be set forth in each applicable Development Phase Approval. Developer shall, following the Development Phase Approval, prepare all maps and legal descriptions as required to effectuate the proposed real estate transfers subject to the City's approval, which will not be unreasonably withheld. As and when needed in connection with the development of an approved Development Phase (and subject to the requirements set forth in this Agreement), the City shall convey any real property to Developer, following the vacation and abandonment of any public rights and the relocation of any utilities in such real property, by quitclaim deed in the form attached as Exhibit K. Developer shall convey any real property to the City by grant deed in the form attached as Exhibit L . Each Party shall have the right to perform physical, title and other customary due diligence before accepting title to exchanged land, and shall have the right to object to the condition of the property, in its reasonable discretion. It shall be a condition precedent to the City's acceptance of any real property that the City obtain title insurance, at Developer's sole cost, in form and from an issuer reasonably acceptable to City in the amount of the fair market value of the land. Developer shall have the right, but not the obligation, to obtain title insurance for the real property that it accepts at Developer's sole cost. If the accepting Party objects to the condition of the real property, including any title exceptions, then the Parties shall meet and confer for a period of thirty (30) days, or such longer period as may be agreed to by the Parties, to try to reach a reasonable resolution. It is the Parties' intent that Developer shall pay all reasonable costs of remedying any objectionable property condition. If the Parties are not able to reach resolution, then neither Party shall be required to complete the real property transfer.

6.1.2 Potential Payments for Real Property; Indemnification. All real property exchanged under this Agreement shall be valued on a square foot basis, and shall be deemed equal in value per square foot. If any real property exchange under this

Agreement results in a net loss of acreage for the City, then Developer shall pay to the City the fair market value of the real property loss at the time of transfer based on the then-current use of the property so transferred. The City shall not be required to pay for any net gain in real property; *provided*, *however*, such gain can be applied against future real property transfers for purposes of determining whether there has been a net loss as described above. Notwithstanding any such credit against future transfers, the City will not be required to reimburse any payments made for real property in connection with a previous transfer. Developer shall indemnify the City against any and all Losses relating to real property conveyed by Developer to City under this Agreement, including but not limited to any Loss relating to the presence of hazardous materials in or on the real property at the time of transfer to the City.

6.2 Compliance with Conditions and CEQA Mitigation Measures. Developer shall comply with all applicable conditions of the Basic Approvals and any Implementing Approvals, and shall comply with all Mitigation Measures.

6.2.1 The Parties expressly acknowledge that the FEIR and the associated Mitigation Monitoring Program are intended to be used in connection with each of the Basic Approvals and the Implementing Approvals to the extent appropriate and permitted under applicable law. Consistent with the CEQA policies and requirements applicable to the FEIR, the City agrees to rely upon the FEIR in connection with the processing of any Implementing Approval to the extent the Implementing Approval does not change the Basic Approvals and to the extent allowed by law.

6.2.2 Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from material changes to the Project from that described by the Basic Approvals 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 granting of such permit or otherwise to address significant environmental impacts as defined by CEQA created by the approval of such permit; *provided*, *however*, any such conditions must be in accordance with applicable law.

6.3 Progress Reports. Developer shall make reports of the progress of construction of the Project in such detail and at such time as the Planning Director reasonably requests.

6.4 Cooperation By Developer.

6.4.1 Developer shall, in a timely manner, provide the City and each City Agency with all documents, applications, plans and other information reasonably necessary for the City to comply with its obligations under this Agreement.

6.4.2 Developer shall timely comply with all reasonable requests by the Planning Director and each City Agency for production of documents or other information evidencing compliance with this Agreement.

6.5 Nondiscrimination.

6.5.1 Developer Shall Not Discriminate. In the performance of this Agreement, Developer agrees not to discriminate against any employee, City and County 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.

6.6 First Source Hiring Program.

6.6.1 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the Administrative Code ("**Chapter 83**") are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Developer shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under Chapter 83, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83. On or before each Development Phase Approval, Developer shall have entered into a First Source Hiring Agreement with respect to such Development Phase substantially in a form that is mutually acceptable. Without limiting the foregoing, each First Source Hiring Agreement shall:

(a) Set appropriate hiring and retention goals for entry level positions. The Employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the Employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the Employer to the provisions of Section 83.10 of the Administrative Code;

(b) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; *provided*, *however*, if the Employer utilizes nondiscriminatory screening criteria, the Employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco

Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the Employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement;

(c) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating Employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the Employer's proprietary information;

(d) Set appropriate record keeping and monitoring requirements. The FSHA shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the Employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals;

(e) Establish guidelines for Employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop Employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the Employer's agreement. In the event that the FSHA finds that the Employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that Employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83;

(f) Set the term of the agreement;

(g) Set appropriate enforcement and sanctioning standards consistent with Chapter 83;

(h) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the Employer in complying with this Chapter; and

(i) Require the Employer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

6.6.2 Miscellaneous. Developer or its contractor, as applicable, shall make the final determination of whether an economically disadvantaged individual referred by the System is "qualified" for the position. Upon application by an Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with Chapter 83 would cause economic hardship. In the event Developer breaches the requirements of this Section 6.6, Developer shall be liable to the City for liquidated damages as set forth in Chapter 83. As set forth in the First Source Hiring Agreement, any contract or subcontract entered into by Developer shall require the contractor or subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section 6.6.

6.7 Payment of Fees and Costs.

6.7.1 Developer shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Site as set forth in Section 2.3 of this Agreement.

6.7.2 Developer shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Basic Approvals or the Implementing Approvals under the Municipal Code. In connection with any environmental review relative to an Implementing Approval, Developer shall reimburse City or pay directly all reasonable and actual costs relating to the hiring of consultants and the performing of studies as may be necessary to perform such environmental review. Prior to engaging the services of any consultant or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

6.7.3 Developer shall pay to the City all City Costs during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to OEWD monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and OEWD shall gather all such invoices so as to submit one City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then OEWD or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred shall not be recoverable.

6.7.4 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 from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 12.5.

6.8 Nexus/Reasonable Relationship Waiver. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project or the Basic Approvals, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement or the Existing Standards, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax. In the event Developer challenges any Future Change to an Existing Standard, or any increased or new fee permitted under Section 2.3, then the City shall have the right to withhold additional development approvals or permits until the matter is resolved; *provided*, *however*, Developer shall have the right to make payment or performance under protest, and thereby receive the additional approval or permit while the matter is in dispute.

6.9 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 (California Government Code § 53311 *et seq.*)) that includes the Project Site unless the new district is City-wide or Developer gives its prior written consent to 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 the Project Site. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Site, or any space therein, that is enacted in accordance with law and applies to similarly-situated property on a City-wide basis.

6.10 Indemnification of City. Developer shall Indemnify the City and its officers, agents and employees 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 this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of City. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City's cost of investigating any claims against the City. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

6.11 Equal Opportunity and Employment and Training Program. In accordance with Administrative Code section 56.7, this Agreement must include a detailed equal opportunity program and employment and training program (the "**Equal Opportunity and Employment Program**") containing goals and timetables and a program for implementation. Before the first Development Phase Application, the Parties agree to negotiate for a detailed agreement for the Equal Opportunity and Employment Program, which will be subject to the review and approval of Developer, the OEWD Director and the Planning Director, each in their reasonable discretion. Developer's rights under this Agreement are subject to and conditioned upon entering into such agreement before the first Development Phase Approval. If the Parties are unable to reach such agreement within one (1) year after the Effective Date, then either Party may initiate arbitration under Section 12.7 to seek to resolve their differences. If the Parties remain unable to reach

agreement on or before the date that is two (2) year following the Effective Date, then this Agreement shall terminate without cost, liability or penalty to either Party.

6.12 Prevailing Wages. During the Term, Developer agrees that any person performing labor in the construction of Public Improvements or Community Improvements on the Project Site shall be paid not less than the highest prevailing rate of wages under 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. Developer shall include in any contract for construction a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Developer shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of Public Improvements or Community Improvements.

6.13 Contracting for Public Improvements. In connection with all of the Public Improvements, Developer shall engage a contractor that is duly licensed in California and qualified to complete the work (the "**Contractor**"). The Contractor shall contract directly with Developer pursuant to an agreement to be entered into by Developer and Contractor (the "**Construction Contract**"), which shall: (i) be a guaranteed maximum price contract; (ii) require the Contractor or Developer to obtain and maintain bonds for one-hundred percent (100%) of the cost of construction for performance and fifty percent (50%) of payment for labor and materials (and include the City and Developer as dual obliges under the bonds), or provide a letter of credit or other security satisfactory to the City, in accordance with the requirements of the Subdivision Code; (iii) require the Contractor to obtain and maintain customary insurance, including workers compensation in statutory amounts, Employer's liability, general liability, and builders all-risk; (iv) release the City from any and all claims relating to the construction, including but not limited to mechanics liens and stop notices; (v) subject to the rights of any Mortgagee that forecloses on the property, include the City as a third party beneficiary, with all rights to rely on the work, receive the benefit of all warranties, and prospectively assume Developer's obligations and enforce the terms and conditions of the Construction Contract as if the City were an original party thereto; and (vi) require that the City be included as a third party beneficiary, with all rights to rely on the work product, receive the benefit of all warranties and covenants, and prospectively assume Contractor's rights in the event of any termination of the Construction Contract, relative to all work performed by the Project's architect and engineer.

7. OBLIGATIONS OF CITY

7.1 No Action to Impede Basic Approvals. Subject to City's express rights under this Agreement (including under Section 2.5 and Section 6.2), City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Basic Approvals. An action taken or condition imposed shall be deemed to be "in conflict with" this Agreement or the Basic Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 2.2.2 of this Agreement.

7.2 Processing During Third Party Litigation. The filing of any third-party lawsuit(s) against the City or Developer relating to this Agreement, the Basic Approvals, the Implementing

Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing or construction of the Project or the issuance of Implementing Approvals unless the third-party obtains a court order preventing the activity.

7.3 Criteria for Approving Implementing Approvals. The City may approve an application for an Implementing Approval subject to any conditions necessary to bring the Implementing Approval into compliance with this Agreement, the Basic Approvals, any Implementing Approvals that have been previously granted, the Existing Standards, or Future Changes to Existing Standards (except to the extent such Future Changes to Existing Standards are in conflict with this Agreement or the terms and conditions of the Basic Approvals). If the City denies any application for an Implementing Approval that implements the Project as contemplated by the Basic Approvals (as opposed to requests for Implementing Approvals that effect a Material Change to the Basic Approvals), the City must specify in writing the reasons for such denial and may suggest modifications. Any such specified modifications shall be consistent with this Agreement (including the consistency with the Uniform Codes or the Agency Design Guidelines, as provided in Section 2.4), the Basic Approvals, the Implementing Approvals that have been previously granted, and the Existing Standards or Future Changes to Existing Standards and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with this Agreement, the Basic Approvals, any Implementing Approvals that have been granted, the Existing Standards, Future Changes to Existing Standards (if any) and applicable law.

7.4 Coordination of Offsite Improvements. The City shall use reasonable efforts to assist Developer in coordinating construction of offsite improvements specified in a Development Phase Approval in a timely manner; *provided*, *however*, the City shall not be required to incur any costs in connection therewith, other than incidental administrative costs, such as staff time.

8. MUTUAL OBLIGATIONS

8.1 Notice of Completion or Revocation. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

8.2 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her 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 either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing 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 9.2 below. The Planning Director shall execute and return such certificate within thirty (30) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may

rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

8.3 Cooperation in the Event of Third-Party Challenge.

8.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, the Basic Approvals or Implementing Approvals, the adoption or certification of the FEIR, other actions taken pursuant to CEQA, or other approvals under state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (each, a "**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

8.3.2 Developer shall assist and cooperate with the City at its 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 and any consultants; *provided*, *however*, (i) Developer shall have the right to receive monthly invoices for all such costs, and (ii) Developer may elect to terminate this Agreement, and upon any such termination, Developer's and City's obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

8.4 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Basic Approvals and any Implementing Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

8.5 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 Basic Approvals, Development Phase Approvals, Design Review Approvals, and the Implementing 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.

9. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

9.1 Annual Review. 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 shall not waive the Planning Director's right to do so later in the calendar year; *provided, however,* that such review shall be deferred to the following January if not commenced before June.

9.2 Review Procedure. 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.

9.2.1 Required Information from Developer. Not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director containing evidence to show compliance with this Agreement, including, but not limited to, compliance with the requirements regarding the following: the Public Improvements constructed or under construction by Developer as required by the Phasing Plan, the timing of construction and quality of the Replacement Units constructed for Existing Tenants, and the manner in which the BMR Requirements have been met. The burden of proof, by substantial evidence, of compliance is upon Developer.

9.2.2 City Report. Within forty (40) 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. 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. If the Planning Director finds Developer in compliance, then the Planning Director shall proceed in the manner provided in Section 56.17(f) and 56.18 of the Administrative Code as those Sections are in effect as of the Effective Date, attached hereto as Exhibit N. The City's failure to timely complete the annual review is not 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.

9.2.3 Planning Director shall issue a Certificate of Non-Compliance. If the Planning Director finds Developer is not in compliance with this Agreement, the Planning Director shall issue a Certificate of Non-Compliance after complying with the procedures set forth in Section 9.3.4.

9.2.4 Effect on Transferees. If Developer has effected a transfer so that its interest in the Project Site has been divided between Developer and/or Transferees, then the annual review hereunder shall be conducted separately with respect to Developer and each Transferee that is not Affiliated with Developer, and if appealed, the Planning

Commission and Board of Supervisors shall make its determinations and take its actions separately with respect to Developer and each such Non-Affiliate Transferee, as applicable, pursuant to Administrative Code Chapter 56. If the Board of Supervisors terminates, modifies or takes such other actions as may be specified in Administrative Code Chapter 56 and this Agreement in connection with a determination that Developer or a Transferee 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 (and its Affiliates) to whom the determination is made and the portions of the Project Site in which such Party (and its Affiliates) has an interest.

9.2.5 Default. The rights and powers of the City under this Section 9 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 the commission by Developer of an Event of Default.

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) and Section 12.5 (Remedies), 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 as of the Effective Date.

10.1.1 Amendment Exemptions. No amendment of a Basic Approval or Implementing Approval, or the approval of an Implementing 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 Implementing Approval). Notwithstanding the foregoing, if there is any conflict between the terms of this Agreement and an Implementing Approval, or between this Agreement and any amendment to a Basic Approval or Implementing 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 Implementing Approval or the proposed amendment to a Basic Approval or Implementing Approval. If the Parties fail to amend this Agreement as set forth above, then the terms of this Agreement shall prevail over any Implementing Approval or any amendment to a Basic Approval or Implementing Approval that conflicts with this Agreement.

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

10.2.1 If any litigation is filed challenging this Agreement (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement is suspended pending the outcome of an electoral vote on a referendum, then the Term 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. The Parties shall document the start and end of this delay in writing within thirty (30) days from the applicable dates.

10.2.2 In the event of 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, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of 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 under this Agreement ("**Excusable Delay**"), the Parties agree to extend the time periods for performance of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, 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 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 Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided*, *however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

10.2.3 The foregoing Section 10.2.2 notwithstanding, Developer may not seek to delay the Completion of any Community Improvement or other public benefit required under a Development Phase Approval (including any required implementation trigger contained in the Phasing Plan or in an Implementing Approval) as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing. Furthermore, Developer may not rely on Excusable Delay to delay the Completion of a Community Improvement or other public benefit while commensurate work (to that which is sought to be delayed) is being performed on market rate development in the Project Site.

11. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

11.1 Permitted Transfer of this Agreement.

11.1.1 No City Consent. Developer shall have the right to Transfer its rights, interests and obligations under this Agreement, without the City's consent, as follows:

(1) Developer may convey the entirety of its right, title, and interest in and to the Project Site together with a Transfer of all rights, interests and obligations of this Agreement without the City's consent;

(2) From and after the recordation of a final subdivision map for all real property within an Development Phase or Sub-Phase Approval and Developer's Completion of the Community Improvements and Transportation Mitigation Measures in that approved Development Phase or Sub-Phase, Developer shall have the right to Transfer all of its interest, rights or obligations under this Agreement with respect to that Development Phase or Sub-Phase to a Transferee acquiring a fee or long-term ground lease interest in all or a portion of the real property within that Development Phase or Sub-Phase without the City's consent;

(3) Following the Completion of infrastructure as needed to create developable lots, Developer shall have the right to convey developable lots or parcels within the Project Site for vertical development not requiring the construction of Community Improvements and Transportation Mitigation Measures but requiring the construction of on-site Public Improvements required by the Planning Code or other City code or regulation (including adjoining streetscape improvements required by a street improvement permit), and Transfer all rights, interests and obligations under this Agreement with respect to the conveyed lots or parcels, without the City's consent (subject to the requirements of Section 4.2.2 with respect to the Completion of BMR Units or payment of an in lieu fee); and

(4) Developer shall have the right to convey a portion of the Project Site, together with a Transfer of its rights, interests and obligations under to this Agreement with respect to the conveyed real property, to Affiliates without the City's consent (but subject to the cross-default provisions between Developer and Affiliates as set forth in Section 12.3 below); and

(5) Developer shall have the right to convey all or a portion of the Project Site, together with a Transfer of all its rights, interests and obligations under this Agreement with respect to the conveyed real property, to a Mortgagee as set forth in Section 11.9 below without the City's consent.

For all Transfers under this Section 11.1.1, Developer shall provide to the City written notice of such conveyances and Transfers no later than thirty (30) days after the conveyance or Transfer. Any Transfer of rights, interests and obligations under this Agreement shall be by an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit O, and notwithstanding the fact that the City cannot object to Transfers described in this Section 11.1.1 above, the City shall have the right to object to an Assignment and Assumption Agreement if and to the extent such agreement does not meet the requirements of Section 11.3.3. No Transfer under this Section shall terminate or modify the rights or obligations of the Parties under this Agreement including but not limited to the Replacement Unit and BMR Requirements.

11.1.2 City Consent Requirement. Developer shall have the right, at any time, to convey a portion of its right, title and interest in and to the Project Site, as well as Transfer the rights, interests and obligations under this Agreement with respect to such real property (including the obligation to construct Community Improvements and Transportation Mitigation Measures required to be constructed in the applicable Development Phase Approval) subject to the prior written consent of the Planning Director, which consent will not be unreasonably withheld, conditioned or delayed. In determining the reasonableness of any consent or failure to consent, the Planning Director shall consider whether the proposed Transferee has sufficient development experience and creditworthiness to perform the obligations to be transferred. With regard to any proposed Transfer under this Section 11.1.2, Developer shall provide to the City information to demonstrate the Transferee's development experience, together with any additional information reasonably requested by the City.

11.2 Transferee Obligations. The Parties understand and agree that rights and obligations under this Agreement run with the land, and each Transferee must satisfy the obligations of this Agreement with respect to the land owned by it (including but not limited to completion of any BMR or Replacement Units); *provided, however*, notwithstanding the foregoing, if an owner of a portion of the Project Site (other than a Mortgagee) does not enter into an Assignment and Assumption Agreement approved by the Planning Director, then it shall have no rights, interests or obligations under this Agreement and the City shall have such remedies as may be available for violation of this Article 11.

11.3 Notice and Approval of Transfers.

11.3.1 With regard to any proposed Transfer under this Article 11, Developer shall provide not less than forty five (45) days written notice to City before any proposed Transfer of its interests, rights and obligations under this Agreement. Developer shall provide, with such notice, a copy of an assignment and assumption agreement, in substantially the form attached hereto as Exhibit O, that Developer proposes to enter into, with a detailed description of what obligations are to be assigned to the Transferee and what obligations will be retained by Developer, and a description of the real property proposed for conveyance to the Transferee (an "**Assignment and Assumption Agreement**").

11.3.2 Each Assignment and Assumption Agreement shall be in recordable form, substantially the form attached hereto as Exhibit O, and include: (i) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this Agreement, including but not limited to the Ellis Act and Costa-Hawkins Act provisions and waivers; (ii) a description of the obligations under this Agreement (including but not limited to obligations to construct Community Improvements and Mitigation Measures) that will be assumed by the assignee and from which assignor will be released; (iii) confirmation of all of the Indemnifications and releases set forth in this Agreement; (iv) a covenant not to sue the City, and an Indemnification to the City, for any and all disputes between the assignee and assignor; (v) a covenant not to sue the City, and an Indemnification to the City, for any failure to complete all or any part of the Project by any party, and for any harm resulting from the

City's refusal to issue further permits or approvals to a defaulting party under the terms of this Agreement; and (vi) such other matters as are deemed appropriate by the assignee and assignor and are approved by the City.

11.3.3 With regard to any proposed Transfer under this Article 11 not requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director and the Planning Director shall only disapprove the Assignment and Assumption Agreement it such Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval. With regard to any proposed Transfer under this Article 11 requiring the City's consent, each Assignment and Assumption Agreement shall be subject to the review and approval of the Planning Director, which shall not be unreasonably withheld or delayed. The Planning Director may withhold such approval (a) if the proposed Assignment and Assumption Agreement does not include the items (i) to (vi) of Section 11.3.2 above, or the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement, the Phasing Plan or any applicable Development Phase Approval, (b) the Planning Director reasonably objects to the qualifications of the proposed Transferee, as set forth in Section 11.1.2 above, or (c) the proposed Assignment and Assumption Agreement disproportionally burdens particular parcels or Transferees with obligations and Developer or Transferee does not provide reasonable evidence that such obligations can or will be completed.

11.4 City Review of Proposed Transfers. The City shall use good faith efforts to promptly review and respond to all approval requests under this Article 11. The City shall explain its reasons for any denial, and the parties agree to meet and confer in good faith to resolve any differences or correct any problems in the proposed documentation or transaction. If the City grants its consent, the consent shall include a fully executed, properly acknowledged release of assignor for the prospective obligations that have been assigned, in recordable form, and shall be recorded together with the approved Assignment and Assumption Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the City shall not be required to consider any request for consent to any Transfer while Developer is in uncured breach of any of its obligations under this Agreement. Any Transfer in violation of this Article 11 shall be an Event of Default. If Developer fails to cure such Event of Default by voiding or reversing the unpermitted Transfer within ninety (90) days following the City's delivery of the Notice of Default, the City shall have the rights afforded to it under Article 12.

11.5 Permitted Change; Permitted Contracts. Notwithstanding anything to the contrary set forth above, the following shall not be deemed a Transfer requiring City consent under this Agreement: (i) any sale, pledge, assignment or other transfer of the entire Project Site to an Affiliate of Developer and (ii) any change in corporate form of Developer or its Affiliates, such as a transfer from a limited liability company to a corporation or partnership, that does not affect or change beneficial ownership of the Project Site (each, a "**Permitted Change**"); *provided*, *however*, Developer shall provide to City written notice of any such Permitted Change, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such Permitted Change or City's request for backup information, as

applicable. In addition, Developer has the right to enter into contracts with third parties, including but not limited to construction and service contracts, to perform work required by Developer under this Agreement. No such contract shall be deemed a Transfer under this Agreement and Developer shall remain responsible to City for the Completion of the work in accordance with this Agreement, subject to Excusable Delay.

11.6 Release of Liability. Upon City's consent to a Transfer (other than to an Affiliate of Developer), Developer shall be released (subject to Section 12.3) from any prospective liability or obligation under this Agreement that has been Transferred to the Transferee as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be the "Developer" under this Agreement with all rights and obligations related thereto with respect to the real property conveyed to such Transferee. As further described in Section 12.3, if a Transferee defaults under this Agreement, such default shall not constitute a default by Developer or its Affiliates (or other Transferees not Affiliated with the defaulting Transferee) and shall not entitle City to Terminate or modify this Agreement with respect to such non-defaulting Parties. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to Complete a Mitigation Measure, Community Improvement, or Public Improvement that must be Completed by a specific Party (as an implementation trigger in the Phasing Plan or applicable Development Phase Approval) may, if not Completed, delay or prevent a different Party's ability to start or Complete a specific building or improvement under this Agreement, and Developer and all Transferees assume this risk. Accordingly, City may withhold Development Phase Approvals, Design Review Approvals, or Implementing Approvals based upon the acts or omissions of a different Party.

11.7 Rights of Developer. The provisions in this Article 11 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, deed of trust, or other device securing financing with respect to the Project Site or Project, (iii) granting a leasehold interest in portions of the Project Site in which persons or entities so granted will reside or will operate, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, *provided* that Developer retains control of such joint venture or partnership and *provided* none of the foregoing will affect or limit Developer's obligations or liabilities under this Agreement, (v) upon completion of a building, selling a fee interest in a condominium unit (excluding the Replacement Units, which shall all remain under common ownership as set forth above), or (vi) 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; *provided*, *however*, with respect to items (i) through (iii) above, Developer shall not grant any such easements or licenses, allow encumbrances, or grant leasehold interests over real property intended for conveyance to the City in accordance with the Parkmerced Plan Documents without the City's prior written consent unless such interests or encumbrances can be and in fact are terminated by Developer before conveyance to the City. None of the terms, covenants, conditions, or restrictions of this Agreement or the Basic Approvals or Implementing Approvals shall be deemed waived by City by reason of the rights given to Developer pursuant to this Section 11.7.

11.8 Developer's Responsibility for Performance. It is the intent of the Parties that as the Project is developed all applicable requirements of this Agreement and the Basic Approvals and Implementing Approvals shall be met. If Developer Transfers all or any portion of this Agreement, Developer shall continue to be responsible for performing the obligations under this Agreement until such time as there is delivered to the City a legally binding Assignment and Assumption Agreement that has been approved by the City in accordance with this Article 11. 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 assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between Developer and the Transferee, or (ii) relates to the period before the Transfer. Developer shall Indemnify the City from and against all Losses arising out of or connected with contracts or agreements entered into by Developer in connection with its performance under this Agreement, including any Assignment and Assumption Agreement and any dispute between parties relating to which such party is responsible for performing certain obligations under this Agreement.

11.9 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

11.9.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements required by the Basic Approvals, Implementing Approvals or this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Project Site or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance or other action in lieu thereof, or other remedial action, obtains title to the Project Site or a portion thereof from or through the Mortgagee, or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of Developer under this Agreement.

11.9.2 Subject to the provisions of the first sentence of Section 11.9.1, any person, including a Mortgagee, who acquires title to all or any portion of the Project Site by foreclosure, trustee's sale, deed in lieu of foreclosure, or other remedial action shall succeed to all of the rights and obligations of Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Project Site to any uses, or to construct any improvements, other than

the uses and improvements provided for or authorized by the Basic Approvals, Implementing Approvals and this Agreement.

11.9.3 If the City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then the City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, the City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to the City at the address shown on the first page of this Agreement for recording.

11.9.4 A Mortgagee shall have the right, at its option, to cure any default or breach by Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) ninety (90) calendar days to cure a default or breach arising from Developer failure to pay any sum of money required to be paid hereunder and (ii) one hundred and eighty (180) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion, or such additional time as necessary for the Mortgagee to obtain physical possession of the Project Site or the part thereof to which the lien of such Mortgagee relates through judicial foreclosure or other means. Nothing in this Agreement shall prevent a Mortgagee from adding the cost of such cure to the indebtedness or other obligation evidenced by its mortgage, *provided* that if the breach or default is with respect to the construction of the improvements on the Project Site, nothing contained in this Section 11.9 or elsewhere in this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made) without first having expressly assumed the obligation, by written agreement reasonably satisfactory to the City, to complete in the manner provided in this Agreement the improvements on the Project Site or the part thereof to which the lien or title of such Mortgagee relates.

11.10 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or 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 or 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 or the Project Site and either (i) undertakes any development activities at the Project Site, or (ii) owns the Replacement Units, BMR Units or other development permitted under this Agreement, 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, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

12. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

12.1 Enforcement. The only Parties to this Agreement are the City and Developer (including any Transferee). Except as provided in Section 12.2 below, this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

12.2 Private Right of Action. In addition to the options available to the City to enforce this Agreement, the Existing Tenants shall have a private right of action against the Developer, but not against the City, to enforce the Replacement Unit requirements set forth in Article 4 of this Agreement, with attorneys' fees and costs awarded to the prevailing party in any court action.

12.3 Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided*, *however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter. An Event of Default by Developer or an Affiliate of Developer shall be, at the City's option, an Event of Default by Developer and its Affiliates with all available remedies under Section 12.5; *provided, however*, (a) no Event of Default by Developer or an Affiliate of Developer in its capacity as a developer of vertical improvements (defined as improvements that are not Community Improvements, Public Improvements, Stormwater Management Improvements, or any other horizontal development) (each, a "**Vertical Obligation**", and the Affiliate, an "**Affiliated Vertical Developer**") shall be an Event of Default by other Affiliated Vertical Developers, (b) no Event of Default by Developer or an Affiliate of Developer with respect to the obligations of this Agreement regarding the construction, maintenance, or operation of Community Improvements, Public Improvements, Transportation Mitigation Measures, Stormwater Management Improvements, or any other horizontal development (each, a "**Horizontal Obligation**") shall be deemed to be an Event of Default by an Affiliated Vertical Developer, and (c) notwithstanding anything to the contrary in clause (a) above, an Event of Default by an Affiliated Vertical Developer with respect to the Replacement Unit or the BMR Unit requirements shall, at the City's option, be deemed an Event of Default by Developer and all of its Affiliates for all purposes under this Agreement (including all Vertical Obligations or Horizontal Obligations). Notwithstanding the inability to cross-default certain obligations as set forth in (a) through (c) above, Developer and each Transferee assume the risk that another Party's failure to Complete a Mitigation Measure, Community Improvement or Public Improvement may delay or interfere with its development rights as set forth in Section 11.6.

12.4 Notice of Default. Prior to the initiation of any action for relief specified in Section 12.5 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of

Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that an default has not occurred. The Parties shall meet to discuss resolution of the alleged default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 12.5 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 12.5. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

12.5 Remedies.

12.5.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 12.5.2 below). The City's specific performance remedy shall include the right to require that Developer Complete any Public Improvement that Developer has commenced (through exercise of rights under payment and performance bonds or otherwise), and to require dedication of the Public Improvement to the City upon Completion together with the conveyance of real property as contemplated by this Agreement. In addition, in the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

12.5.2 Limited Damages. The Parties have determined that, except as set forth in this Section 12.5.2, (i) monetary damages are generally inappropriate and in no event shall the City be liable for any damages whatsoever for any breach of this Agreement, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages but including 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) the City 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) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in

this Agreement, (2) the City shall have the right to recover any and all damages relating to Developer's failure to construct Public Improvements in accordance with the City approved plans and specifications and in accordance with all applicable laws (but only to the extent that the City first collects against any security, including but not limited to bonds, for such Public Improvements), and (3) either Party shall have the right to recover attorneys' fees and costs as set forth in Section 12.8, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean 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.

12.6 Dispute Resolution. The Parties recognize that disputes may arise from time to time regarding application to the Project and the Project Site of the Existing Standards or Future Changes to the Existing Standards. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in this Section 12.6 that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project or the Project Site of Existing Standards or Future Changes to the Existing Standards, the dispute shall initially be presented by Planning Department staff to the Planning Director, by DPW staff to the Director of DPW, or to DBI staff to the Director of DBI, whichever is appropriate, for resolution. If the Planning Director, Director of DPW, or Director of DBI, as applicable, decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

12.7 Dispute Resolution Related to Changes in State and Federal Rules and Regulations or Failure to Agree on Equal Opportunity and Training Program. The Parties agree to the follow the dispute resolution procedure in this Section 12.7 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section 2.5.2 hereof, or if the Parties are not able to reach agreement on an Equal Opportunity and Training Program pursuant to Section 6.11 hereof.

12.7.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section 12.7.2.

12.7.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a

brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10) business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) usiness days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

12.8 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of 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" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, 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 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 City Attorney's Office.

12.9 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.10 Future Changes to Existing Standards. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section 12.5, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum

(excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself), including any Future Changes to Existing Standards, subject to the terms of Section 2.5.

12.11 Joint and Several Liability. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

13. MISCELLANEOUS PROVISIONS

13.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

13.2 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 Article 11 above, 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 limitations on Transfers set forth in Article 11 above, 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.

13.3 Planning Code Section 317. The Parties acknowledge that the Project involves the demolition of dwelling units but that the Project replaces all demolished dwelling units with the Replacement Units and increases the City's overall supply of housing, including the supply of BMR Units. By adopting this Agreement, the City acknowledges that it has thoroughly considered the Project's effects on housing supply and therefore, during the Term of this Agreement, shall not require Developer to obtain conditional use authorization for the demolition of any dwelling units on the Project Site that may be required by Planning Code section 317 or subsequent amendment of the Planning Code, Administrative Code or any other City code or regulation.

13.4 Applicable Law and Venue. 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 such City and County 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.

13.5 Construction of Agreement. 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 Basic Approvals or Implementing Approvals shall be deemed to refer to the Agreement or the Basic Approvals or Implementing Approvals as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

13.6 Project Is a Private Undertaking; No Joint Venture or Partnership.

13.6.1 The development proposed to be undertaken by Developer on the Project Site is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning any of the improvements on the Project Site. Unless and until portions of the Project Site are dedicated to the City, Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

13.6.2 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.

13.7 Recordation. Pursuant to Section 65868.5 of the Development Agreement Statute and Section 56.16 of the Administrative Code as of the Effective Date, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

13.8 Obligations Not Dischargeable in Bankruptcy. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

13.9 Signature in Counterparts. 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.

13.10 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

13.11 Notices. 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 written 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, California 94102

To Developer:

Robert Rosania
Parkmerced Investors, LLC
156 Williams Street, 10th Floor
New York, New York 10038

Seth Mallen
Parkmerced Investors, LLC
3711 Nineteenth Avenue
San Francisco, California 94132

Dean Dakolias
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

Rick Noble
c/o Parkmerced Investors, LLC
Fortress Credit Corp.
1345 Avenue of the Americas
46th Floor
New York, New York 10105

with a copy to:

Mary G. Murphy, Esq.
Jim M. Abrams, Esq.
Gibson Dunn & Crutcher, LLP
555 Mission Street Suite 3000
San Francisco, California 94105

13.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board 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.

13.13 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

13.14 MacBride Principles. 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.

13.15 Tropical Hardwood and Virgin Redwood. 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.

13.16 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 6250 *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 applicable 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.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

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

By:_____
John Rahaim
Director of Planning

Approved on _____
Board of Supervisors Ordinance No. _____

Approved as to form:
Dennis J. Herrera, City Attorney

By:_____
Deputy City Attorney

Approved:

By: _____
Amy Brown, Acting City Administrator

By: _____
Ed Reiskin, Director of Public Works

By: _____
Joanne Hayes-White, SFFD Fire Chief

By: _____
_____, SFFD Fire Marhsall

DEVELOPER

PARKMERCED INVESTORS, LLC,
a Delaware limited liability company

By:_____

Its:_____

By:_____

Its:_____

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency

The Municipal Transportation Agency of the City and County of San Francisco ("**SFMTA**") has reviewed the Development Agreement between the City and PARKMERCED INVESTORS LLC, a Delaware limited liability company (the "**Development Agreement**"), relating to the proposed Parkmerced development project to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the Infrastructure Plan, the Transportation Plan, and the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to the following:

1. The Development Agreement as it relates to matters under SFMTA jurisdiction, including the SFMTA Infrastructure and the transportation-related Mitigation Measures; and

2. Subject to Developer satisfying SFMTA's requirements and the transportation-related Mitigation Measures for design, construction, testing, performance, training, documentation, warranties and guarantees, that are consistent with the applicable City regulations and applicable State and federal law and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, SFMTA's accepting the SFMTA Infrastructure described in the Infrastructure Plan and the Transportation Plan that will be under SFMTA jurisdiction.

By executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
NATHANIEL P. FORD,
Executive Director

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

By: _____
Deputy City Attorney

San Francisco Municipal Transportation Agency Resolution No. _____
Approved _____.

[SFMTA Consent]

CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Public Utilities Commission

The Public Utilities Commission of the City and County of San Francisco (the "**SFPUC**") has reviewed the Development Agreement to which this Consent to Development Agreement (this "**SFPUC Consent**") is attached and incorporated. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering the Development Agreement, the Parkmerced Plan Documents, and utility-related Mitigation Measures at a duly noticed public hearing, consented to:

1. The Development Agreement as it relates to matters under SFPUC jurisdiction, including the Stormwater Management Improvements and the SFPUC-related Mitigation Measures;

2. Subject to Developer satisfying the SFPUC's requirements for construction, operation, and maintenance that are consistent with the Existing Standards, Future Changes to Existing Standards permitted by Section 2.2 of the Development Agreement, the Uniform Codes, the Agency Design Standards, and applicable State and federal law, and the plans and specifications approved by the SFMTA under the terms of the Development Agreement, and meeting the SFPUC-related Mitigation Measures, the SFPUC's accepting and then, subject to appropriation, operating and maintaining SFPUC-related infrastructure; and

3. Delegating to the SFPUC General Manager or his or her designee any future approvals of the SFPUC under the Development Agreement, including approvals of Development Phase Applications, subject to applicable law including the City's Charter.

By authorizing this SFPUC Consent, the SFPUC does not intend to in any way limit the exclusive authority of the SFPUC as set forth in Article XIIIB of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the SAN FRANCISCO PUBLIC UTILITY COMMISSION

By: _____
EDWARD HARRINGTON,
General Manager

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

By: _____
Deputy City Attorney

San Francisco Public Utility Commission Resolution No. _____
Approved _____

[Rent Board Consent]

Exhibits

A	Project Site Diagram
B	Legal Description
C	List of Community Improvements
D	Regulations Regarding Access and Maintenance of Full Public Access Privately-Owned Community Improvements
E	Impact Fees and Exactions
F	Phasing Plan
G	Sample Development Phasing Application
H	Area of Private Maintenance and Operations Obligation Map
I	Tier 5 Concept Areas of Focus
J	Real Property Transfers Diagram
K	Form of Quitclaim Deed
L	Form of Grant Deed
M	Subdivision Requirements
N	San Francisco Administrative Code sections 56.17(f) and 56.18
O	Form of Assignment and Assumption Agreement
P	SFMTA Design Guidelines
Q	Parkmerced Power Generation Requirements and Implementation Plan
R	Tenant Relocation Plan
S	Transit Subsidy Program

Exhibit A
Project Site Diagram

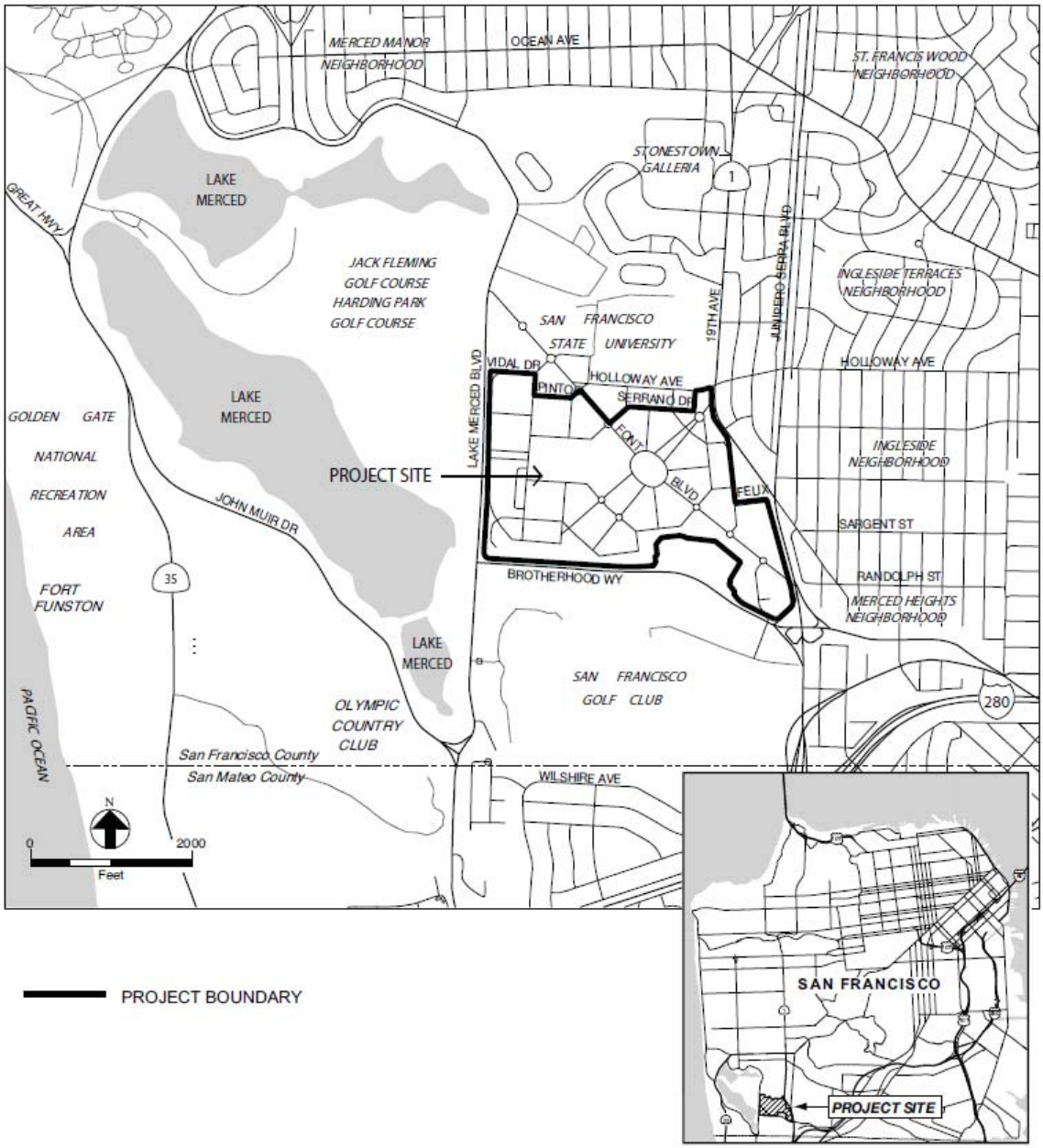


Exhibit B
Legal Description

Real property situated in the City of San Francisco, County of San Francisco, State of California, and described as follows:

PARCEL ONE:

ALL OF BLOCKS 7303, 7303-A, 7308, 7309, 7309-A, 7310, 7311, 7315, 7316, 7317, 7318, 7319, 7321, 7322, 7323, 7325, 7326, 7330, 7333-A, 7333-B, 7333-C, 7333-D, 7333-E, 7334, 7335, 7336, 7337, 7338, 7339, 7340, 7341, 7342, 7343, 7344, 7345, 7345-A, 7345-B, 7345-C, 7356, 7357, 7358, 7359, 7360, 7361, 7362, 7363, 7364, 7365, 7366, 7367, 7368, 7369 AND 7370, AS SHOWN ON THE MAP ENTITLED "RECORD OF SURVEY MAP OF PARKMERCED, SAN FRANCISCO, CALIF.", FILED AUGUST 21, 1951, IN BOOK "R" OF MAPS, PAGES 15 THROUGH 19, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND LOT 4 OF BLOCK 7331 AND LOT 4 OF BLOCK 7332 AS SHOWN ON THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 3, 2006 AS DOCUMENT NO. 2006-4122531, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

TOGETHER WITH ALL THE RIGHT, TITLE AND INTEREST, IF ANY, IN THE STREETS WITHIN SAID AREA DESCRIBED HEREWITH.

PARCEL TWO:

ALL OF BLOCK 7320, AS SHOWN ON THE MAP ENTITLED "RECORD OF SURVEY MAP OF PARKMERCED, SAN FRANCISCO, CALIF.", FILED AUGUST 21, 1951, IN BOOK "R" OF MAPS, PAGES 15 THROUGH 19, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

TOGETHER WITH THAT PORTION OF GONZALEZ DRIVE VACATED BY RESOLUTION NO. 461-63, ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON AUGUST 12, 1963, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF GONZALEZ DRIVE. SAID POINT BEING THE MOST NORTHERLY EXTREMITY OF THAT CERTAIN COURSE DENOTED NORTH 7° 24' WEST 204.225 FEET LYING NORTHERLY FROM CARDENAS AVENUE, ACCORDING TO "MAP OF PARKMERCED, ETC.", RECORDED JULY 13, 1945, IN MAP BOOK "P", AT PAGES 25 TO 29, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA; THENCE RUNNING ALONG THE FORMER LINES OF GONZALEZ DRIVE, AS SAID DRIVE EXISTED PRIOR TO THE VACATION THEREOF BY RESOLUTION NO. 461-63 ADOPTED AUGUST 12, 1963, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, THE FOLLOWING COURSES AND DISTANCES: NORTHERLY, NORTHEASTERLY AND EASTERLY ON THE ARC OF A CURVE TO THE RIGHT, TANGENT TO THAT CERTAIN COURSE LAST MENTIONED, WITH RADIUS OF 6.50 FEET, CENTRAL ANGLE 90° 00' 00", A DISTANCE OF 10.210 FEET; EASTERLY TANGENT TO THE PRECEDING CURVE 43.00 FEET; EASTERLY, NORTHEASTERLY AND NORTHERLY ON THE ARC OF A CURVE TO THE LEFT TANGENT TO THE PRECEDING COURSE WITH RADIUS OF 13.50 FEET, CENTRAL ANGLE 90° 00' 00", A DISTANCE OF 21.206 FEET; NORTHERLY TANGENT TO THE PRECEDING CURVE 24.00 FEET; NORTHERLY,

NORTHWESTERLY AND WESTERLY ON THE ARC OF A CURVE TO THE LEFT TANGENT TO THE PRECEDING COURSE WITH RADIUS 13.50 FEET; CENTRAL ANGLE 90° 00' 00", A DISTANCE OF 21.206 FEET; WESTERLY TANGENT TO THE PRECEDING CURVE 40.584 FEET; WESTERLY, NORTHWESTERLY AND NORTHERLY ON THE ARC OF A CURVE TO THE RIGHT TANGENT TO THE PRECEDING COURSE WITH RADIUS 6.50 FEET, CENTRAL ANGLE 92° 24' 01", A DISTANCE OF 10.482 FEET; THENCE LEAVING SAID FORMER LINE OF GONZALEZ DRIVE AND RUNNING SOUTHERLY TANGENT TO THE PRECEDING CURVE 57.823 FEET; THENCE DEFLECTING 2° 24' 01" TO THE LEFT FROM THE PRECEDING COURSE AND RUNNING SOUTHERLY 6.50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF GONZALEZ DRIVE VACATED BY RESOLUTION HEREINABOVE MENTIONED.

EXCEPTING THEREFROM, THAT PORTION OF BLOCK 7320, AS SHOWN ON THE MAP HEREINABOVE MENTIONED, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY CURVED LINE OF NINETEENTH AVENUE, DISTANT THEREON 9.794 FEET NORTHWESTERLY FROM THE SOUTHEASTERLY TERMINUS OF THE CURVE WITH A RADIUS OF 570 FEET WHICH CONNECTS THE WESTERLY TANGENT LINE OF NINETEENTH AVENUE AND THE SOUTHWESTERLY TANGENT LINE THEREOF, AS SHOWN ON THE MAP THEREOF FILED MAY 29, 1939, IN BOOK "N" OF MAPS, AT PAGES 70 TO 74 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA; RUNNING THENCE SOUTHEASTERLY ALONG SAID CURVED LINE OF NINETEENTH AVENUE 9.794 FEET TO THE SOUTHEASTERLY TERMINUS OF SAID CURVE; THENCE SOUTH 37° 00' 30" EAST ALONG SAID SOUTHWESTERLY LINE OF NINETEENTH AVENUE 45.00 FEET; THENCE AT A RIGHT ANGLE SOUTH 52° 59' 30" WEST 12.00 FEET; THENCE AT A RIGHT ANGLE NORTH 37° 00' 30" WEST 45.00 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 582 FEET TANGENT TO THE PRECEDING COURSE, A DISTANCE OF 10.00 FEET; THENCE ON A RADIAL LINE NORTH 53° 58' 34" EAST 12.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL THE RIGHT, TITLE AND INTEREST, IF ANY, IN THE STREETS WITHIN SAID AREA DESCRIBED HEREWITH.

PARCEL THREE:

ALL OF BLOCK 7333, AS SHOWN ON THE MAP ENTITLED "RECORD OF SURVEY MAP OF PARKMERCED, SAN FRANCISCO, CALIF.", FILED AUGUST 21, 1951, IN BOOK "R" OF MAPS, PAGES 15 THROUGH 19, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM, THAT PORTION OF BLOCK 7333, AS SHOWN ON THE MAP HEREINABOVE MENTIONED, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF LAKE MERCED BOULEVARD, AS SHOWN ON THAT CERTAIN "RECORD OF SURVEY MAP OF PARKMERCED, SAN FRANCISCO, CALIF.", FILED AUGUST 21, 1951, IN BOOK "R" OF MAPS, AT PAGES 15 TO 19 INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DISTANT THEREON SOUTH 2° 29' 53" WEST 310.710 FEET FROM THE SOUTHERLY EXTREMITY OF THAT CERTAIN CURVE WITH A RADIUS OF

3050 FEET, CENTRAL ANGLE 2° 30’ 03” AN ARC DISTANCE OF 133.125 FEET; RUNNING THENCE SOUTH 2° 29’ 53” WEST ALONG SAID EASTERLY LINE OF LAKE MERCED BOULEVARD 77.000 FEET; THENCE SOUTH 87° 30’ 07” EAST 66.000 FEET; THENCE NORTH 2° 29’ 53” EAST 72.897 FEET TO THE SOUTHWESTERLY LINE OF VIDAL DRIVE, AS SHOWN ON ABOVE MENTIONED MAP; THENCE NORTH 24° 06’ WEST ALONG SAID SOUTHWESTERLY LINE OF VIDAL DRIVE 4.588 FEET; THENCE NORTH 87° 30’ 07” WEST 63.946 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL THE RIGHT, TITLE AND INTEREST, IF ANY, IN THE STREETS WITHIN SAID AREA DESCRIBED HEREWITH.

PARCEL FOUR:

A RIGHT OF WAY EASEMENT FOR WATER, TELEPHONE, GAS AND ELECTRIC SYSTEMS, AS RESERVED IN THE CONVEYANCE FOR STREET PURPOSES IN THE DEED FROM METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION, TO CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, DATED MAY 17, 1945, RECORDED JULY 13, 1945, IN BOOK 4252 OF OFFICIAL RECORDS, PAGE 85, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND AS MODIFIED AND RESERVED IN THE EXCHANGE DEED, BY AND BETWEEN SAID PARTIES DATED OCTOBER 7, 1949, RECORDED NOVEMBER 4, 1949, IN BOOK 5298 OF OFFICIAL RECORDS, PAGE 129, IN SAID RECORDER’S OFFICE.

EXCEPTING FROM SAID EASEMENT ANY PORTIONS THEREOF LYING WITHIN THE BOUNDS OF THE FOLLOWING:

(A) THAT CERTAIN 10.095 ACRE PARCEL DESCRIBED IN THE INTERLOCUTORY DECREE IN CONDEMNATION, DATED APRIL 10, 1950, ENTERED IN THE ACTION IN SUPERIOR COURT ENTITLED “THE STATE OF CALIFORNIA VS. METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION, ET AL”, A CERTIFIED COPY OF WHICH DECREE WAS RECORDED APRIL 10, 1950, IN BOOK 5418 OF OFFICIAL RECORDS, PAGE 320, IN SAID RECORDER’S OFFICE, SAN FRANCISCO SUPERIOR COURT CASE NO. 381649.

(B) THAT CERTAIN PARCEL (PORTION OF FELIX STREET, VACATED) DESCRIBED IN THE DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, TO METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION, DATED JULY 31, 1950, RECORDED AUGUST 14, 1950, IN BOOK 5514 OF OFFICIAL RECORDS, PAGE 249, IN SAID RECORDER’S OFFICE.

(C) THAT CERTAIN PARCEL (PORTION OF GONZALEZ DRIVE, VACATED) DESCRIBED IN THE DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, TO METROPOLITAN LIFE INSURANCE COMPANY, A NEW YORK CORPORATION, DATED SEPTEMBER 19, 1963, RECORDED OCTOBER 2, 1963, IN BOOK A656 OF OFFICIAL RECORDS, PAGE 425, IN SAID RECORDER’S OFFICE.

ASSESSOR’S PARCEL NUMBERS:

LOT 001 AS TO EACH OF THE FOLLOWING BLOCKS:
7303, 7303-A, 7308, 7309, 7309-A, 7310, 7311, 7315, 7316, 7317, 7318, 7319, 7321, 7322, 7323, 7325,

7326, 7330, 7333-A, 7333-B, 7333-C, 7333-D, 7333-E, 7334, 7335, 7336, 7337, 7338, 7339, 7340, 7341, 7342, 7343, 7344, 7345, 7345-A, 7345-B, 7345-C, 7356, 7357, 7358, 7359, 7360, 7361, 7362, 7363, 7364, 7365, 7366, 7367, 7368, 7369, 7370
LOT 003, AS TO BLOCK 7320
LOT 001 AND LOT 003, AS TO BLOCK 7333
LOT 004, AS TO BLOCK 7331
LOT 004, AS TO BLOCK 7332

Exhibit C
List of Community Improvements

Each of the Community Improvements listed below is described in more detail in the *Parkmerced Design Standards + Guidelines*, the *Parkmerced Transportation Plan* and/or the *Parkmerced Sustainability Plan*.

Publicly-Owned Community Improvements. The following constitute the Community Improvements that are classified as Public Improvements:

- Intersection improvements at each of the following:
    - Higuera Drive and Lake Merced Boulevard
    - Brotherhood Way and Chumasero Drive
    - Chumasero Drive and Junipero Serra Boulevard
    - Lake Merced and Brotherhood Way
    - Junipero Serra and Brotherhood Way Interchange
- New intersection/access point on Lake Merced Boulevard at each of the following:
    - Vidal Drive
    - Acevedo Avenue
    - Gonzalez Drive
- Elements of the MUNI M Oceanview realignment including:
    - Realignment of MUNI M Oceanview into Parkmerced and provision of left turn in Crespi Drive
    - Fourth southbound lane and landscaping on 19th Avenue between Holloway and Junipero Serra
    - Intersection improvements at:
        - 19th and Holloway Avenues
        - 19th Avenue and Junipero Serra Boulevard
        - 19th Avenue and Crespi Drive
- Bicycle Lanes/Paths

- Sidewalks and pedestrian path (Gonzalez) and related furniture, fixtures and equipment
- Street Trees
- Pedestrian Safety Improvements
- Bicycle Improvements (way-finding, bicycle parking)

Privately-Owned Community Improvements – Full Public Access. The following constitute the Community Improvements that are classified as Privately-Owned Community Improvements and further classified as Full Public Access:

- Open Space - Juan Bautista Circle/Pond
- Open Space - Stream Corridor
- Open Space - Sports Fields
- Open Space - Belvedere Gardens
- Open Space - Neighborhood Commons
- Open Space - Community Garden
- Open Space - Tower Area
- Transit Plaza
- Paseos, alley ways and plazas

Privately-Owned Community Improvements – Partial Public Access. The following constitute the Community Improvements that are classified as Privately-Owned Community Improvements and further classified as Partial Public Access:

- Organic Farm
- Open Space - Courtyards
- Recreation Center
- School Facility
- BART and Shopper Shuttles
- Transportation Coordinator (including all activities of the Transportation Coordinator described in the Transportation Plan and not otherwise listed herein)
- Discounted Transit Passes

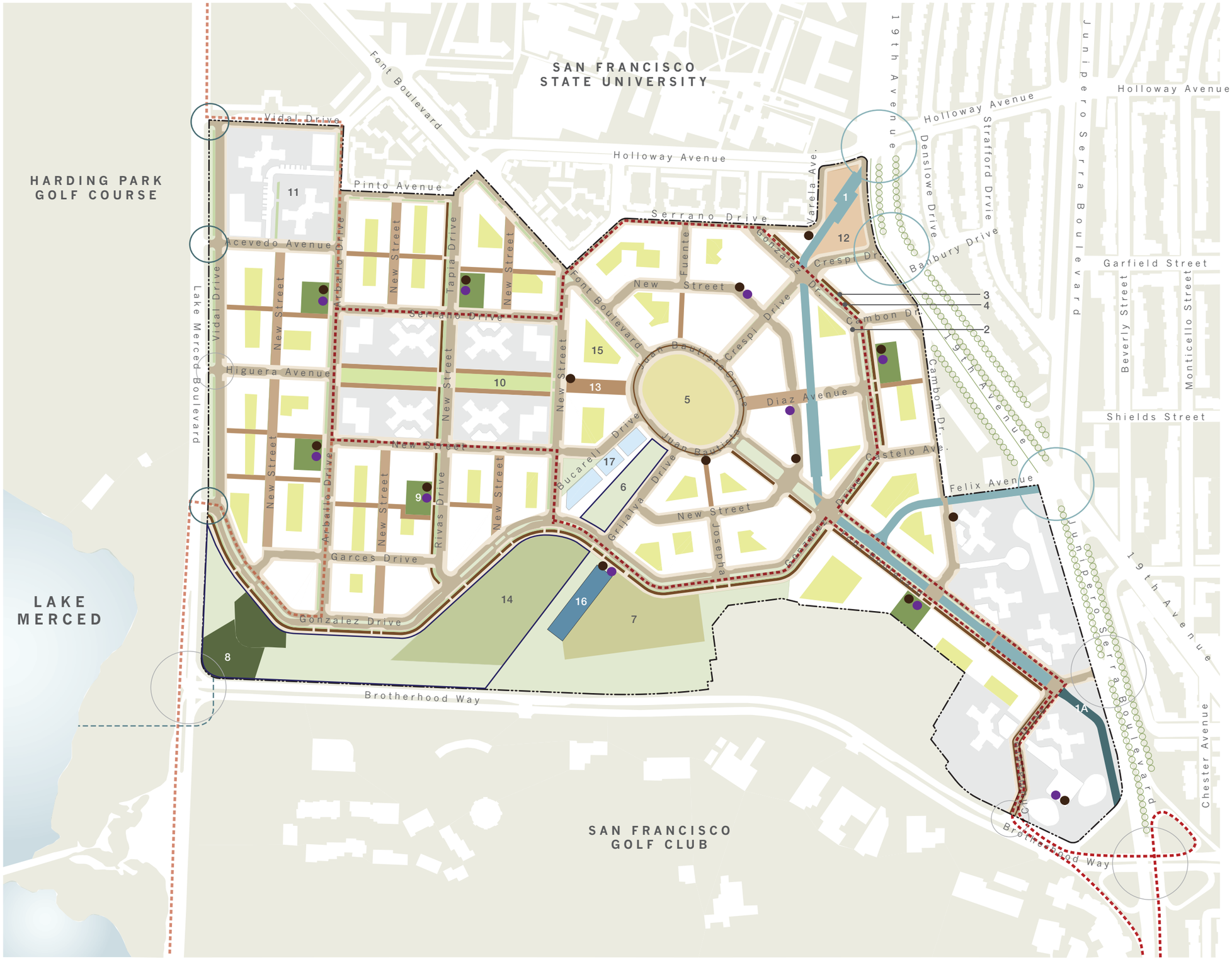
- Carpool/Vanpool Services
- Carshare Program and Parking
- Bikeshare Program and Parking

Privately-Owned Community Improvements – No Public Access. The following constitute the Community Improvements that are classified as Privately-Owned Community Improvements and further classified as No Public Access:

- Cogeneration Systems
- Solar Panels (on-site or off-site)

Not applicable. The following are Privately-Owned Community Improvements that do not fall within the above described categories:

- Parking Management Program (including unbundled parking and market rate pricing)
- Elements of the Transportation Demand Management Program that are not otherwise listed herein



PUBLICLY OWNED COMMUNITY IMPROVEMENTS

Intersection Improvements
- Higuera Drive & Lake Merced Boulevard
- Brotherhood Way & Chumasero Drive
- Chumasero Drive and Junipero Serra Boulevard
- Lake Merced Boulevard & Brotherhood Way
- Junipero Serra and Brotherhood Way Interchange

New Intersection Improvements
- Vidal Drive
- Acevedo Avenue
- Gonzalez Drive

Muni M Oceanview Realignment

1 - Realignment of Muni M Oceanview into Parkmerced and provision of left turn in Crespi Drive

1A - Potential future Muni M Oceanview to Daly City BART

- Fourth southbound lane and landscaping on 19th Avenue between Holloway and Junipero Serra
- Intersection Improvements
  - 19th and Holloway Avenues
  - 19th Avenue and Junipero Serra Boulevard
  - 19th Avenue and Crespi Drive — 1,661,800 sf

3	Sidewalks and Gonzalez Pedestrian Path	78,800 sf
not shown	Bicycle Lanes/ Paths	
4	Bicycle Improvements (way-finding, parking)	126,600 sf
	Bioswales	
not shown	Stormwater Outfall to Lake Merced	
not shown	Recycled water infrastructure	
not shown	Street Trees	

PRIVATELY OWNED COMMUNITY IMPROVEMENTS

Full Public Access

5	Open Space - Juan Bautista Circle/ Pond	106,300 sf
6	Open Space - Stream Corridor	74,600 sf
7	Open Space - Sports Fields	127,900 sf
8	Open Space - Belvedere Gardens	87,200 sf
9	Open Space - Neighborhood Commons	90,000 sf
10	Open Space - Community Garden	48,000 sf
11	Open Space - Tower Area	974,278 sf
12	Transit Plaza	38,400 sf
13	Paseos, Alley Ways and Plazas	240,000 sf

Partial Public Access

14	Organic Farm	
15	Open Space - Courtyards	207,700 sf
16	Recreation Center	378,127 sf
17	School Facility	64,000 sf
	BART and Shopper Shuttles	25,000 sf
not shown	Transportation Coordinator	
not shown	Discounted Transit Passes	
not shown	Carpool/ Vanpool Services	
	Carshare Program and Parking	
	Bikeshare Program and Parking	

No Public Access

not shown	Cogeneration Systems
not shown	Solar Panels (on-site or off-site)

Other

not shown	Parking Management Program
not shown	Other Elements of Transportation Demand Management

Project Boundary — 6,743,400 sf

*subject to reasonable maintenance, operations, repair and security rights

**all dimensions are approximate and subject to detailed design

PARKMERCED SAN FRANCISCO, CALIFORNIA • 2010 10 19

0 50' 100' 200' 400' 800'

PROPOSED PLAN • COMMUNITY IMPROVEMENTS DIAGRAM

PARKMERCED INVESTORS LLC | SOM

EXHIBIT D

REGULATIONS REGARDING ACCESS AND MAINTENANCE OF PRIVATELY-OWNED COMMUNITY IMPROVEMENTS

These Regulations Regarding Access and Maintenance of Privately-Owned Community Improvements ("**Regulations**") shall govern the use, maintenance and operation of those certain Privately-Owned Community Improvements that are designated as Full Public Access (each, a "**Full Public Access Improvement**" and collectively, the "**Full Public Access Improvements**"). The Full Public Access Improvements are the Parks (as defined in Section 5 of this Exhibit), and those sidewalks, bike paths, and pedestrian paths within the Project Site (as defined in the *Parkmerced Design Standards and Guidelines*) not dedicated to the City.

1. Public Use. Developer or successor Master HOA shall offer the Full Public Access Improvements for the use, enjoyment and benefit of the public for open space and recreation purposes only including, without limitation, leisure, social activities, picnics and barbecues, playgrounds, sports, and authorized special events; *provided*, *however*, that Developer may use the Full Public Access Improvements for temporary construction staging related to adjacent development (during which time the subject Full Public Access Improvement shall not be used by the public) to the extent that such construction is in accordance with this Agreement, the Basic Approvals, and any Implementing Approvals.

2. No Discrimination. Developer shall not discriminate against, or segregate, any person, or group of persons, on account of race, color, religion, creed, national origin, gender, ancestry, sex, sexual orientation, age, disability, medical condition, marital status, or acquired immune deficiency syndrome, acquired or perceived, in the use, occupancy, tenure or enjoyment of the Full Public Access Improvements.

3. Maintenance Standard. The Full Public Access Improvements shall be operated, managed and maintained in a clean and safe condition in accordance with the anticipated and foreseeable use thereof.

4. Temporary Closure. Developer shall have the right, without obtaining the prior consent of the City or any other person or entity, to temporarily close any or all of the Full Public Access Improvements 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 the circumstances described below:

   a. Emergency. In the event of an emergency or danger to the public health or safety created from whatever cause (including flood, storm, fire, earthquake, explosion, accident, criminal activity, riot, civil disturbances, civil unrest or unlawful assembly), Developer may temporarily close the Full Public Access Improvements (or affected portions thereof) in any manner deemed necessary or desirable to promote public safety, security and the protection of persons and property; or

b. Maintenance and Repairs. Developer may temporarily close the Full Pubic Access Improvements (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 the Full Public Access Repairs.

5. Operation of the Parks. Operation of the Parks (defined below) shall be subject to the additional requirements of this Paragraph. For the purposes of these Regulations, the "**Parks**" shall mean each of the following Full Public Access Improvements: (i) the Neighborhood Commons, (ii) Juan Bautista Circle, (iii) the Athletic Fields, (iv) Belvedere Gardens, and (v) the open space located in the southwest corner of the Project Site other than the Athletic Fields, Organic Farm and Belvedere Gardens. Each of the Parks is described in more detail in the *Parkmerced Design Standards + Guidelines*.

a. Hours of Operation. The Parks shall be open and accessible to the public for a minimum of seven (7) days per week during daylight hours, unless reduced hours are approved in writing by the City, otherwise expressly provided for in this Agreement (including, without limitation, Paragraphs 4 and 5(b) of these Regulations), or reasonably imposed by Developer, with the City's reasonable consent, to address security concerns. No person shall enter, remain, stay or loiter in the Parks when the Parks are closed to the public, except persons authorized in conjunction with a Special Event or other temporary closure, or authorized service and maintenance personnel.

b. Special Events. Developer shall have the right to close temporarily to the public all or portions a Park for a period of up to seventy-two (72) consecutive hours in connection with the use of the subject Park for a private special event such as a wedding, meeting, reception, seminar, lecture, concert, art display, exhibit, convention, parade, gathering or assembly (each, a "**Special Event**" and collectively, "**Special Events**"). Prior to closing any Park for a Special Event, a notice of the closure shall be posted at all major entrances to the subject Park for a period of seventy-two (72) hours prior to the Special Event. Developer may require payment of a permit fee or other charge for use of the Parks for Special Events. Developer shall not schedule more than an average of two (2) Full Closure Special Events per Park per month throughout the year, if such Special Event requires closure of more than forty (40) percent the entire Park. Developer shall not schedule more than an average of five (5) Partial Closure Special Events per Park per month throughout the year, if such Partial Closure Special Event requires the closure of up to forty (40) percent of the area of the Park or less. In no event can any one Park be closed for Special Events for more than five (5) consecutive days or more than ten (10) days total in any given month.

c. Public Events. The public shall have the right to request the use of the Parks for privately- or publicly-sponsored special events, including

meetings, receptions, seminars, lectures, concerts, art displays, exhibits, demonstrations, marches, conventions, parades, gatherings and assemblies, that do not require the closure of the Parks to the public (collectively, "**Public Events**"). All Public Events must be approved in advance by Developer. Developer may require payment in the form of a permit fee or other charge for use of the Parks for Public Events, so long as the permit fee and/or use charge do not exceed the reasonable costs for administration, maintenance, security, liability and repairs associated with such event. Developer shall post via on the web a clear explanation of the application process and criteria for review and approval of such Public Events and send copies of such criteria and application forms to the Planning Director and the Director of the San Francisco Department of Recreation and Parks for the purpose of each Department publishing such criteria and application forms if they so choose.

d. Signs. Developer shall post signs at the major public entrances to the Parks, setting forth the applicable regulations imposed by these Regulations, hours of operation, and a telephone number to call regarding security, management or other inquiries.

6. Permissive Use. Developer may post at each entrance to the Full Public Access Improvements, 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 Full Public Access Improvements for any purpose or period of time shall be construed, interpreted or deemed to create any rights or interests to or in the Full Public Access Improvements 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 the Full Public Access Improvements 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. Developer expressly reserves the right to control the manner, extent and duration of any such use.

7. Arrest or Removal of Persons. Developer shall have the right (but not the obligation) to use lawful means to effect the arrest or removal of any person or persons who creates a public nuisance, who otherwise violates the applicable rules and regulations, or who commits any crime including, without limitation, infractions or misdemeanors in or around the Full Public Access Improvements.

8. Project Security During Periods of Non-Access. Developer shall have the right to block entrances to, to install and operate security devices, and to maintain security personnel in and around the Full Public Access Improvements to prevent the entry of persons or vehicles during the time periods when public access to the Full Public Access Improvements or any portion thereof is restricted or not permitted pursuant to this Agreement. Developer's proposal to install permanent architectural features that serve as security devices such as gates and fences shall be subject to Design Review Approval as detailed in the Development Agreement.

9. Removal of Obstructions. Developer shall have the right to remove and dispose of, in any lawful manner it deems appropriate, any object or thing left or deposited on the Full Public Access Improvements deemed to be an obstruction, interference or restriction of use of the Full Public Access Improvements for the purposes set forth in this Agreement, including, but not limited to, personal belongings or equipment abandoned in the Full Public Access Improvements during hours when public access is not allowed pursuant to this Agreement.

10. Temporary Structures. No trailer, tent, shack, or other outbuilding, or structure of a temporary character, shall be used on any portion of the Full Public Access Improvements at any time, either temporarily or permanently; *provided*, *however*, that Developer may approve the use of temporary tents, booths and other structures in connection with Public Events or Special Events.

Exhibit E
Impact Fees and Exactions

FEE	AUTHORITY
School Impact Fee	Cal. Educ. Code §17620(b) Cal. Gov. Code §65995(b)
Transit Impact Development Fee	S.F. Admin. Code §§ 38.4, 38.3-1
Jobs-Housing Linkage Fee	S.F. Plan. Code §§313.3, 313.6
Child Care Fee	S.F. Plan. Code §314.4(b)(4)
Wastewater Capacity Charge	Cal. Health & Safety Code §5471; SFPUC Resolution No. 07-0100 (adopted June 12, 2007)
Water Capacity Charge	SFPUC Resolution No. 07-0099 (adopted June 12, 2007)

Exhibit F
Phasing Plan

[see attached]

Parkmerced

San Francisco, California

DRAFT - Phasing Plan

November 3, 2010

Each Community Improvement or CEQA mitigation measure listed in this Phasing Plan must be constructed and/or implemented in accordance with the guidelines set forth below. Detailed descriptions of each Community Improvement or CEQA mitigation measure are availablein the following documents as indicated: (i) Parkmerced Design Standards & Guidelines ("DS&G"); (ii) Parkmerced Sustainability Plan ("Sust"); (iii) Parkmerced Infrastructure Plan ("Infra"); (iv) Parkmerced Transportation Plan ("TP"); (v) Fehr & Peers Mitigation Measure Proposed Designs ("F&P"); or (vi) Parkmerced Environmental Impact Report ("EIR").

TRANSPORTATION

Transportation Infrastructure: The relevant triggers are expressed in Net New PM Peak Auto Trips, which (as described in the Trip Generation Calculation table) approximates the level of development at the Project Site.

- Community Improvements ([CI]) - Must be constructed during the development sub-phase in which the "Required Implementation Trigger in Net New PM Auto Trips" is reached.
- CEQA Mitigation Measures [TR] - Except as otherwise noted below for design-related measures, SFMTA will monitor and (if warranted) conduct a feasiblity study when the "Required Implementation Trigger in Net New PM Auto Trips" is reached. Developer will be required to construct or fund the CEQA Mitigation Measure if warranted by the study results.

Community Improvements and CEQA Mitigation Measures: Transportation Infrastructure	Document Reference	Required Implementation Trigger in Net New PM Peak Hour Trips	Notes
- [CI] Intersection improvements at Higuera Drive and Lake Merced Boulevard	DS&G - 02.39	213	
- [CI] Intersection improvements at Brotherhood Way and Chumasero Drive	DS&G - 02.37	372	
- [CI] Intersection improvements at Chumasero Drive and Junipero Serra Boulevard	DS&G - 02.35	372	
- [TR-22B]: Lake Merced Boulevard at Font Boulevard and State Drive	F&P M-TR-22B	465	
- [CI] Intersection improvements at Junipero Serra and Brotherhood Way Interchange	DS&G - 02.36	755	
- [TR-9]: Junipero Serra Boulevard and Brotherhood Way Interchange	F&P M-TR-9	755	Design measure - no monitoring/mitigation.
- [TR-2C]: Lake Merced Boulevard and Winston Drive	F&P M-TR-2C	930	
- [TR-2D]: Lake Merced and Font Boulevards	F&P M-TR-2D	930	
- [CI] New intersection/access point #1 on Lake Merced Boulevard	DS&G - 02.39	965	Could be Vidal, Acevedo or Gonzalez
- [CI] Intersection improvements at Lake Merced and Brotherhood Way	DS&G - 02.38	1,128	
- [TR-2E]: Lake Merced Boulevard and Brotherhood Way	F&P M-TR-2E	1,128	Design measure - no monitoring/mitigation.
- [TR-25B]: Lake Merced Boulevard from Sunset Boulevard to Winston Drive	F&P M-TR-25B	1,551	
- [TR-2B]: Sunset & Lake Merced Boulevards	F&P M-TR-2B	2,171	
- [TR-36C]: Brotherhood Way/Chumasero Drive	F&P M-TR-36C	2,171	
- [TR-36D]: Lake Merced Boulevard and John Muir Drive	F&P M-TR-36D	2,326	
- [CI] New intersection/access point #2 on Lake Merced Boulevard	DS&G - 02.39	2,343	Could be Vidal, Acevedo or Gonzalez
- [TR-36E]: Lake Merced and John Daly Boulevards	F&P M-TR-36E	2,946	
- [TR-36F]: Lake Merced Boulevard and Gonzalez Drive	F&P M-TR-36F	2,946	
- [CI] New intersection/access point #3 on Lake Merced Boulevard	DS&G - 02.39	3,101	Could be Vidal, Acevedo or Gonzalez
- [TR-23]: 19th Avenue from Winston Drive to Holloway Avenue	F&P M-TR-23	3,101	

Trip Generation Calcuation (Full Build Out)				
Land Use	Proposed Net New Land Use		Effective PM Peak Hour Trip Generation Rate (Auto Trips Per Unit of Development)	Total Net New PM Peak Hour Trips
- Residential	5,679	Dwelling Units	0.35	2,008.41
- Retail	230	KSF	3.24	744.46
- Commercial	69	KSF	3.76	260.51
- Recreation	64	KSF	0.84	53.85
- Schools	21	KSF	1.60	33.77
			TOTAL	***3101.00***

Transportation Demand Management; MUNI Realignment; and Payments: Each Community Improvement or CEQA mitigation measure must be implemented in accordance with the "Phasing Parameters."

Community Improvements: Transportation Demand Management	Document Reference	Phasing Parameters
- BART and Shopper Shuttle	TP 4.1.1	To be implemented during first development phase and expanded during subsequent development phases at a rate proportionate to demand as outline in the Transportation Plan
- Parking Management	TP 4.1.8	To be implemented during each development phase at a rate proportionate to construction.
- Transportation Coordinator + Activities	TP 4.1.5	Transportation Coordinator to be implemented during first development phase; Transportation Coordinator's activities to be implemented/expanded at a rate proportionate to construction.
- Discounted Transit Passes	TP 4.1.5	To be available to each household occupying a net new unit and to each new household occupying a Replacement Unit (excluding Relocating Tenants).
- Carpool/Vanpool Services	TP 4.1.5	To be implemented during first development phase and expanded during subsequent development phases at a rate proportionate to construction.
- Bike Share Program and Parking	TP - 4.1.6	Program to be implemented and seven (7) locations to be completed prior to completion of 3,000 net new units; one (1) additional location to be completed prior to completion of each additional 750 net new units.
- All other elements of TDM Program	TP 4.1.4, 4.1.6 (cars only), 4.1.9	To be implemented at a rate proportionate to construction.

Community Improvements and CEQA Mitigation Measure: MUNI Realignment	Document Reference	Phasing Parameters
Phasing for the MUNI M Oceanview realignment, including the improvements listed below, has not been established. Refer to the Article 3 of the Development Agreement for further information regarding implementation.		
- Realign MUNI M Oceanview into Parkmerced and provide left turn in Crespi Drive	TP 3.4	To be implemented per Development Agreement.
- Intersection Improvements at 19th and Holloway Avenues	DS&G - 02.33	To be completed in conjunction with MUNI realignment.
- Open Space - Transit Plaza	DS&G - 02.18	To be completed in conjunction with MUNI realignment.
- TR-2A: 19th & Crespi Drive	F&P M-TR-2A	To be completed with construction of proposed intersection improvement
- Intersection Improvements at 19th Avenue and Junipero Serra Boulevard	DS&G - 02.34	To be completed in conjunction with MUNI realignment.
- Intersection Improvements at 19th Avenue and Crespi Drive	DS&G - 02.33	To be completed in conjunction with MUNI realighnment, following intersection improvements at 19th/Holloway and 19th/Junipero Serra.
- Provide 4th Southbound Lane and Landscaping on 19th Avenue between Holloway and Junipero Serra	TP 3.3, DS&G 02.33	To be completed following completion of MUNI realignment.

CEQA Mitigation Measures: Payments	Document Reference	Phasing Parameters
- TR-21A: Fund purchase of one (1) light rail vehicle for M Oceanview line.	EIR	To be completed prior to operation of the realigned MUNI M Oceanview line; not required if M-TR-21B implemented.
- TR-21B: Fund study and installation of Transit Signal Priority treatments on M Oceanview line.	EIR	To be completed prior to operation of the realigned MUNI M Oceanview line; not required if M-TR-21A implemented.
- TR-22-C: Contribute to purchase and operation of transit vehicles for 18 46th Avenue line.	EIR	One bus to be purchased when Net New PM Peak Hour Auto Trips reach 965. Second bus to be purchased when Net New PM Peak Hour Auto Trips reach 2,270
- TR-25-C: Contribute to purchase and operation of transit vehicles for 29 Sunset line.	EIR	Two buses (28 & 28L) to be purchased when Net New PM Peak Hour Auto Trips reach 2,950.
- TR-44: Fund "fair share" contribution toward provision of additional transit vehicles for 28 19th Avenue and 28L 19th Aven	EIR	Implementation to be coordinated with SFMTA.

NON-TRANSPORTATION

All Non-Transportation: Each Community Improvement or CEQA mitigation measure must be implemented in accordance with the "Phasing Parameters."

Community Improvements: Neighborhood Infrastructure	Document Reference	Quantity to be Provided On-Site	Phasing Parameters
- Bicycle improvements (wayfinding, bicycle parking)	TP 4.1.3, 4.1.6 (bikes only), 4.1.7	per plan	To be constructed in conjunction with adjacent building construction and completed prior to First Certificate of Occupancy.
- Recreation Center	DS&G - App A Blk 23	1	To be completed prior to completion of 3,500 net new units.
- School Facility	DS&G - App A Blk 13	1	To be constructed prior to demolition of the existing Montessori School.
- Bike Lanes/Paths	DS&G - 02.05 thru 02.16	per plan	To be completed in conjunction with construction of adjacent street.
- Open Space - Juan Bautista Circle/Pond	DS&G - 02.19	1	To be completed prior to completion of 3,000 net new units.
- Open Space - Stream Corridor	DS&G - 02.20	1	To be completed prior to completion of 5,500 net new units.
- Open Space - Organic Farm	DS&G - 02.21	1	To be completed prior to completion of 3,000 net new units.
- Open Space - Sports Fields	DS&G - 02.22	1	To be completed prior to completion of 3,500 net new units.
- Open Space - Belvedere Gardens	DS&G - 02.23	1	To be completed prior to completion of 5,500 net new units.
- Open Space - Neighborhood Commons	DS&G - 02.24	6	One (1) to be completed prior to completion of every 1,000 net new units; all six (6) must be completed prior to completion of 5,500 net new units.
- Open Space - Community Garden	DS&G - 02.25	1	To be completed in conjunction with construction of adjacent block.
- Open Space - Tower Areas	DS&G - 02.26	1	To be completed in conjunction with construction of adjacent building.
- Open Space - Courtyard	DS&G - 02.27	1	To be completed in conjunction with construction of adjacent building.

Community Improvements: Sustainability Plan Measures	Document Reference	Phasing Parameters
- Bioswales	Infra - Section 6	To be installed in adjacent roadway (if necessary to serve the building) prior to the issuance of the First Certificate of Occupancy for each new building.
- Stream Corridor	DS&G - 02.20	To be constructed and completed simultaneously with Organic Farm.
- Stormwater Outfall to Lake Merced	Infra - Appendix C	To be installed in conjunction with Lake Merced and Brotherhood Way Intersection Improvement.
- Recycled Water infrastructure (Street Infrastructure)	Infra-Sec 4, Fig 4.1	To be completed with associated utility work to all buildings and with the build-out of the development.
- Cogeneration Systems	Sust - EN.03	One (1) system to be installed prior to completion of every 1,000 net new units.
- Solar Panels (on-site or off-site)	Sust - EN.03	Proportionate share to be installed prior to completion of every every 1,000 net new units.

Baseline and/or Code Required Improvements	Document Reference	Phasing Parameters
- Public Realm (Sidewalks, Pedestrian Paths, Paseo, Alleyways, FF&E)	DS&G - Sec 02	To be installed in adjacent roadway (if necessary to serve the building) prior to the issuance of the First Certificate of Occupancy for each new building.
- Pedestrian Safety Improvements	DS&G - Sec 02	To be installed in adjacent roadway (if necessary to serve the building) prior to the issuance of the First Certificate of Occupancy for each new building.
- Street Trees	DS&G - 02.06	To be installed in adjacent roadway (if necessary to serve the building) prior to the issuance of the First Certificate of Occupancy for each new building.
- Non-potable water supply piping to new units	Sust - WA.02	To be completed prior to issuance of First Certificate of Occupancy for building in which located.
- Bicycle Parking	DS&G - 04.01 & TP 4.1.6	To be completed prior to issuance of First Certificate of Occupancy for building in which located.
- Car Share Parking	DS&G - 04.01 & TP 4.1.6	To be completed prior to issuance of First Certificate of Occupancy for building in which located.
- Replacement Rent Controlled Units [not Code required]	Development Agreement	Certificate of Occupancy for Replacement Unit to be obtained prior to the demolition of any to-be-replaced rent-controlled unit. At no point will there be fewer than 3,221 rent-conrolled/Replacement Units on-site.
- Affordable/BMR Units	Development Agreement	To be completed in accordance with Approved Phase Application.

CEQA Mitigation Measures	Document Reference	Phasing Parameters
- CR-1: Documentation and interpretation of Parkmerced complex.	EIR	To be commenced prior to demolition of first garden apartment. To be completed prior to completion of 3,000 net new units.

Exhibit G
Sample Development Phase Application

[see attached]

SAMPLE

DEVELOPMENT PHASE APPLICATION

Phase I

Parkmerced
3711 Nineteenth Avenue

TABLE OF CONTENTS

OWNER/APPLICANT INFORMATION

Project Sponsor:	Parkmerced Investors LLC 3711 Nineteenth Avenue San Francisco, CA 94132 Phone: (415) 584-4561 FAX: (415) 584-8096 Attn: Seth Mallen
Applicant/Project Contact:	Gibson, Dunn & Crutcher LLP 555 Mission Street Suite 3000 San Francisco, CA 94105 Phone: (415) 393-8370 FAX: (415) 986-5309 Attn: Mary G. Murphy and Jim M. Abrams
Land Use Planner/Architect:	Skidmore, Owings & Merrill One Front Street San Francisco, CA 94111 Phone: (415) 981-1555 FAX: (415) 398-3214 Attn: Craig Hartman

LOCATION AND CLASSIFICATION

Street Address: 3711 Nineteenth Avenue

Phase I: Sub-Phase	**Assessor's Block Number**[1]	**Existing Parkmerced Block Number**[2]	**Proposed Parkmerced Block Number**[3]	**Zoning District**	**Height/Bulk District**	**Block Size (approx. square feet) *Before* Phase I**	**Block Size (approx. square feet) *After* Phase I**
A	7303A, 7308, 7333D	49, 50	01, V1	PM-R	130-PM, 83-PM, 45-PM	434,225 sq ft.	416,840 sq ft.
B	7334 (portion), 7333B, 7333A, 7337	34, 37 (portion)	03W, 03E, 03EASMT, 04, V2, G1, G2	PM-R	85-PM, 45-PM	184,878 sq ft.	206,548 sq ft.
C	7309, 7333E	38	02W, 02E 02EASMT, V2	PM-R, PM-MU2, PM-OS	85-PM, 45-PM	166,958 sq ft.	215,139 sq ft.
D	7330 (portion), 7331 (portion), 7338	19, 35	21S, 08W, 08E, 08EASMT	PM-R	145-PM, 85-PM, 65-PM, 45-PM	162,218 sq ft.	162,368 sq ft.
E	7317, 7318, 7345A, 7358	3, 4	14NW, 14NE, 14S	PM-R, PM-MU1	145-PM, 105-PM, 95-PM, 85-PM, 65-PM	291,331 sq ft.	261,056 sq ft.

1 Assessor's Block Numbers are shown on the attached Existing Parcel Areas diagram.

2 Existing Parkmerced Block Numbers are shown on the attached Existing Phase 1 Site Plan diagram.

3 Proposed Parkmerced Block Numbers are shown on the attached Proposed Parcel Areas diagram.

PROJECT DESCRIPTION

Project Type:	New Construction; Demolition
Present or Previous Use:	Residential
Proposed Use:	Residential, Commercial, Retail, Open Space

Narrative:

This application pertains to Phase I of the Parkmerced Project (the "Project"). This application is submitted in accordance with the Project's Development Agreement, which requires the project sponsor to submit a Phase Application for approval by the Planning Department, SFMTA, SFPUC, and the DPW prior to the submittal of building permits for such phase of the Project. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Development Agreement.

Phase I is comprised of five development subphases, Subphase A through Subphase E. The parcels subject to Phase I are shown by subphase on the attached Existing Phase 1 Site Plan diagram and further described by block number and area on page 4 of this application. Phase I consists primarily of residential development on the western portion of the Project site, with additional residential development on the southeastern portion of the Project site in Subphase D and residential and commercial development north of Juan Bautista Circle in Subphase E. In addition, as described in more detail below, Phase I will include a number of Community Improvements and CEQA Mitigation Measures, as required by the approved Parkmerced Phasing Plan.

Following is a description of the elements of Phase I. Each is also described in the attached Phasing Application table, which may be consulted for additional detail regarding each element or subphase.

Residential Development. Phase I includes construction of 2,184 residential dwelling units distributed among the five subphases as follows: 348 new units in Subphase A, 292 new units in Subphase B, 364 new units in Subphase C, 406 new units in Subphase D and 774 new units in Subphase E. Phase I also involves the demolition, by subphase, of all residential buildings shown on the Existing Phase 1 Site Plan diagram except Towers 27, 39, 40 and 47. Although no existing unit will be demolished in Subphase A, each subsequent subphase involves demolition of a small number of existing units as follows: 38 units in Subphase B, 87 units in Subphase C, 70 units in Subphase D and 132 units in Subphase E. Beginning with Subphase A, the number of units designated as Replacement Units will be equal to the number of units to be demolished in the subsequent phase. For example, in Subphase A, 38 of the new units will be designated as Replacement Units and these units will be made available to the households residing in the 38 units to be demolished as part of Subphase B. The number of net new units in Phase I will be 1,757 units total, or 310 net new units in Subphase A, 205 net new units in

Subphase B, 294 net new units in Subphase C, 274 net new units in Subphase D and 674 net new units in Subphase E.

The BMR Requirement of 15 percent applied to the proposed 1,757 new units results in a requirement of 267 BMR units. By subphase, the BMR requirement will be 47 in Subphase A, 31 in Subphase B, 45 in Subphase C, 42 in Subphase D, and 102 in Subphase E. In accordance with the terms of the Development Agreement, the BMR unit requirement may be satisfied by construction on-site, off-site or payment of an in-lieu fee, which shall be determined at the time of the design review application for each residential building.

Commercial Development. Phase I includes the construction 40,918 square feet of commercial space in Subphase E. This commercial space will be located within the Parkmerced Mixed Use – Social Heart (PM-MU1) zoning district. Together with the existing 10,775 square feet of commercial space on the Project site, there will be a total of 51,693 square feet of commercial space at the completion of Phase I.

Retail Development. Phase I includes the construction of 7,183 square feet of retail space in Subphase C and 47,938 square feet of retail space in Subphase E, for a total of 55,120 square feet of retail space in Phase I. The Subphase C retail space will be located within the Parkmerced Mixed Use – Neighborhood Commons (PM-MU2) zoning district. The Subphase E retail space will be located within the Parkmerced Mixed Use – Social Heart (PM-MU1) zoning district. There is no existing retail space on the Project site.

Street Realignments. Phase I involves the realignment of certain internal streets at the Parkmerced site, most significantly along Higuera Avenue (Subphase B), Crespi Drive (Subphase E), Font Boulevard (Subphase E) and Chumasero Drive (Subphase D). The exact location of such vacations and dedications are shown in detail on the attached Existing and Proposed Street Areas diagram. In total, 145,847 square feet of existing street right-of-way area will be vacated and 136,391 square feet of existing lot area will be dedicated to the City as a public right-of-way.

In addition, Phase I includes the construction internal streets, alley ways and pedestrian paseos within each block subject to development. Each such improvement will be constructed in conjunction with the construction of the adjacent building. Accordingly, each subphase will include the following improvements:

- Subphase A – Construction of one north-south pedestrian walk bisecting Block 01.[4]

- Subphase B – Construction of two east-west pedestrian paseos on Block 03W and a portion of one north-south alley way between Blocks 03W and 03E.

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[4] Unless otherwise noted, block numbers used herein are the Proposed Parkmerced Block Numbers identified on page 4 of this application.

- Subphase C – Construction of one east-west pedestrian paseo on each of Blocks 02W and 02E, one north-south alley way between Blocks 02W and 02E, and one north-south pedestrian walk bisecting each of Blocks 02W and 02E.

- Subphase D – Construction of one north-south alley way between Blocks 08W and 08E.

- Subphase E – Construction of one north-south pedestrian paseo bisecting Block 14S and one pedestrian walk bisecting each of Blocks 14NW and Blocks 14NE.

Community Improvements/CEQA Mitigation Measures. In accordance with the Development Agreement Phasing Plan, the following Community Improvements and CEQA Mitigation Measures will be constructed or implemented during Phase I. Each is described in more detail in the referenced Parkmerced Plan Document. As this application relates to the first development phase, no Community Improvements or CEQA Mitigation Measures have been constructed or implemented to date.

All Subphases:

- Transportation
    - Parking Management – See *Parkmerced Transportation Plan* section 4.1.8 (pages 46-48).
    - Discounted Transit Passes – See *Parkmerced Transportation Plan* section 4.1.5 (page 41).
    - Pedestrian safety improvements in design of each new or altered street – See *Parkmerced Design Standards + Guidelines* sections 02.07 through 02.14 (pages 24-43).
- Neighborhood Infrastructure
    - Bicycle Lanes/Paths and improvements adjacent to new buildings – See *Parkmerced Design Standards + Guidelines* sections 02.07 through 02.14 (pages 24-43).
    - Public realm improvements, including sidewalks, alley ways, pedestrian paseos and street trees, adjacent to new buildings – See *Parkmerced Design Standards + Guidelines* Chapter 02 (pages 12-77).
    - Tower Area Open Space adjacent to new towers on blocks 48 and 50 – See *Parkmerced Design Standards + Guidelines* section 02.26 (pages 66-67).
    - Courtyards adjacent to new buildings – See *Parkmerced Design Standards + Guidelines* section 02.27 (pages 68-69).
    - Parking for bicycles and car share vehicles in each new parking structure – See *Parkmerced Design Standards + Guidelines* section 04.01 (pages 136-137).

- Sustainability Infrastructure
    - Bio-swales adjacent to each new building as shown on the attached Proposed Storm Drain System diagram – See *Parkmerced Infrastructure Plan* section 6 (pages 15-16).
    - Recycled Water Infrastructure for each new building, as shown on the attached Proposed Recycled Water System diagram – See *Parkmerced Infrastructure Plan* section 4 (figure 4.1).

Subphase A Only:

- Transportation
    - Lake Merced Boulevard and Vidal Drive, intersection improvements – See *Parkmerced Transportation Plan* section 3.3 (page 27).
    - Transit Coordinator – See *Parkmerced Transportation Plan* section 4.1.5 (pages 38-40).
- Other
    - Commencement of historic documentation and interpretation of Parkmerced complex – *Environmental Impact Report* (CR-1).

Subphase B Only:

- Transportation
    - Lake Merced Boulevard and Higuera Avenue, intersection improvements – See *Parkmerced Transportation Plan* section 3.3 (page 27).

Subphase C Only:

- Transportation
    - Chumasero Drive and Brotherhood Way, intersection improvements – See *Parkmerced Transportation Plan* section 3.3 (page 27).
    - Chumasero and Juniper Serra Boulevard, intersection improvements – See *Parkmerced Transportation Plan* section 3.3 (page 26).
    - BART and Shopper Shuttles – See *Parkmerced Transportation Plan* section 4.1.1 (pages 36-37).
- Neighborhood Infrastructure
    - A Neighborhood Common – See *Parkmerced Design Standards + Guidelines* section 02.24 (pages 62-63).
- Sustainability Infrastructure
    - Installation of one cogeneration units and supporting infrastructure, as shown on attached diagram – See *Parkmerced Sustainability Plan* section EN.03 (pages 50-51).

- Payment of in-lieu fee for installation of photovoltaic panels – See *Parkmerced Sustainability Plan* section EN.03 (pages 50-51).

Subphase D Only:

- Neighborhood Infrastructure
  - Neighborhood Commons – See *Parkmerced Design Standards + Guidelines* section 02.24 (pages 62-63).

Subphase E Only

- Transportation
  - Lake Merced Boulevard at Font Boulevard and State Drive, intersection monitoring/study and mitigation (if warranted) – See *Environmental Impact Report* (TR-22B).
  - Juniper Serra Boulevard and Brotherhood Way Interchange, design requirements – See *Environmental Impact Report* (TR-9).
  - Juniper Serra Boulevard and Brotherhood Way Interchange, intersection improvements – See *Parkmerced Transportation Plan* section 3.3 (page 27).
  - Lake Merced Boulevard and Winston Drive, intersection monitoring/study and mitigation (if warranted) – See *Environmental Impact Report* (TR-2C).
  - Lake Merced and Font Boulevards, intersection monitoring/study and mitigation (if warranted) – See *Environmental Impact Report* (TR-2D).
  - Carpool/Vanpool Services – See *Parkmerced Transportation Plan* section 4.1.5 (page 41).
- Sustainability Plan Measures
  - Installation of one cogeneration units and supporting infrastructure, as shown on attached diagram – See *Parkmerced Sustainability Plan* section EN.02 (pages 50-51).
  - Payment of in-lieu fee for installation of photovoltaic panels – See *Parkmerced Sustainability Plan* section EN.02 (pages 50-51).

No modifications or deviations from the Parkmerced Plan Documents are requested at this time.

APPLICANT'S AFFIDAVIT

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

Under penalty of perjury the following declarations are made:

(a) The undersigned is the owner or authorized agent of the owner of this property.

(b) The information presented is true and correct to the best of my knowledge.

(c) I understand that other information or applications may be required.

Signed: _____
(Applicant)

Date: _____

Name (print):_____

Owner / Authorized Agent (circle one)

Parkmerced

Phase Application - SAMPLE

Overview

Phase	Subphase	Residential Summary - Unit Counts: Units Per Phase: New Units Constructed	Existing Units Demolished	Replacement Units	Total Net New Units	Cumulative Units: Existing Units Remaining	New Units Constructed	*Total Units On-Site*	15% Total BMR Units Req'd	Non-Residential Summary (in square feet): Commercial	Maintenance	Retail	Recreation	School	Blocks Affected (Existing Parkmerced Blocks)		Blocks Affected (Proposed Parkmerced Blocks)			
Existing at Start of Phase I		*0*	-	*0*	*0*	*3,221*	*0*	*3,221*	*0*	*10,775*	*28,343*	-	-	*3,949*						
1	A	348	-	38	*310*	3,221	348	***3,569***	*47*	-	-	-	-	-	*48*	*50*	*01-0*	*06-0*	-	-
1	B	292	(38)	87	*205*	3,183	640	***3,823***	*31*	-	-	-	-	-	*34*	*37(10u)*	*03-W*	*04-0*	-	-
1	C	364	(87)	70	*294*	3,096	1,004	***4,100***	*45*	-	-	7,183	-	-	*38*	-	*02-W*	*02-E*	-	-
1	D	406	(70)	132	*274*	3,026	1,410	***4,436***	*42*	-	-	-	-	-	*35*	*19*	*08-E*	*08-W*	*21-0-04*	*21-0-05*
1	E	774	(132)	100	*674*	2,894	2,184	***5,078***	*102*	40,918	-	47,938	-	-	*3*	*4*	*14-NE*	*14-NW*	*14-SW*	*14-SE*
	Totals:	**2,184**	**(327)**	**427**	***1,757***	**2,894**	**2,184**	***5,078***	***267***	**51,693**	**28,343**	**55,120**	**0**	**3,949**						

Transportation Improvements: Community Improvements and CEQA Mitigation Measures

Phase	Subphase	*Trip Generation Calculation by Subphase*: 0.3537 **Residential** Trip Gen	0.0038 **Commercial** Trip Gen	0.0032 **Retail** Trip Gen	0.0008 **Recreation** Trip Gen	0.0016 **School** Trip Gen	**TOTAL Trip Gen**	**Entire Project Net Cumulative** Trip Gen	*Community Improvements: Intersections*: Location	Cumulative Trip Generation Trigger	*Community Improvements: TDM*: Item	*CEQA Mitigation Measures*: Location	Cumulative Trip Gen Trigger
Existing at Start of Phase I								-					
1	A	110	-	-	-	-	**110**	110	Lake Merced and Vidal Drive	965	Transportation Coordinator		
1	B	72	-	-	-	-	**72**	182	Lake Merced and Higuera	213			
1	C	104	-	23	-	-	**127**	309	Chumasero and Junipero Serra/ Brotherhood	372	BART Shuttle		
1	D	97	-	-	-	-	**97**	406	N/A				
1	E	238	154	155	-	-	**548**	954	Brotherhood and Junipero Serra Interchange	755	Carpool/Vanpool Services	TR-22B: Lake Merced Boulevard at Font Boulevard and State Drive; TR-9: Junipero Serra Boulevard and Brotherhood Way Interchange; TR-2C: Lake Merced Boulevard and Brotherhood Way; TR-2D: Lake Merced and Font Boulevards [each to be completed consistent with MMRP]	465; 755; 930; 930
	Total	***621***	***154***	***178***	***0***	***0***	***954***	***954***					

Community Improvements : Neighborhood Infrastructure	Total Required In Phase	# Provided In Phase	Provided by Subphase: A	B	C	D	E	Value in Units for Provided	Net New Units per Req'd Benefit	Requirements
- Neighborhood Commons (six neighborhood parks)	1	2	-	-	1	1	-	2,500	1,250	One on-line with every net new 1,250 units completed
- Open Space - Tower Areas	per plan	per plan	-	-	-	-	-	-	n/a	To be completed in conjunction with construction of adjacent block.
- Open Space - Courtyard	per plan	per plan	-	-	-	-	-	-	n/a	To be completed in conjunction with construction of adjacent block.
- Bike Lanes/Paths & Improvements	per plan	per plan	-	-	-	-	-	-	n/a	Installed with the adjacent roadway construction

Community Improvements: Sustainability Plan Measures	Included in Phase	Counts Provided In Phase (approx)	Units of Measurement	Requirements
- Bio- swales	Yes	3,880	LF	Must be constructed and completed prior to the issuance of the first Certificate of Occupancy for each adjacent building and if the adjacent roadway is necessary to serve that building
- Bio-swale connection to Lake Merced	No	1	Unit	Completed with Lake Merced and Brotherhood Way Intersection Improvement
- Recycled Water infrastructure	Yes to (n) bdgs	8,460	LF	To be completed with associated utility work to all buildings and with the build-out of the development
- Cogeneration Systems	2 facilities	234	KW/hr	On-line for every 1,000 units completed
- Solar Panels (on-site or off-site)	In-lieu payment	$ 11,571,016.02	Dollars	Proportionate share completed with every 1,000 net new units constructed

Towers to remain*

KEY
- Subphase A
- Subphase B
- Subphase C
- Subphase D
- Subphase E
- Project Boundary

LEGEND

AO	ACEVEDO AVENUE	GO	GONZALEZ DRIVE
AE	ARELLANO AVENUE	GU	GRIJALVA DRIVE
AR	ARBALLO DRIVE	HI	HIGUERA AVENUE
BU	BUGARELI DRIVE	HO	HOLLOWAY AVENUE
CA	CARDENAS AVENUE	JO	JOSEPHA AVENUE
CH	CHUMASERO DRIVE	JU	JUAN BAUTISTA CIRCLE
CM	CAMBON DRIVE	PI	PINTO DRIVE
CR	CRESPI DRIVE	RI	RIVAS AVENUE
CS	CASTELLO AVENUE	SE	SERRANO DRIVE
DI	DIAZ AVENUE	TA	TAPIA DRIVE
FO	FONT BOULEVARD	VA	VARELA AVENUE
FU	FUENTE AVENUE	VI	VIDAL DRIVE
GA	GARCES DRIVE		

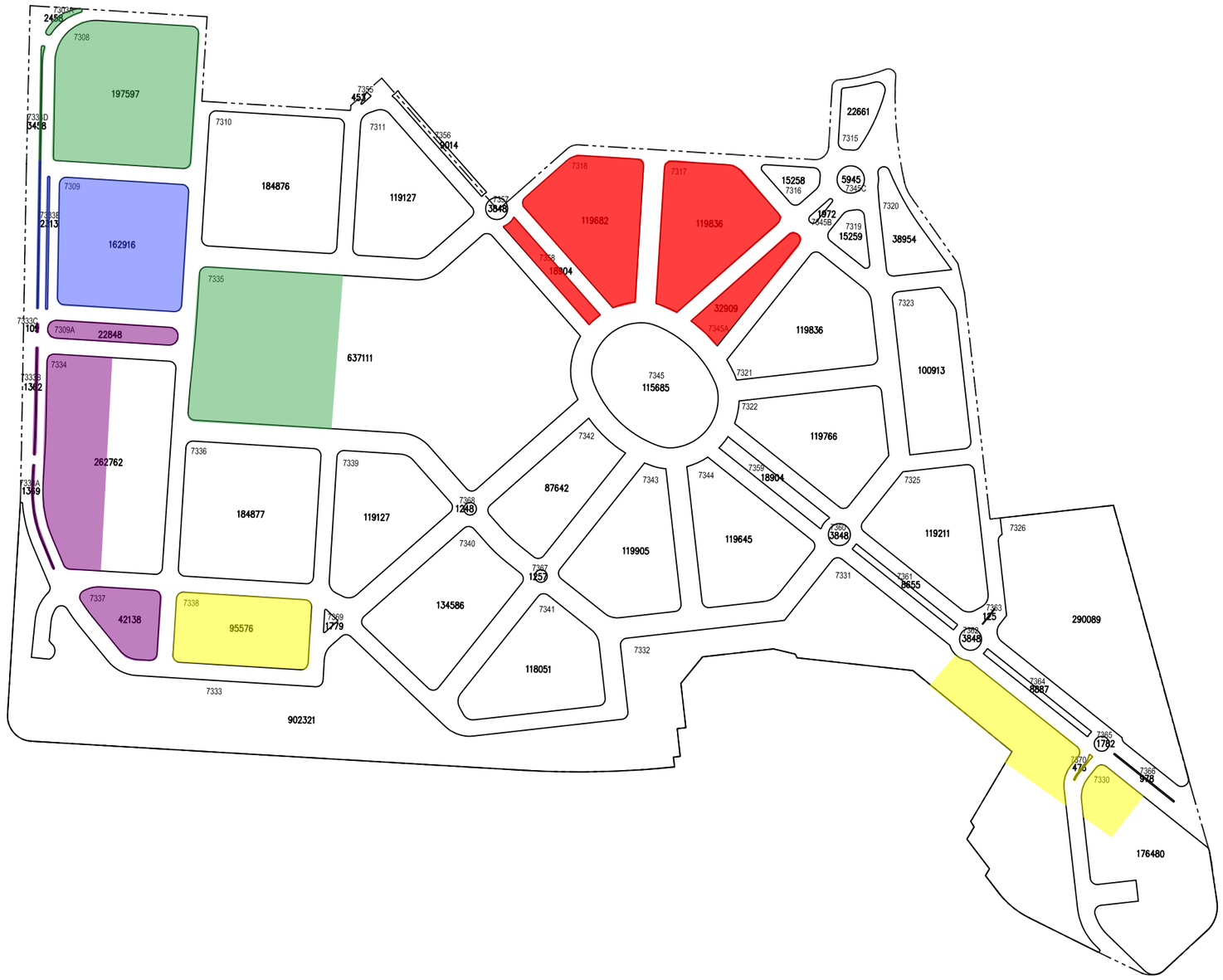
FEET 0 100 200 300 400 500

SCALE

Parkmerced

Site Plan Phase 1 - Existing

Fig. 2



KEY

- Subphase A
- Subphase B
- Subphase C
- Subphase D
- Subphase E

TOTAL AREA: 5,020,636 SF

N 0 200' 400' 800'

PUBLICLY OWNED COMMUNITY IMPROVEMENTS

Intersection Improvements
- Higuera Drive & Lake Merced Boulevard
- Brotherhood Way & Chumasero Drive
- Chumasero Drive and Junipero Serra Boulevard
- Junipero Serra and Brotherhood Way Interchange
- CEQA Mitigation Measure TR-9, see Environmental Impact Report

New Intersection Improvements
- Vidal Drive

2 Sidewalks
4 Bioswales
not shown Street Trees
not shown Pedestrian Safety Improvements

PRIVATELY OWNED COMMUNITY IMPROVEMENTS

Full Public Access
9 Open Space - Neighborhood Commons
11 Open Space - Tower Area
13 Paseos, Alley Ways and Plazas

Partial Public Access
15 Open Space - Courtyards
Carshare Program and Parking

Phase 1 Sub-phases
- Sub-phase A - Blocks 1, 6
- Sub-phase B - Blocks 3W, 4
- Sub-phase C - Block 2
- Sub-phase D - Blocks 8, 21E
- Sub-phase E - Block 14

Project Boundary

*subject to reasonable maintenance, operations, repair and security rights

**all dimensions are approximate and subject to detailed design

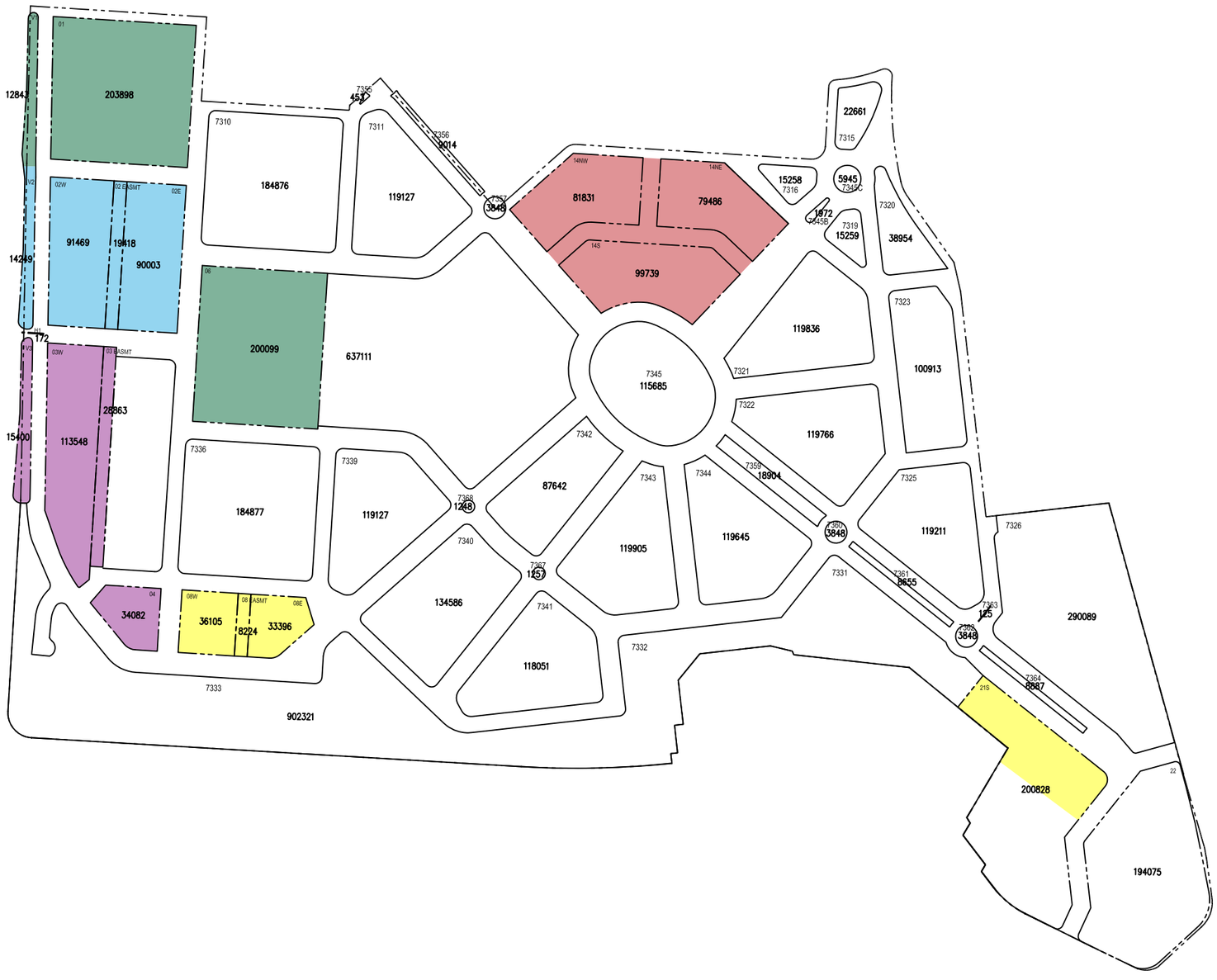
PARKMERCED SAN FRANCISCO, CALIFORNIA • 2010 11 02

0 50' 100' 200' 400' 800'

Fig. 4

PROPOSED PLAN • PHASE 1 COMMUNITY IMPROVEMENTS DIAGRAM

PARKMERCED INVESTORS LLC | SOM

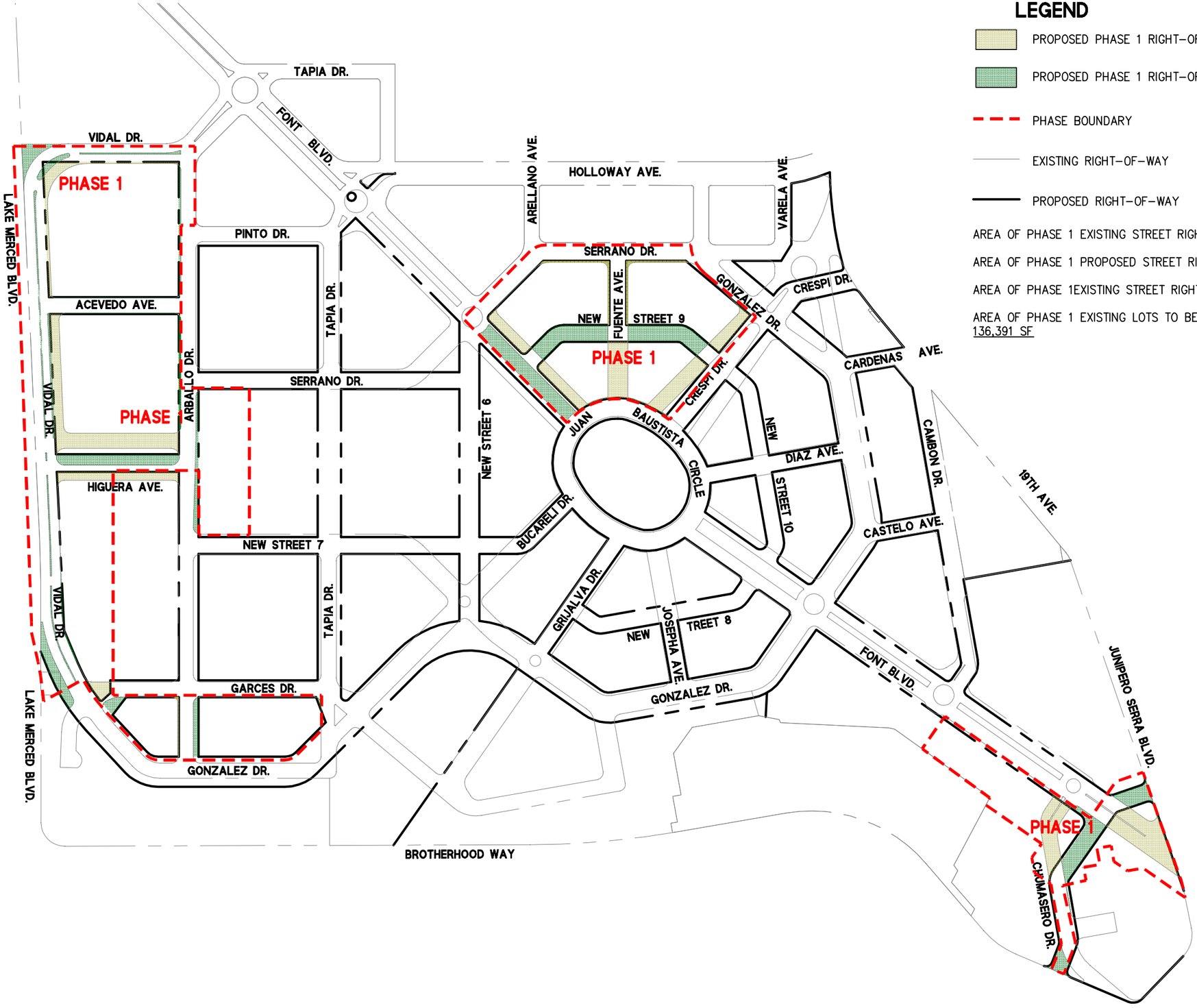


PARKMERCED SAN FRANCISCO, CALIFORNIA 2010.05.11

PROPOSED PARCEL AREAS ASK-301

PARKMERCED INVESTORS LLC SOM

Fig. 5



LEGEND

- PROPOSED PHASE 1 RIGHT-OF-WAY VACATION
- PROPOSED PHASE 1 RIGHT-OF-WAY DEDICATION
- PHASE BOUNDARY
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY

AREA OF PHASE 1 EXISTING STREET RIGHT-OF-WAYS = 484,757 SF

AREA OF PHASE 1 PROPOSED STREET RIGHT-OF-WAYS = 469,463 SF

AREA OF PHASE 1EXISTING STREET RIGHT-OF-WAY TO BE VACATED = 145,847 SF

AREA OF PHASE 1 EXISTING LOTS TO BE DEDICATED TO PUBLIC RIGHT-OF-WAY = 136,391 SF

BKF
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
ENGINEERS/SURVEYORS/PLANNERS

PARKMERCED
EXISTING AND PROPOSED STREET AREAS
PHASE 1 RIGHT-OF-WAY DEDICATION & VACATION
SAN FRANCISCO CALIFORNIA
SAN FRANCISCO COUNTY

No.	Revisions

Date: 10-08-10
Scale:
Design: BS
Drawn: BS
Approved: BS
Job No: 2090086

Fig. 6

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\Street_Areas_Exhibit.dwg (Phase 1)
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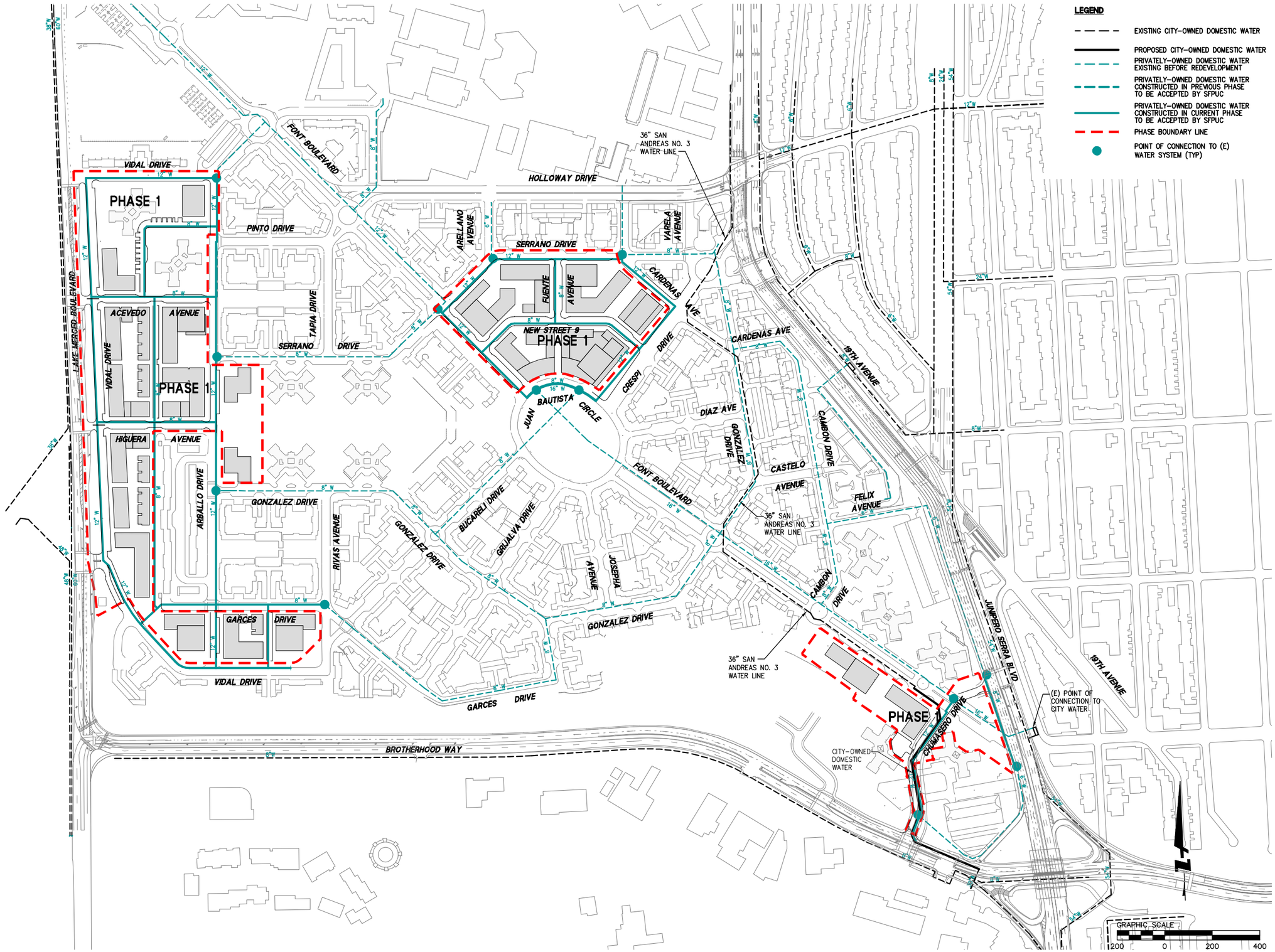

BKF ENGINEERS
ENGINEERS / SURVEYORS / PLANNERS
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED WATER SYSTEM – PHASE 1
SAN FRANCISCO — SAN FRANCISCO COUNTY, CALIFORNIA

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JD
Job No: 20090086

Fig. 7

PRELIMINARY

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\PA 4_01 WD.dwg (02)
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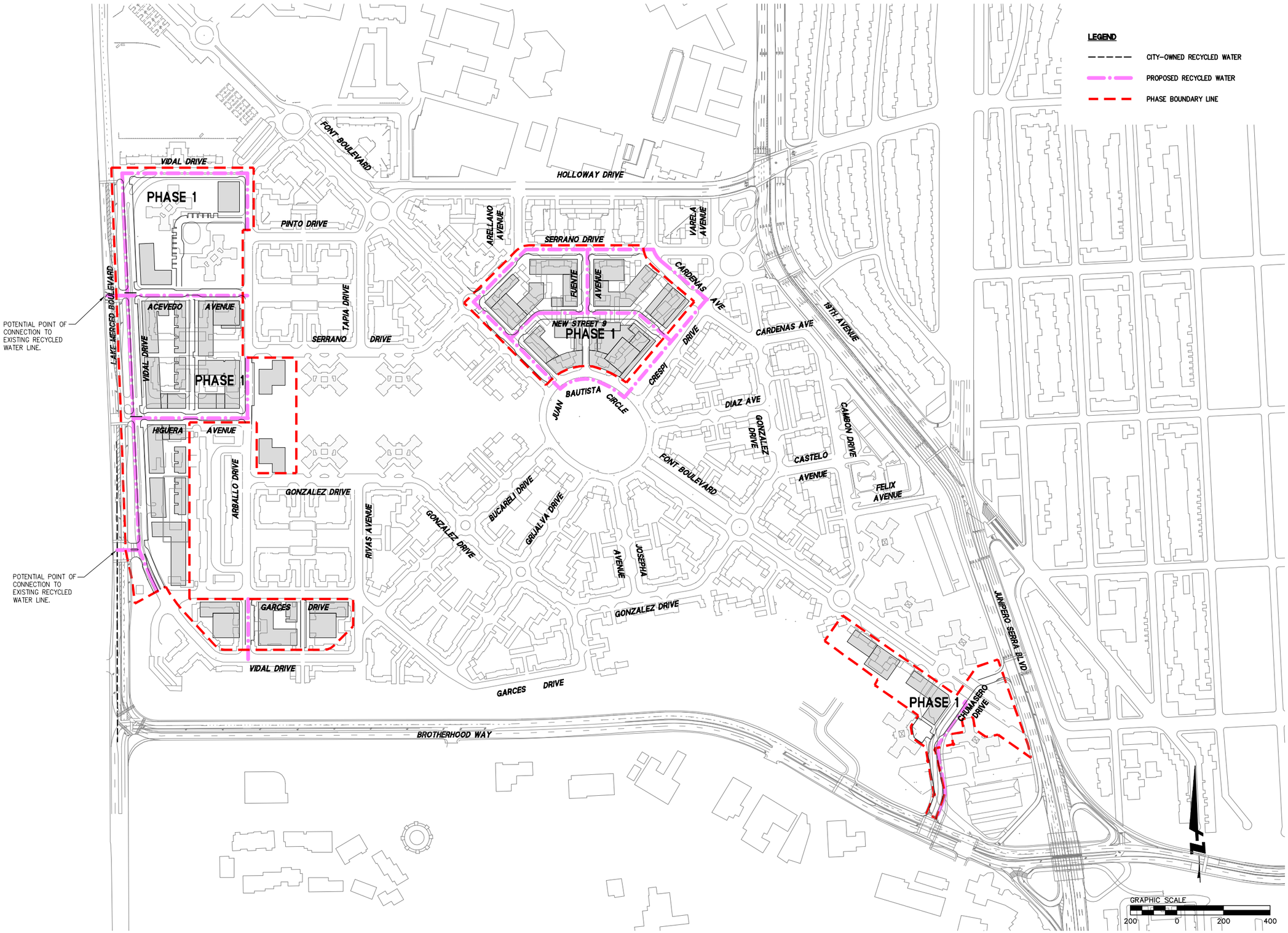

255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
BKF ENGINEERS / SURVEYORS / PLANNERS

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED RECYCLED WATER SYSTEM – PHASE 1
SAN FRANCISCO, SAN FRANCISCO COUNTY, CALIFORNIA

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JD
Job No: 20090086

Fig. 8

PRELIMINARY

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\PA 4_06 RW.dwg (02)
PLOT TIME: 09-27-10 5:22pm PLOTTED BY: shar

255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
BKF ENGINEERS / SURVEYORS / PLANNERS

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED AUXILIARY WATER SUPPLY SYSTEM – PHASE 1
SAN FRANCISCO — SAN FRANCISCO COUNTY — CALIFORNIA

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JO
Job No: 20090086

Fig. 9

PRELIMINARY

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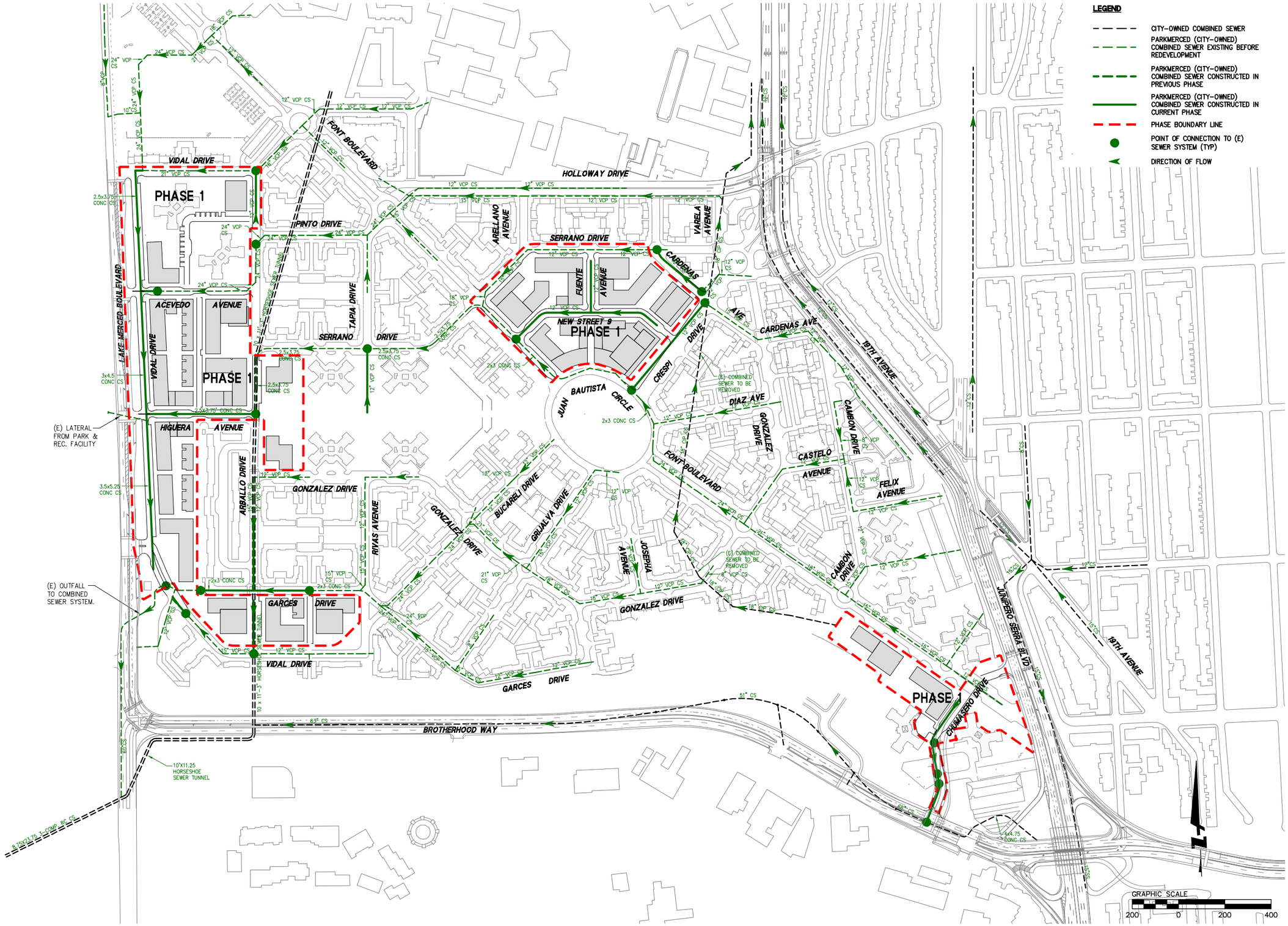

PRELIMINARY

BKF ENGINEERS
ENGINEERS / SURVEYORS / PLANNERS
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED SEWER SYSTEM – PHASE 1
SAN FRANCISCO CALIFORNIA
SAN FRANCISCO COUNTY

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JO
Job No: 20090086

Fig. 10

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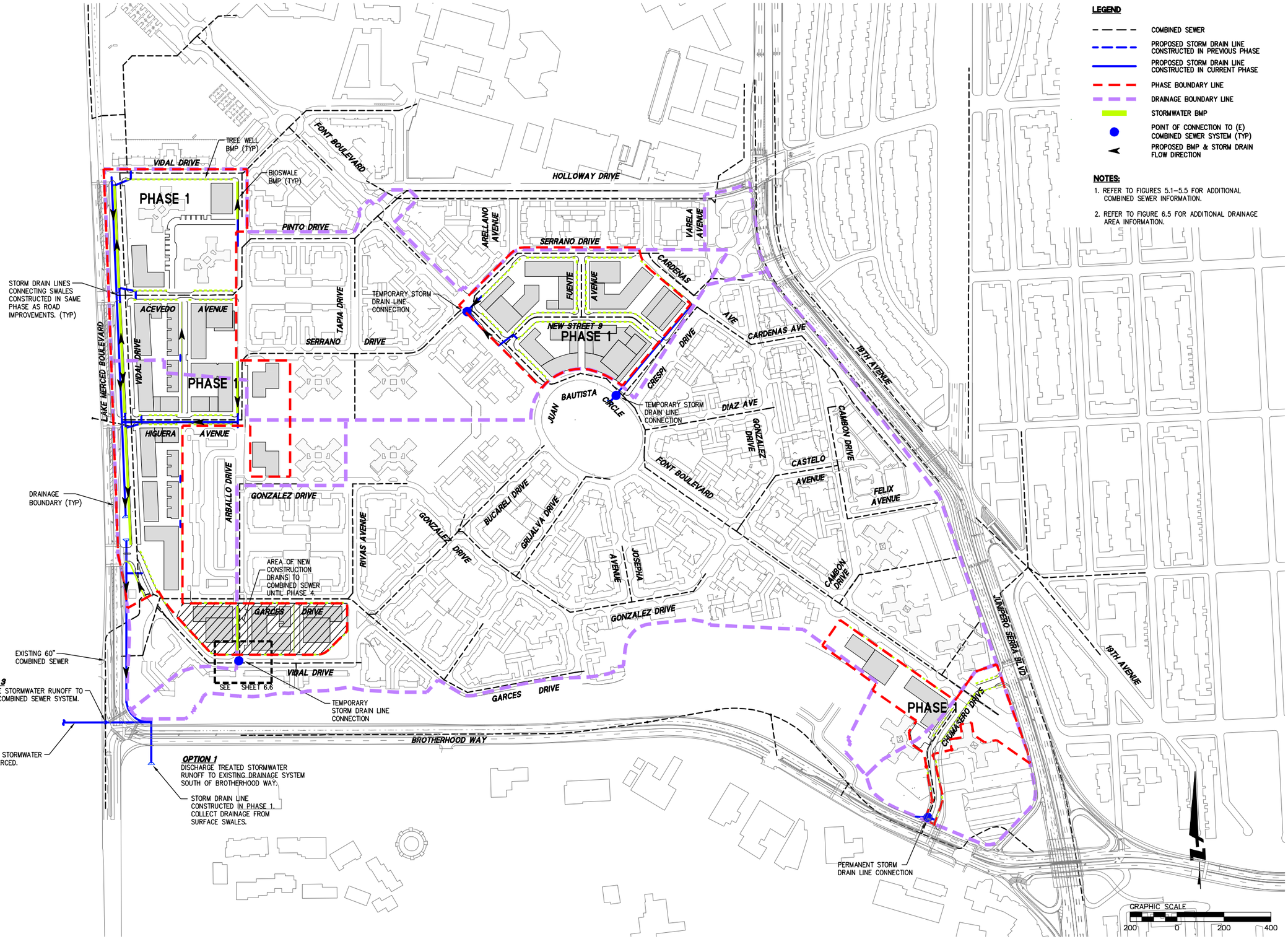

PRELIMINARY

255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
BKF ENGINEERS / SURVEYORS / PLANNERS

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED STORM DRAIN SYSTEM – PHASE 1

SAN FRANCISCO CALIFORNIA

SAN FRANCISCO COUNTY

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JD
Job No: 20090086

Fig. 11

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\PA 6_01 SD.dwg (01)
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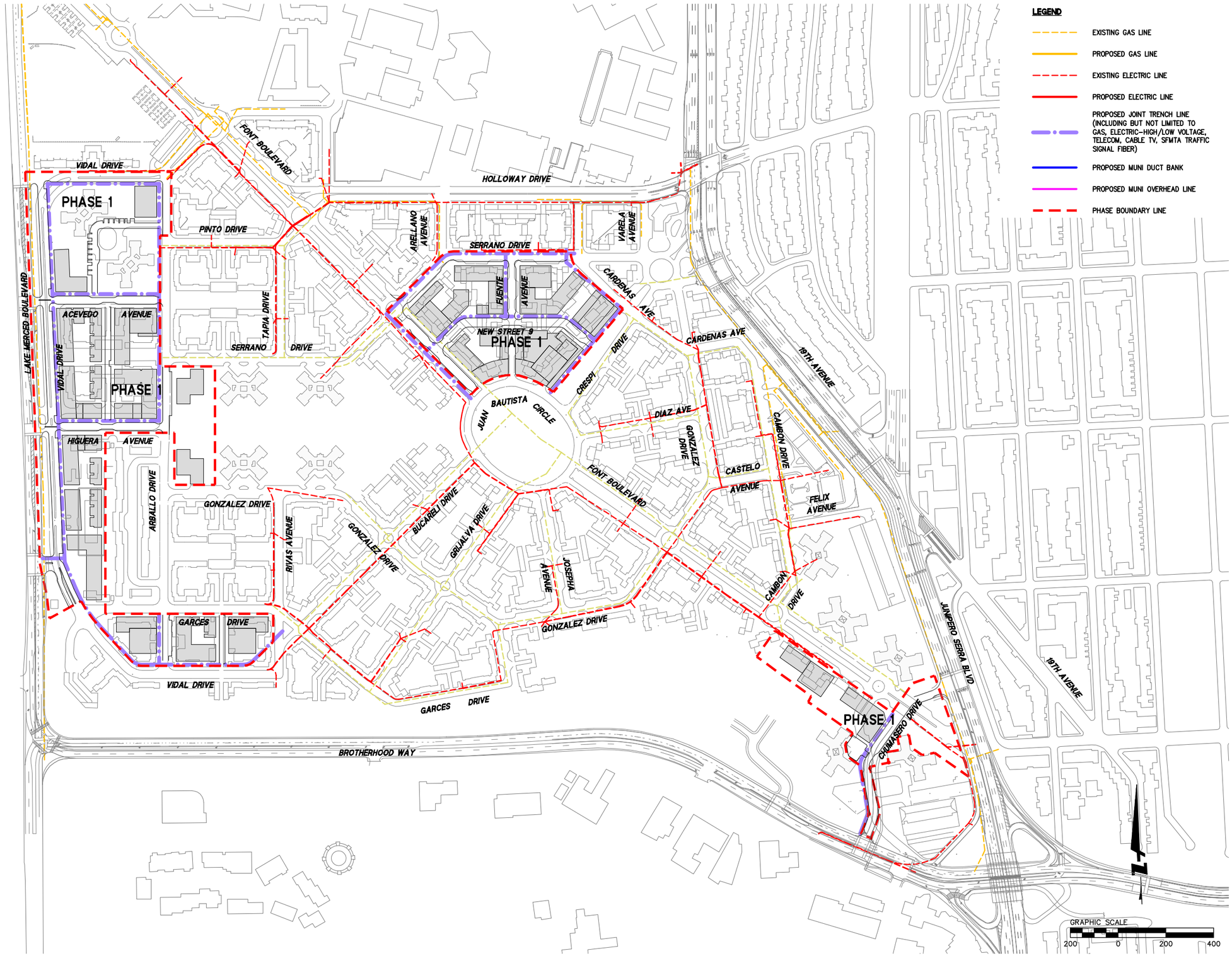

255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
BKF ENGINEERS / SURVEYORS / PLANNERS

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED DRY UTILITY SYSTEM – PHASE 1
SAN FRANCISCO SAN FRANCISCO COUNTY CALIFORNIA

Revisions

No.	

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JD
Job No: 20090086

Fig. 12

PRELIMINARY

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\PA 7_01 JT.dwg (03)
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BKF
ENGINEERS / SURVEYORS / PLANNERS
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

PARKMERCED
PHASING APPLICATION - SAMPLE
PROPOSED AUTOMATED WASTE MANAGEMENT SYSTEM - PHASE 1
SAN FRANCISCO COUNTY
SAN FRANCISCO CALIFORNIA

No.	Revisions

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JO
Job No: 2009008B

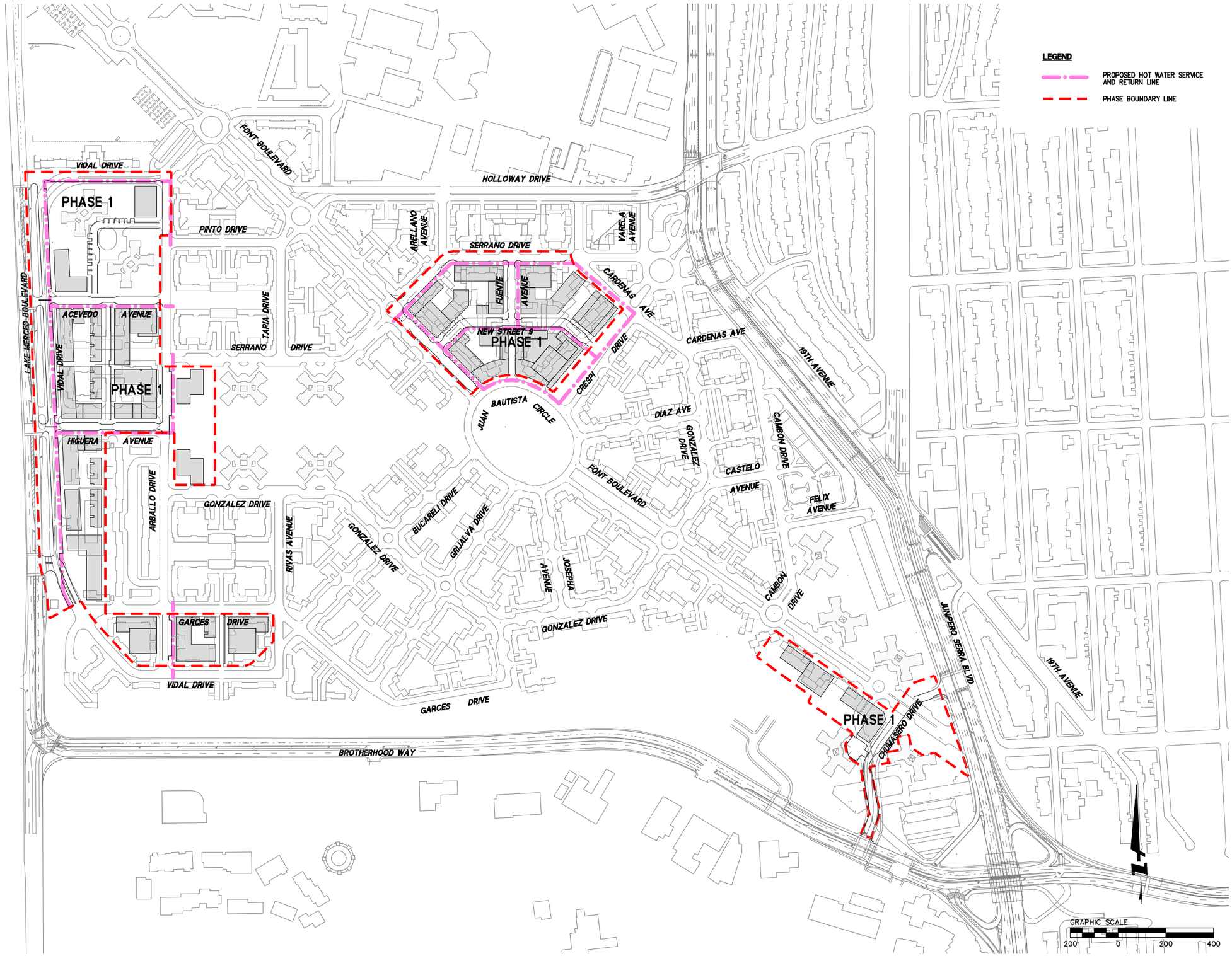
Fig. 13

PRELIMINARY

LEGEND
PROPOSED AUTOMATED WASTE MANAGEMENT LINE
PHASE BOUNDARY LINE

GRAPHIC SCALE
400 200 0 200

19TH AVENUE
JUNIPERO SERRA BLVD
CHUMASERO DRIVE
PHASE 1
FELIX AVENUE
CAMBON DRIVE
CASTELO AVENUE
CARDENAS AVE
DIAZ AVE
GONZALEZ DRIVE
FONT BOULEVARD
VARELA AVENUE
CRESPI DRIVE
HOLLOWAY DRIVE
SERRANO DRIVE
NEW STREET 9
FUENTE AVENUE
ARELLANO AVENUE
JUAN BAUTISTA CIRCLE
JOSEPHA AVENUE
GRALVA DRIVE
BUCARELI DRIVE
GARCES DRIVE
BROTHERHOOD WAY
RIVAS AVENUE
TAPIA DRIVE
PINTO DRIVE
ARBALLO DRIVE
VIDAL DRIVE
ACEVERO AVENUE
HIGUERA AVENUE
LAKE MERCED BOULEVARD



PRELIMINARY

255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
BKF ENGINEERS / SURVEYORS / PLANNERS

PARKMERCED
PHASING APPLICATION – SAMPLE
PROPOSED CO-GEN SITE PIPING – PHASE 1
SAN FRANCISCO, CALIFORNIA
SAN FRANCISCO COUNTY

Revisions

No.	

Date: 9/27/10
Scale: 1" = 400'
Design: BS
Drawn: MS
Approved: JD
Job No: 20090086

Fig. 14

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Phasing Analysis\PA 8_02 COGN.dwg (Ph01)
PLOT TIME: 09-27-10 5:31pm PLOTTED BY: shar

Exhibit H
Area of Private Maintenance and Operations Obligation Map

[see attached]

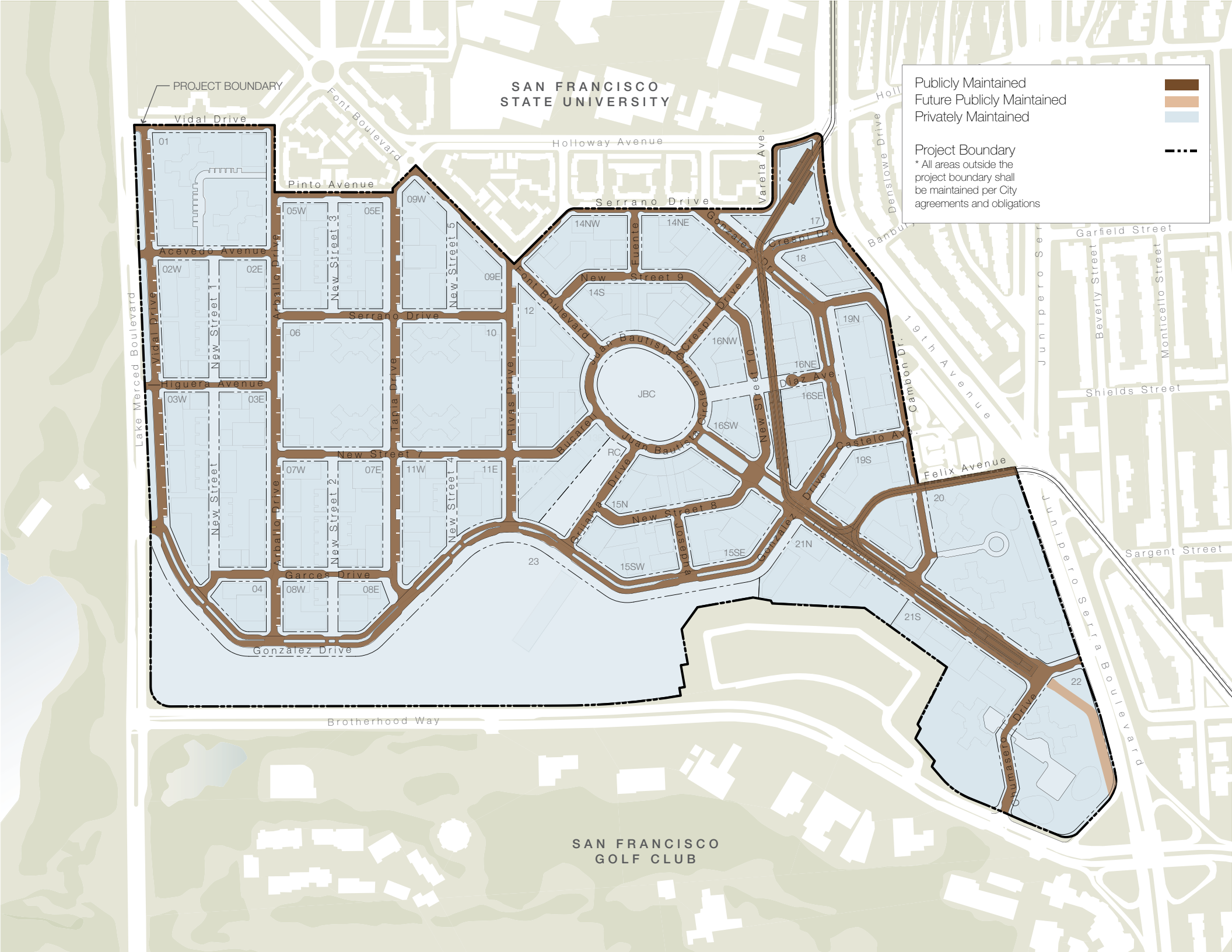
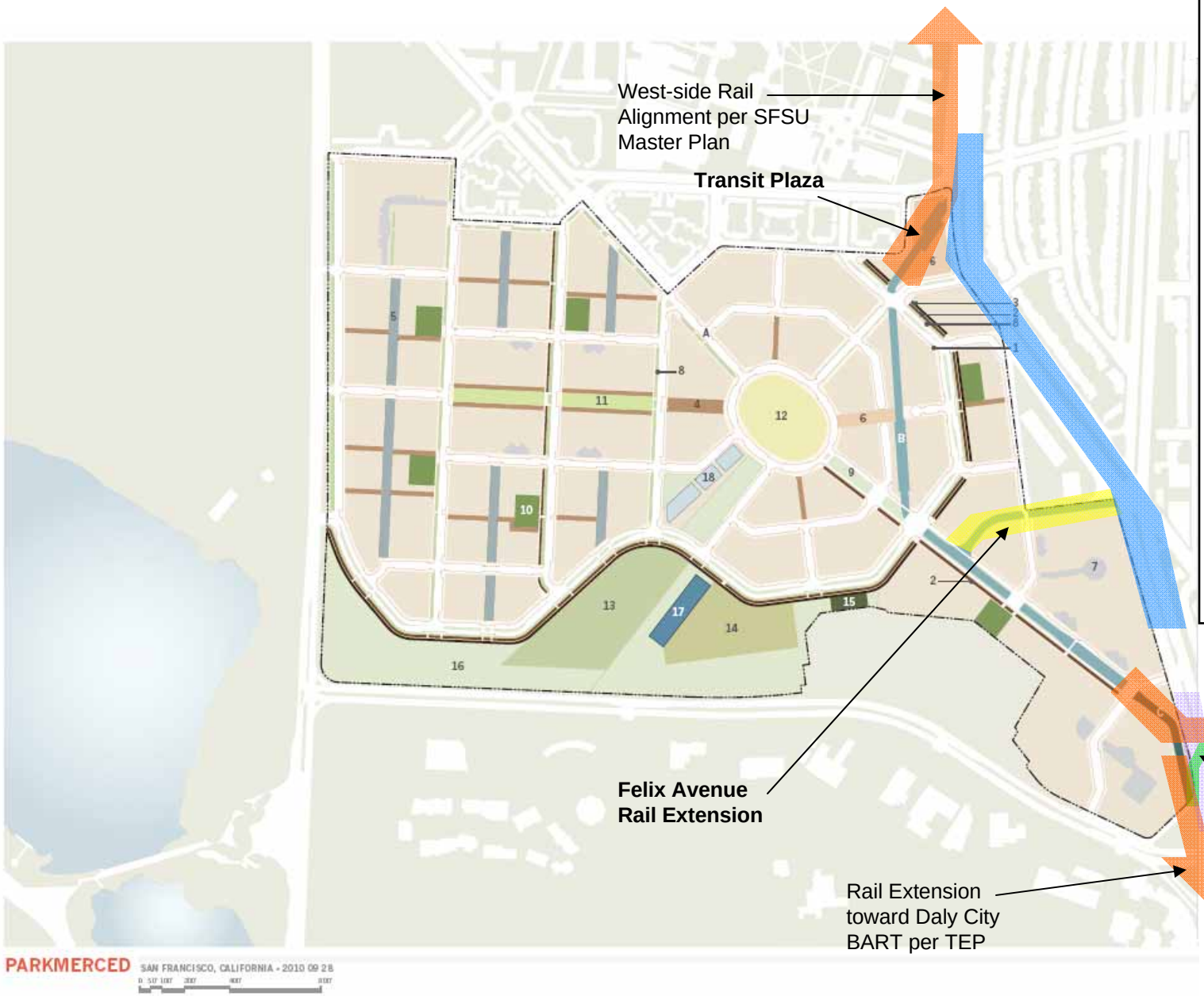

PROJECT BOUNDARY
Vidal Drive
Font Boulevard
SAN FRANCISCO STATE UNIVERSITY
Holloway Avenue
Pinto Avenue
Serrano Drive
Varela Ave.
Acevedo Avenue
Higuera Avenue
Garces Drive
Gonzalez Drive
Brotherhood Way
Lake Merced Boulevard
Arballo Drive
New Street 1
New Street 2
New Street 3
New Street 4
New Street 5
New Street 7
New Street 8
New Street 9
New Street 10
Font Boulevard
Rivas Drive
Ilaria Drive
Fuente Avenue
Juan Bautista Circle
Crespi Drive
Bucareli Drive
Arriaga Drive
Cabrillo Circle
Gonzalez Drive
Cambon Dr.
Crespi Dr.
Diaz Ave.
Castelo Ave.
Felix Avenue
19th Avenue
Junipero Serra Boulevard
Garfield Street
Beverly Street
Monticello Street
Shields Street
Sargent Street
Denslowe Drive
Font Boulevard
Junipero Serra Blvd.
JBC
RC
01
02W
02E
03W
03E
04
05W
05E
06
07W
07E
08W
08E
09W
09E
10
11W
11E
12
14NW
14NE
14S
15N
15SW
15SE
16NW
16NE
16SW
16SE
17
18
19N
19S
20
21N
21S
22
23
SAN FRANCISCO GOLF CLUB
Publicly Maintained
Future Publicly Maintained
Privately Maintained
Project Boundary
* All areas outside the project boundary shall be maintained per City agreements and obligations

Exhibit I
Tier 5 Concept Diagram

[see attached]

Parkmerced / Tier 5 Concept: Areas of Focus



Legend:

- No widening Of Hwy 1
- Potential Muni Rail Expansion
- Potential Muni Rail Deletion
- Potential Muni Rail Junction
- Potential Depression of Junipero Serra

Exhibit J
Real Property Transfers Diagram

[see attached]

DRAWING NAME: J:\Eng09\090086\DWG\Exhibits\Street_Areas_Exhibit.dwg (Layout1)
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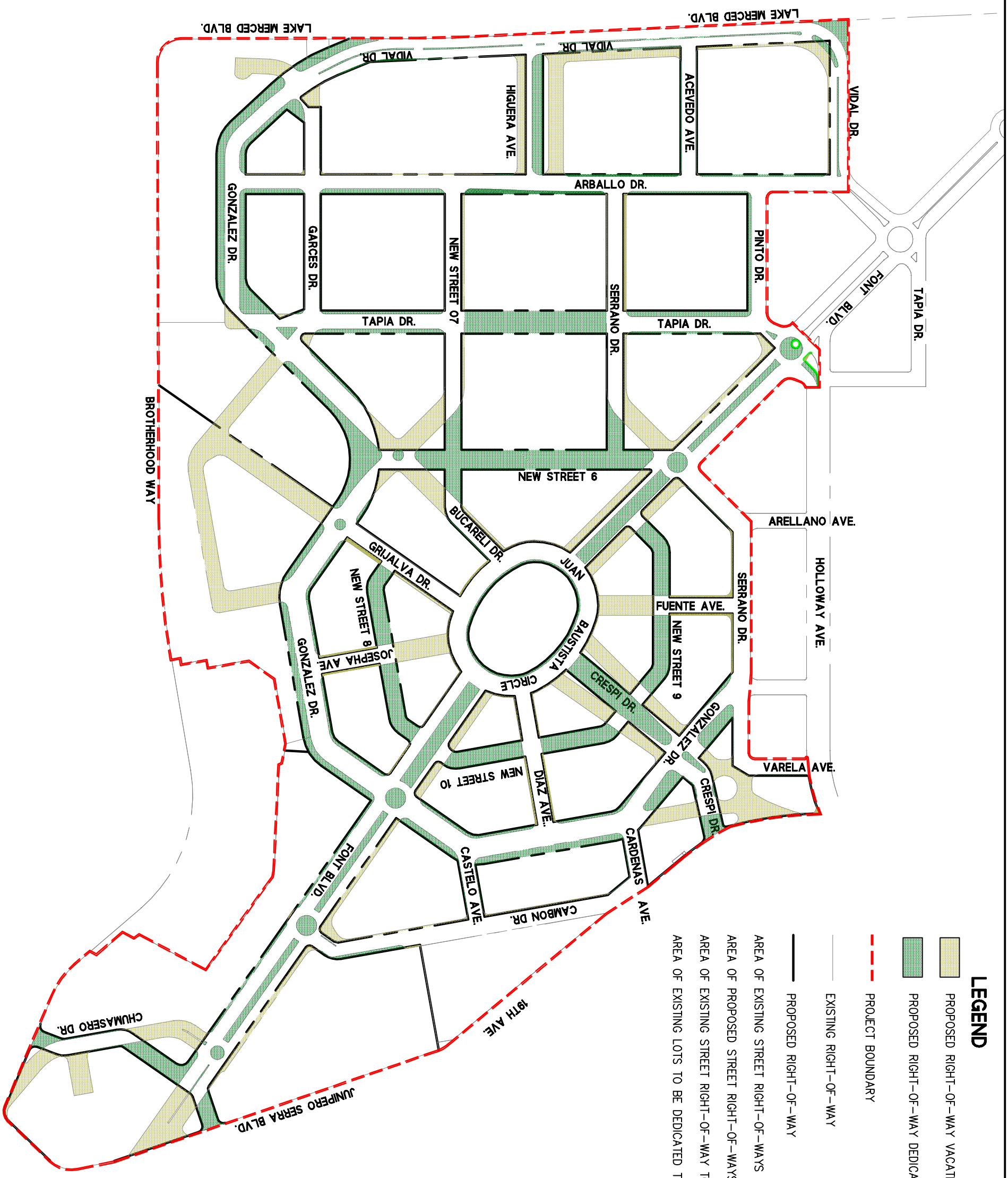

LEGEND

- PROPOSED RIGHT-OF-WAY VACATION
- PROPOSED RIGHT-OF-WAY DEDICATION
- PROJECT BOUNDARY
- EXISTING RIGHT-OF-WAY
- PROPOSED RIGHT-OF-WAY

AREA OF EXISTING STREET RIGHT-OF-WAYS = 1,821,140 SF
AREA OF PROPOSED STREET RIGHT-OF-WAYS = 1,984,611 SF
AREA OF EXISTING STREET RIGHT-OF-WAY TO BE VACATED = 469,503 SF
AREA OF EXISTING LOTS TO BE DEDICATED TO PUBLIC RIGHT-OF-WAY = 632,974 SF

PARKMERCED
EXISTING AND PROPOSED STREET AREAS

SAN FRANCISCO SAN FRANCISCO COUNTY CALIFORNIA

Date: 9-15-10	No.	Revisions
Scale:		
Design: BS		
Drawn: BS		
Approved: BS		
Job No: 20090086		

Drawing Number: 1 OF 1

BKF ENGINEERS
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)
ENGINEERS/SURVEYORS/PLANNERS

Exhibit K
Form of Quitclaim Deed

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:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: _____

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX is $ 0

☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.

☐ unincorporated area
☐ city and county of SAN FRANCISCO

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its _____ ("Grantor"),

does hereby REMISE, RELEASE and forever QUITCLAIM to

_____, a _____,

the following described real property in the City and County of San Francisco, State of California:

See Exhibit "A" attached hereto and made a part hereof.

[SIGNATURE PAGE FOLLOWS]

Executed as of _____, 20__.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By:_____
_____
Director of Planning

Approved on _____
Board of Supervisors Ordinance No. _____

Approved as to form:
_____, City Attorney

By:_____
Deputy City Attorney

State of California)
County of _____)

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

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

WITNESS my hand and official seal.

_____
Signature

(Affix Seal)

Exhibit L
Form of Grant Deed

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:

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

Space Above This Line for Recorder's Use

GRANT DEED

The undersigned Grantor declared that Documentary Transfer Tax is not part of the public records.

For valuable consideration, receipt of which is acknowledged, _____, a _____("Grantor"), hereby grants to CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Grantee"), all of Grantor's right, title and interest in and to that certain real property located in the City and County of San Francisco, California, as legally described in Exhibit A attached hereto.

The foregoing is conveyed subject to: (a) the lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 3.5 (commencing with Section 75) of the Revenue and Taxation Code of the State of California; and (b) the liens for real property taxes for the fiscal year [_____] not yet due and payable.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: _____, 20___

GRANTOR:

_____,
_____

By:_____
Name: _____
Its: _____

STATE OF CALIFORNIA
COUNTY OF _____ ss.

On this ___ day of _____, 2007, before me, _____ a Notary Public in and for the State of California, personally appeared _____ personally known to me (or proved 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(is), 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.

WITNESS my hand and official seal

Signature _____

Exhibit M
Subdivision Requirements

Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement to which these Subdivision Requirements are attached.

Subdivision Requirements. Notwithstanding the City's Subdivision Code, the following provisions shall apply to subdivision within the area covered under this Agreement. In the case of a conflict between these provisions and this Agreement, this Agreement shall prevail. For purposes of this Section, DPW Director shall also mean City Engineer and County Surveyor, unless provided otherwise.

1. Public Improvements.

(a) General. Public Improvements listed in this Section shall (where provided) meet the design and construction standards in the Existing Standards and any non-conflicting Future Changes to Existing Standards.

(b) Streets.

(1) Dedicated Public Streets. A subdivision and each lot, parcel, and unit thereon shall have direct access to a public right-of-way. Title to a new or widened public right-of-way shall be conveyed to the City by proper deed at the time provided for in this Agreement.

(2) Private Streets. Easements for government facilities in private streets and other private areas shall meet the requirements of Section 5 of these Subdivision Requirements.

(c) Frontage Improvements. The frontage of each lot shall be improved to the geometric section specified by the DPW Director in accordance with the Existing Standards and any non-conflicting Future Changes to Existing Standards and the street

structural section, curbs, sidewalks, planting areas, driveway approaches and transitions in accordance with the Subdivision Regulations.

(d) Pedestrian Ways. Pedestrian ways shall be required in accordance with Existing Standards and any non-conflicting Future Changes to Existing Standards.

(e) Sanitary and Drainage Facilities. The Subdivider shall provide sanitary and drainage facilities consistent with the Existing Standards and any non-conflicting Future Changes to Existing Standards unless this Agreement specifically provides otherwise. When connected to City facilities, such facilities will serve adequately all lots, dedicated areas and all other areas comprising the subdivision.

(f) Fire Protection. The Subdivider shall provide for the installation of fire hydrants and other appurtenances and facilities needed for adequate fire protection consistent with the Existing Standards and any non-conflicting Future Changes to Existing Standards.

(g) Street Lighting. The Subdivider shall provide street lighting facilities along all streets, alleys and pedestrian ways consistent with the Existing Standards and any non-conflicting Future Changes to Existing Standards.

(h) Fencing. An approved fence may be required on parcels or lots within the subdivision adequate to prevent unauthorized access between the subdivided property and adjacent properties.

(i) Transportation Infrastructure. The Subdivider shall provide all transportation infrastructure consistent with the Existing Standards and any non-conflicting Future Changes to Existing Standards unless this Agreement specifically provides otherwise.

(j) Other Improvements. Other improvements may be required including, but not limited to, grading, dry utilities, open space parcel improvements, temporary fencing, signs, street lines and markings, street trees and shrubs, street furniture, landscaping, monuments, bicycle facilities, and smoke detectors, or fees in lieu of any of the

foregoing, shall also be required as determined by the DPW Director in consultation with the Planning Director, but only to the extent consistent with Existing Standards and any non-conflicting Future Changes to Existing Standards, and the General Plan.

2. Utilities.

The Subdivider shall provide or cause to be provided a water system, connected to the San Francisco Public Utilities Commission's water distribution system as well as all other required public facilities as set forth in the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement. The Subdivider shall also provide electric, gas and communication services connected to the appropriate public utility's distribution system.

3. Beautification.

(a) Undergrounding of Utilities. All new utility lines shall be undergrounded as specified in Article 18 of the Public Works Code.

(b) Street Trees and Landscaping. Trees planted along a public street, within the right-of-way, and all landscaping within said right-of-way shall conform to the requirements of the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement. In the case of all newly constructed subdivisions, the Subdivider shall provide street trees and landscaping conforming to the policies of the General Plan, Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement. Provisions shall be made for maintenance of said trees.

(c) Open Areas on Private Property. When required pursuant to the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement, the Subdivider shall provide for the landscaping of open areas on private property and provision shall be made for the maintenance thereof. Such open areas shall be restricted to such use in accordance with the Basic Approvals and this Agreement.

4. Parkland Dedication.

Park and open space improvements and dedications shall be provided as required by the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement, and in conformance with the standards set forth therein and subject to the approval of the DPW Director and other affected City agencies.

5. Easements.

Easements for City utilities and City facilities, such as sanitary and drainage facilities, fire protection facilities and City-owned street lighting facilities shall be for the use of such governmental facilities, with the right of immediate access to the utilities and facilities by the City.

6. Monuments.

The location and installation of survey monuments shall conform to the standards in the Subdivision Regulations. When such monuments are "tied" to the City or State monuments, for which coordinates of the California Coordinate System are available, the corresponding coordinates for such monuments shall be determined and recorded. The location of survey monuments shall be shown on the Final Map. In the event all survey monuments are not installed prior to filing of the Final Map or Parcel Map a monument bond shall be filed at that time.

7. General Improvement Requirements.

(a) The Subdivider shall provide for the construction and installation of all Public Improvements in the subdivision in accordance with the Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement.

(b) Notwithstanding any provision of the Public Works Code to the contrary, a Subdivider or applicant may request from the DPW Director a street improvement permit to initiate the construction of Public Improvements independent of or as part of the approval of a Final Map or Parcel Map. Said permit shall comply with the applicable

provisions of the Subdivision Code and any additional provisions set forth in this Agreement. In addition, all such permits shall comply with the provisions of Public Works Code Sections 2.3.1 et seq., if such provisions are applicable to the work contemplated under the permit. Fees for said permits shall be according to the Public Works Code Sections 2.1 et seq. unless modified by the Existing Standards and any non-conflicting Future Changes to Existing Standards.

8. Improvement Plans.

(a) Following approval of the Tentative Map and prior to filing of the Final Map, the Subdivider's engineer shall submit grading and construction plans for any required Public Improvements to the DPW Director for approval.

(b) Improvement plans including grading plans and an erosion control plan, as appropriate, shall be prepared under the direction of a qualified and duly licensed professional civil engineer registered in the State of California.

(c) Improvement plans shall conform to the Subdivision Regulations regarding format, size and contents.

(d) Any specifications supplementing DPW's Standard Specifications shall be considered a part of the improvement plans.

(e) The improvement plans shall reflect the Public Improvement required in accordance with this Agreement or any amendments thereto.

(f) The DPW Director shall act upon and review improvement plans within the time periods specified in Section 66456.2 of the Subdivision Map Act. This time limit may be extended by mutual agreement. The DPW Director shall send a copy of the improvement plans to all affected City agencies for their review. The DPW Director's review of the improvement plans shall conform with the Existing Standards and any non-conflicting Future Changes to Existing Standards.

9. Construction.

(a) No construction of Public Improvements shall commence until improvement plans have been approved by the DPW Director and appropriate City permits have been issued. Prior to issuance of any such permits, the City shall obtain easements from the Subdivider or third parties to allow for the City to complete construction of Public Improvements on private property should the Subdivider fail to do so and to allow for public use, if necessary, prior to City acceptance of such Public Improvements. Also, prior to issuance of any such permits, the City shall obtain an irrevocable offer of dedication of private property in fee title, including grant deeds, from the Subdivider or third parties where said property is designated for use as future public right-of-way in accordance with this Agreement and the Basic Approvals. The City, at its option, shall obtain an irrevocable offer of dedication for private property in fee title, including grant deeds, from Subdivider or third parties where Public Improvements will be constructed on said property. In addition, City also shall obtain from Subdivider an irrevocable offer of dedication of any Public Improvements constructed pursuant to this Agreement and the Basic Approvals.

(b) Notwithstanding Administrative Code Chapter 23, the Director of Property is authorized to enter into easements for a term of five (5) years or less for purposes of Subsection (a) above or other purposes associated with construction and use of Public Improvements as set forth in this Agreement.

(c) Construction of Public Improvements that are to be accepted by the City as Public Improvements or for public maintenance and liability purposes shall be subject to inspection by the DPW Director and the City agency that will assume jurisdiction over the Public Improvement. The Subdivider is responsible for paying the applicable engineering inspection fee as specified in the Public Works Code.

(d) Any work done by the Subdivider prior to issuance of appropriate City permits or approval of improvement plans, including changes thereto, or without the

inspection and testing required by the DPW Director is subject to rejection. Such work shall be deemed to have been done at the risk and peril of the Subdivider.

(e) The design and layout of all required improvements, both on-site and off-site, private and public, shall conform to the Basic Approvals, the Existing Standards and any non-conflicting Future Changes to Existing Standards, and Tentative Map conditions consistent therewith.

(f) Installation of Underground Facilities. All underground facilities including sanitary and drainage facilities, and duct banks, and excepting survey monuments installed in streets, alleys, or pedestrian ways shall be constructed, by the Subdivider and inspected and approved by the DPW Director, prior to the surfacing of such street, alley or pedestrian way. Service connections for all underground utilities and sewers shall be laid to such length as will in the DPW Director's opinion obviate disturbing the street, alley, or pedestrian way improvements when service connections are completed to properties in the subdivision.

10. Failure To Complete Improvements Within Agreed Time.

The improvement agreement shall include provisions consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement regarding extensions of time and remedies when improvements are not completed within the agreed time.

11. Revision To Approved Plans.

Requests by the Subdivider for revisions to the approved improvement plans shall be submitted in writing to the DPW Director and shall be accompanied by drawings showing the proposed revision. If the revision is acceptable to the DPW Director and any affected City agency and consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, this Agreement, and the Tentative Map, the DPW Director shall initial the revised plans. Construction of any

proposed revision shall not commence until revised plans have been received and approved by the DPW Director and any affected City agency.

12. Improvement Agreement.

(a) General. This Section shall apply only to Public Improvements that have not been completed or conditions that have not been fulfilled prior to filing a Parcel or Final Map. An agreement (the "improvement agreement ") shall be approved by the DPW Director, approved as to form by the City Attorney, and executed by the DPW Director on behalf of the City. The improvement agreement shall be consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, this Agreement, and the Tentative Map and shall provide for:

(1) Construction of all Public Improvements required pursuant to the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, this Agreement, and conditions imposed on the Tentative Map or Parcel Map consistent therewith, including any required off-site improvements, within the time specified by Section 13;

(2) Satisfaction of conditions precedent to the transfer of title to the City of all land and improvements required to be dedicated to or acquired by the City, if the City elects to defer transfer of title until after the Public Improvements have been completed consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and this Agreement, including any approved title exceptions as defined therein, which are or shall be specified in this Agreement;

(3) Payment of inspection fees in accordance with applicable City regulations, consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards;

(4) Improvement security as required by Section 15;

(5) Maintenance and repair of any defects or failures of the required Public Improvements, and to the extent feasible, removing their causes, prior to acceptance of the Public Improvements by the City;

(6) Release and indemnification of the City from all liability incurred in connection with the construction and design of Public Improvements and payment of all reasonable attorneys' fees that the City may incur because of any legal action or other proceeding arising from the construction, except release and indemnification disallowed under the Subdivision Map Act or any other State or federal law pursuant to the procedures provided in the Subdivision Map Act;

(7) Payment by Subdivider of all costs and reasonable expenses and fees, including attorneys' fees, incurred in enforcing the obligations of the improvement agreement;

(8) Any other deposits, reimbursements, fees or conditions as required by City regulations consistent with Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, and as may be required by the Director;

(9) Any other provisions required by the City as reasonably necessary to effectuate the purposes and provisions of the Subdivision Map Act, the Basic Approvals, and Existing Standards and any non-conflicting Future Changes to Existing Standards, in accordance with this Agreement.

(b) Any improvement agreement, contract or act required or authorized by the Subdivision Map Act or this Agreement for which security is required, shall be secured in accordance with Section 66499 et seq. of the Subdivision Map Act and this Agreement.

13. Completion Of Improvements.

(a) The Public Improvements for subdivisions of five or more parcels which are not otherwise required to be completed prior to recordation of a Final Map, shall be

completed by the Subdivider within the time specified in an improvement agreement which is consistent with the Basic Approvals, Existing Standards and any non-conflicting Future Changes to Existing Standards, this Agreement, and the Tentative Map.

(b) The completion of Public Improvements for subdivisions of four or fewer parcels which are not otherwise required to be completed prior to recordation of a Parcel Map or Final Map may be deferred until a permit or other grant of approval for the development of any parcel within the subdivision is applied for, unless the completion of the Public Improvements is found to be necessary pursuant to this Agreement, for public health or safety, or for the orderly development of the surrounding area, in which case the improvement agreement shall specify a time for completion. If any required Public Improvements are not completed at the time of recordation of a Parcel Map or Final Map for four or fewer parcels, an improvement agreement is required pursuant to this Agreement. This finding shall be made by the DPW Director, after consultation with appropriate City agencies. The specified date for completion of the Public Improvements, when required, shall be stated in the improvement agreement. Public Improvements shall be completed in accordance with the improvement agreement.

(c) Completion dates may be extended by the DPW Director according to the following procedures:

(1) The Subdivider must request an extension in writing, stating adequate evidence to justify the extension, by letter to the DPW Director. The request shall be made not less than 30 days prior to expiration of the improvement agreement. The Director may grant such extensions, subject to the terms of the improvement agreement.

(2) The DPW Director may condition approval of an extension agreement upon the following:

(i) Revised improvement construction estimates to reflect current improvement costs as approved by the DPW Director;

(ii) Increase of improvement securities in accordance with revised construction estimates;

(iii) Inspection fees may be increased to reflect current construction costs but shall not be subject to any decrease or refund; and,

(iv) Conditions that the DPW Director deems necessary to assure the timely completion of Public Improvements.

(3) If authorized by the DPW Director, the Subdivider shall enter into an improvement agreement extension ("extension agreement") with the City. The extension agreement shall be approved by the DPW Director and the City Attorney, and executed by the Director and the Subdivider.

(4) The costs incurred by the City in reviewing and processing the extension agreement shall be paid by the Subdivider at actual cost.

(d) Should the Subdivider fail to complete the Public Improvements within the specified time, or correct all deficiencies within the time specified for completion, the City may, by resolution of the Board of Supervisors and at its option, cause any or all uncompleted Public Improvements to be completed and all uncorrected deficiencies to be corrected, and the Subdivider and parties executing the security or securities shall be firmly bound for the payment of all necessary costs.

(e) As-Built Plans. Upon completion of the Public Improvements, the Subdivider shall submit to the DPW Director a reproducible set of as-built improvement plans in the format the DPW requests.

14. Acceptance Of Improvements.

(a) General. With respect to all subdivisions, when any deficiencies in the required Public Improvements have been corrected, as-built improvement plans submitted, and the City Engineer, upon written request from the Subdivider, issues a

Notice of Completion, the completed Public Improvements shall be considered by the Director for acceptance.

(b) Acceptance. If the Public Improvements have been completed to the satisfaction of the DPW Director and are ready for their intended use, the Director shall provide the Board of Supervisors with a written certificate to that effect, and the Public Improvements shall be accepted by the Board of Supervisors, by ordinance, subject to the provisions of San Francisco Administrative Code Section 1.52. Acceptance of the improvements shall imply only that the improvements have been completed satisfactorily, are ready for their intended use, and that Public Improvements have been accepted for public use. Acceptance of any Public Improvement shall not effect a waiver of any rights the City may have as to warranties and construction defects.

(c) Warranty Periods.

(1) Pump Station and Stormwater Management System Warranty. The Subdivider shall warranty each pump station and the stormwater management system for three years after the City Engineer issues its Notice of Completion for said pump station. The General Manager of the SFPUC also shall approve any Notice of Completion issued under this Subsection.

(2) Warranty for all other Public Improvements. Other than as provided in (c)(1) above and in Section 3.7.7 of this Agreement, the Subdivider shall warranty all Public Improvements for two years after the City Engineer issues its Notice of Completion for said Infrastructure unless the City agency with jurisdiction over the Public Improvement authorizes a shorter warranty period. To the extent the Public Improvement is within SFMTA jurisdiction, the appropriate SFMTA official also shall approve any Notice of Completion issued under this Subsection.

(3) Subdivider's liability pursuant to the warranties in Subsections (c)(1) and (2) above shall cover latent defects and defective material or workmanship, and shall

not extend to ordinary wear and tear or harm or damage from improper maintenance or operation of the Public Improvement by a City agency or the City agency's agent.

15. Security For Improvements.

(a) The requirements of this Section apply to all improvement agreements.

(b) No Final Map or Parcel Map shall be signed by the DPW Director or recorded until all improvement securities required by this Article in the form prescribed by the City pursuant to Government Code Section 66499 et seq., have been received and approved.

(c) A performance bond or other acceptable security as provided in Section 66499 of the Government Code in the amount of 100 percent of the estimated cost of completion of the construction or installation of all Public Improvements, as determined by the DPW Director, shall be required of all subdivisions to secure satisfactory performance of those obligations. As a guarantee of payment for the labor, materials, equipment and services required, a payment bond or other acceptable security shall be required for 50 percent of the estimated cost of completion of the Public Improvements as determined by the DPW Director. For purposes of the preceding sentences, the "estimated cost of completion" shall include all costs of remediating any hazardous materials as necessary to permit completion of the required Public Improvements, unless those costs are otherwise secured as provided in this Agreement.

(d) The security shall be released or reduced upon completion of construction as follows:

(1) The security shall be reduced to no less than 10 percent of the original amount for the purpose of guaranteeing repair of any defect in the improvements which occurs within one year of when: (i) the Public Improvements have been deemed complete to the satisfaction of the City Engineer and DPW Director; and (ii) the Clerk of the Board of Supervisors certifies that no claims by any contractor, subcontractor or

person furnishing labor, materials or equipment for the required Public Improvements have been filed against the City prior to or within a 100-day period following completion of the Public Improvements.

(2) If any claims by any contractor, subcontractor or person furnishing labor, materials or equipment to the Subdivider have been filed against the City, then the performance security shall only be reduced to an amount equal to the amount of all such claims filed or to 10 percent of the original amount, whichever is greater.

(3) The security may be reduced in conjunction with completion of a portion of the Public Improvements to the satisfaction of the DPW Director, to an amount determined by the Director; however, in no event shall the amount of the security be reduced below the greater of (i) the amount required to guarantee the completion of the remaining portion of Public Improvements and any other obligation imposed by the Subdivision Map Act, this Code or the improvement agreement; or (ii) below 10 percent of the original amount of the security.

(4) The security shall be released when all of the following have occurred:

(i) One year has passed since the date of acceptance by the Board of Supervisors, or one year has passed since the date that all deficiencies that the DPW Director identifies in the required Public Improvements have been corrected or waived in writing; and

(ii) If any claims identified in Subsection (d)(1)(ii) have been filed against the City, all such claims have been satisfied or withdrawn, or otherwise secured.

16. Monument Bonds.

As a guarantee of good faith to furnish and install the required survey monuments and to pay the Subdivider's engineer or surveyor for said work, the Subdivider shall furnish a corporate surety bond or other acceptable security for an amount equal to 100 percent of the estimated cost of such work. Such work shall

consist of satisfactorily furnishing and installing the said survey monuments and of accurately fixing exact survey points thereon.

17. Payment Of Taxes And Liens.

Prior to recordation of a Final Map or Parcel Map, the Subdivider shall comply with all applicable provisions governing taxes and assessments as set forth in Sections 66492, 66493 and 66494 of the Subdivision Map Act and any amendments thereto.

Exhibit N
San Francisco Administrative Code sections 56.17(f) and 56.18

SEC. 56.17. PERIODIC REVIEW.

…

(f) **Finding of Failure of Compliance.** If the Commission after a public hearing determines on the basis of substantial evidence that the applicant/developer has not complied in good faith with the terms and conditions of the agreement during the period under review, the Commission shall either (1) extend the time for compliance upon a showing of good cause; or (2) shall initiate proceedings to modify or terminate the agreement pursuant to Section 56.18.

SEC. 56.18. MODIFICATION OR TERMINATION.

(a) If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, determines that modification of the agreement is appropriate or that the agreement should be terminated, the Commission shall notify the applicant/developer in writing 30 days prior to any public hearing by the Board of Supervisors on the Commission's recommendations.

(b) **Modification or Termination.** If the Commission, upon a finding pursuant to Subdivision (f) of Section 56.17, approves and recommends a modification or termination of the agreement, the Board of Supervisors shall hold a public hearing to consider and determine whether to adopt the Commission recommendation. The procedures governing Board action shall be the same as those applicable to the initial adoption of a development agreement; provided, however, that consent of the applicant/developer is not required for termination under this section.

SEC. 56.3. DEFINITIONS.

…

(d) "Commission" shall mean the City Planning Commission.

Exhibit O
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:

Gloria L. Young
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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this ____ day of _____, _____, by and between Parkmerced Investors LLC, a Delaware limited liability corporation ("**Assignor**"), and _____, a _____ ("**Assignee**").

RECITALS

A. On _____, _____, Assignor and the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement by and between the City and County of San Francisco and Parkmerced Investors LLC Relative to the Development Known as the Parkmerced Development Project (the "**Development Agreement**") with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Subject Property**"). The Development Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

B. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Assigned Parcel**") to Assignee. The Assigned Parcel is subject to the Development Agreement.

C. 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 Assigned Parcel, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. Assignor hereby assigns to Assignee, effective as of Assignor's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel, including the following obligations:

   a. [_____]

   b. [_____]

   Assignor retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other portions of the Subject Property owned by Assignor.

3. Assignee hereby assumes, effective as of Assignor's conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement with respect to the Assigned Parcel (including but not limited to those set forth in paragraph 2 above), and to be subject to all the terms and conditions thereof with respect to the Assigned Parcel. The parties intend that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Assignor as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

4. Assignee hereby consents to and expressly reaffirms any and all Indemnifications and releases of the City set forth in the Development Agreement including without limitation Section 6.10 of the Development Agreement.

5. Assignee hereby covenants and agrees that:

   a. Assignee shall not challenge the enforceability of any provision or requirement of the Development Agreement, including but not limited to the provisions and waivers set forth in Article 4 of the Development Agreement with respect to the Ellis Act (California Government Code section 7060 *et seq.*) and the Costa-Hawkins Act (California Civil Code section 1954.50 *et seq.*);

   b. Assignee shall not sue the City in connection with (i) any and all disputes between Assignor and Assignee arising from this Assignment or the Development Agreement, (ii) any failure to complete all or any part of the Project by any party, or (iii) any

harm resulting from the City's refusal to issue further permits or approvals to a defaulting party under the terms of the Development Agreement;

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 (i) any dispute between Assignor and Assignee arising from this Assignment or the Development Agreement, (ii) any failure to complete all or any part of the Project by any party, or (iii) any harm resulting from the City's refusal to issue further permits or approvals to a defaulting party under the terms of the Development Agreement.

6. 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.

7. The notice address for Assignee under Section 13.11 of the Development Agreement shall be:

_____
_____
_____
Attn: _____
Tel: _____
Fax: _____

With copy to:

_____
_____
_____
Attn: _____
Tel: _____
Fax: _____

8. 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. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

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

ASSIGNOR:

Parkmerced Investors LLC,
a Delaware limited liability company

By: _____

Its: _____

ASSIGNEE:

_____,
a _____

By: _____

Its: _____

[All Signatures must be Acknowledged]

STATE OF CALIFORNIA

SS.

COUNTY OF

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

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

WITNESS my hand and official seal Signature

My commission expires

STATE OF CALIFORNIA

SS.

COUNTY OF

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

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

WITNESS my hand and official seal Signature

My commission expires

Exhibit P
SFMTA Design Guidelines

As provided in the Development Agreement, Developer shall design and construct the following SFMTA Infrastructure. Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement to which these SFMTA Design Guidelines are attached.

ELEMENTS OF TRANSIT IMPROVEMENTS

Developer shall provide or cause to be provided all Transit Improvements required by SFMTA guidelines to integrate the improvements contemplated by the Project with the existing SFMTA system. Transit Improvements include all work necessary for or ancillary to the relocation and cutover of the SFMTA light rail "M" Oceanview into the Project Site, including any work necessary to meet CalTrans, CPUC, and any other regulatory agency's code requirements for the construction and operation of the relocated SFMTA light rail "M" Oceanview. Transit Improvements include but are not limited to the following elements:

A. Overhead Traction Power System

A 660 volt DC overhead traction power system consisting of:

1. Power cables and support cables and structures, including crossovers and tensioners;

2. Support poles every 100 linear feet of track and at every corner or as required by the final design (light poles can provide support if sufficiently robust);

3. Substation(s) as required by the final design (new and/or upgraded), including switches, breakers and transformers; and

4. Duct banks and conduit to carry power throughout the new systems as required by the design, which may include a cable from substation to overhead line entry.

B. Track System and Trackway

1. Rail;

2. Switches;

3. Crossing barriers at 19th Avenue;

4. Foundation system (ballast or direct fixation as required by SFMTA);

5. Appropriate drainage;

6. Minimum of one meter clearance (generally not accessible to pedestrians) exterior of trackway for operations safety and location of wayside equipment;

7. Barriers and/or fences to segregate trackway, except at designated pedestrian and road vehicle crossovers, consistent with the draft drawings prepared by AECOM and

reviewed by the CPUC, dated March 24, 2010, and the Parkmerced Design Standards & Guidelines; and

8. Track switch controllers and box enclosures.

C. Communications, Signaling and Wayside Systems

1. 120/240 volt AC to operate signaling equipment;

2. Duct banks and conduit to carry signal and power cables;

3. Signal controllers and equipment boxes at every intersection (to the extent signals are necessary) and station;

4. Signal uprights and lights;

5. CCTV cameras and related equipment (consistent with equipment and level of service provided throughout the City);

6. Traffic signals at every intersection;

7. SCADA extension from the intersection of 19th Avenue and Holloway avenue, or 19th Avenue and Junipero Serra Boulevard, through the Project Site; and

8. Lighting along the right-of-way (as is consistent with the Parkmerced Design Standards & Guidelines).

D. Stations

1. Elevated platforms matching current platform heights;

2. All stops must be "Key Stops" (i.e., ADA compliant sidewalks, curb cuts, stairs, and ramps and railings at stations and in all pedestrian paths of travel approaching stations);

3. One ticket vending machines per station;

4. One passenger information display (currently NextBus) per station;

5. CCTV cameras and communications equipment (consistent with equipment and level of service provided throughout the City);

6. Safety provisions for vision impaired passengers (consistent with ADA requirements);

7. 120/240 AC power (consistent with equipment and level of service provided throughout the City);

8. Shelter canopy and benches (if not provided at stations by City);

9. Fencing and barriers (hardscape or substantial landscaping) to keep passengers from approaching stations via trackway;

10. Rail at and approaching stations must be in direct fixation (concrete embedment); and

11. Dedicated single-occupancy, unisex operator restroom within 250 feet of the southwest terminus station.

ELEMENTS OF INTERSECTION AND TRAFFIC IMPROVEMENTS

Traffic Improvements are Public Improvements necessary to ensure pedestrian and traffic safety and to handle anticipated increased traffic flow resulting from the Project. Traffic Improvements include but are not limited to the construction of new and renovation of existing intersections, signals and controllers, signs, striping, curb cuts, medians, bulb outs, and other required work for traffic regulation and control, as generally described below.

A. Signals (where required by the proposed and final designs)

1. Controllers;

2. Controller cabinets;

3. Lights and support arms and poles; and

4. Wireless and fiber optic communications equipment, trenching, duct banks, conduit, cabling and lines (including but not limited to fiber optic cable to Lake Merced Blvd as provided in the Infrastructure Plan).

B. Intersections

1. Bulb outs and medians;

2. Curb cuts;

3. Striping;

4. Paving and repaving;

5. Signage; and

6. Transit Priority Signal equipment (as required by the Planning Code).

C. Streets and Streetscape

1. Street signs and striping;

2. Speed control/traffic calming devices;

3. Landscaping (must not interfere with pedestrian visibility and vehicular and transit lines of sight); and

4. Bicycle lanes (when in the public right of way).

Exhibit Q
Parkmerced Power Generation Requirements and Implementation Plan

Exhibit R
Tenant Relocation Plan

TENANT RELOCATION PLAN

This Tenant Relocation Plan has been prepared in accordance with Section 4.4.2 of that certain Development Agreement By and Between Parkmerced Investors LLC and the City and County of San Francisco Relative to the Development Known as the Parkmerced Development Project (the "Agreement"), with regards to the construction of new housing and the demolition of existing housing at Parkmerced (the "Project").

The purpose of this document is to inform the tenants of Parkmerced of the housing and relocation protections and rights under the Agreement, in particular the rights of Existing Tenants to relocate to a new home (a "Replacement Unit") within a newly constructed building (a "Replacement Building") prior to the demolition of the tenant's existing building (a "To-Be-Replaced Building") under the terms of the tenant's existing lease.

An overview of the protections afforded to Existing Tenants in a To-Be-Replaced Building are as follows:

- An option to relocate to a new home before the demolition of the existing home;
- Same lease, same lease terms, same rent, same and rent-control, only with a new address;
- New home of similar size in new construction with improved energy efficiencies including new amenities such as a dishwasher and washer/dryer;
- Advanced notices and meetings provided at least 2 years before being asked to relocate;
- Relocation expenses paid for and provided by Parkmerced; and
- An option to received Relocation Benefits in lieu of a new home.

I. "Existing Tenants"

Parkmerced residents who qualify as "Existing Tenants" have certain rights to relocate to a Replacement Building prior to the demolition of the To-Be-Replaced Building in which that tenant currently resides. Under the terms of the Development Agreement, an "Existing Tenant" means:

> each person or persons recognized as a tenant under the San Francisco Rent Stabilization and Arbitration Ordinance (the "Rent Ordinance") with respect to an Existing Unit in an existing building which will be demolished as part of the Project on the date that Parkmerced delivers the Existing Tenant Notice (described below in Section IV.B. below). Any person or persons who meet the criteria above shall remain an Existing Tenant until they either (i) relocate to a new building at Parkmerced in accordance with the procedures described in this Tenant Relocation Plan, (ii) voluntarily vacate their Existing Unit before delivery of the Replacement Unit Availability Notice (described below in Section IV.B. below), or (iii) are evicted from their Existing Unit for a "just cause" reason under the Rent Ordinance other than Sections 37.9(a)(10) or 37.9(a)(15).

Within sixty (60) days after commencement of construction on a Replacement Building, each occupant of the To-Be-Replaced Building will be notified by Parkmerced whether he or she qualifies as

an Existing Tenant as of that date. If the resident disagrees with such determination, the resident may request a determination by the San Francisco Rent Board ("Rent Board") by submitting a determination request within forty-five (45) days of receipt of the notification. This process is described in more detail in Section IV.C. of this Tenant Relocation Plan.

II. Replacement Units

Existing Tenants who elect to relocate to a new unit in a Replacement Building (a "Replacement Unit") will be offered a Replacement Unit that is similar to their existing unit in the following manner and as more particularly described on Table 1:

- Number of Bedrooms and Bathrooms – The Replacement Unit will contain the same number of bedrooms and bathrooms as the Existing Unit.
- Size (including storage space located in the unit) – The Replacement Unit (including any in-unit storage space) will be of a similar size as the Existing Unit, based on square footage. For example, as shown on Table 1, if an Existing Tenant currently rents a "small 1-bedroom / 1-bathroom" unit at Parkmerced, the Existing Tenant will be entitled to a Replacement Unit that is no smaller than 682 square feet (including no less than 39 square feet of in-unit storage space); the average size of all similar "small 1-bedroom / 1-bathroom" Replacement Units in the Replacement Building will be 688 square feet (including an average of 45 square feet of in-unit storage space).
- Patios & Balconies – Just as not all current units have patios and balconies, not all Replacement Units will have patios and balconies. In allocating Replacement Units (as described in Section IV.G. below), Existing Tenants with such amenities will be given preference for these units over Existing Tenants without such amenities.
- Parking Spaces – If the Existing Tenant's lease includes rights to use a parking space or spaces, the Replacement Unit will include the same parking rights. (Note, however, that parking spaces will be relocated in connection with the Project, and may be located a farther distance from the Replacement Unit than the Existing Tenant's current parking space. If the Existing Tenant is dissatisfied as a result of this distance, the Existing Tenant may petition the Rent Board for a determination that this additional distance constitutes a "reduction in service" under the Rent Ordinance.)
- Utilities – Parkmerced will pay for any utility hook-up fees or charges incurred by a Relocating Tenant, including cable TV and internet service initiation fees incurred in relocating to a Replacement Unit, but only to the extent that the Relocating Tenant had such utilities, cable television, or internet service activated in his or her Existing Unit.
- Washer, Dryer & Dishwasher – All Replacement Units will include a washing machine, dryer and dishwasher, regardless of whether the Existing Tenant's unit includes these amenities.

- Moving Costs – Parkmerced will pay all moving costs from the Existing Unit to the Replacement Unit.

Table 1: Type/Size of Existing Units and Replacement Units

Number of Units of this type at Parkmerced	Unit Type	Average Size (Square Feet) of Existing and Replacement Units	Minimum Size (Square Feet) of Existing and Replacement Units	Average In-Unit Storage Space (Square Feet) of Existing and Replacement Units	Minimum In-Unit Storage Space (Square Feet) of Existing and Replacement Units
252	Small 1-bedroom/ 1-bathroom	688	682	45	39
172	Medium 1-bedroom/ 1-bathroom	713	691	48	44
120	Large 1-bedroom/ 1-bathroom	749	748	42	39
157	Small 2-bedroom/ 1-bathroom	873	873	41	41
407	Medium 2-bedroom/ 1-bathroom	888	888	42	42
114	Large 2-bedroom/ 1-bathroom	916	910	50	47
106	Extra Large 2-bedroom/ 1-bathroom	1,022	1,005	75	60
18	Jumbo 2-bedroom/ 1-bathroom	1,046	1,042	81	81
122	Regular 3-bedroom/ 2-bathroom	1,192	1,192	80	80
68	Small 3-bedroom/ 2.5-bathroom	1,330	1,328	78	77
2	Large 3-bedroom/	1,506	1,506	115	115

	2.5-bathroom				

III. Rent and Rent Protections

The initial rent paid by any Existing Tenant who elects to relocate to a Replacement Unit (a "Relocating Unit") will be the Existing Tenant's "Base Rent" (as defined in the Rent Ordinance) for the Existing Unit at the time of relocation. A new or increased security deposit will not be required.

The Existing Tenant's lease of the Replacement Unit will be subject to the terms and protections of the Rent Ordinance (or any successor rent-control ordinance enacted by the City) for as long as the Rent Ordinance remains the law in San Francisco. Parkmerced will not pass through to the Existing Tenant any construction costs or relocation costs associated with the Project. Parkmerced may assess future passthroughs to the extent permitted by the Rent Ordinance only after the new base year has been established.

IV. Relocation Process

In accordance with the Development Agreement, Parkmerced (also referred to below as "Developer") will take the following steps to notify and relocate Existing Tenants. At any time, residents may contact the Rent Board for additional information about their rights under the Development Agreement.

A. Developer Holds Community Meeting

Following the City's approval of a "development phase," Developer will hold at least one duly noticed informational presentation with Existing Tenants regarding the details of the approved development phase. This presentation shall include information regarding which buildings will be replaced and the anticipated date for construction of the Replacement Buildings and demolition of the existing buildings.

B. Building Occupants Are Formally Notified of the Process by Developer

Within 60 days after commencement of construction of the Replacement Building, Developer will deliver a written notice (the "Existing Tenant Notice") to all occupants in every occupied unit in the To-Be-Replaced-Building, the Rent Board and each recognized residents' association (defined as an organization with more than 10 members, that has been in existence for 24 months prior to the filing of the Existing Tenant Notice, and has notified the Developer and Rent Board of its existence) of the following:

(i) the name of each person qualifying as an Existing Tenant and known by Developer at such address;

(ii) the Existing Tenant's Unit Type (as described on Table 1 above)

(iii) the Existing Tenant's numerical rank in seniority for the Unit Type for which the Existing Tenant qualifies;

(iv) if more than one person occupies the Existing Unit, the numerical rank by seniority of each person occupying the unit as compared to other persons occupying the unit, including ther initial date of occupancy for each occupant;

(v) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of the Agreement as outline in this Tenant Relocation Plan;

(vi) notice that further information regarding such rights can be obtained from the Rent Board, including notice that any occupant can file a request for a determination of tenancy status with the Rent Board if there is a dispute as to whether or not someone qualifies as an Existing Tenant;

(vii) the anticipated completion date for the Replacement Building;

(viii) the anticipated relocation dates for Existing Tenants who chose to relocate to a Replacement Unit; and

(ix) a site plan showing the location of the Replacement Building and preliminary floor plans.

This Existing Tenant Notice will be delivered by certified U.S. Mail. In addition, the Existing Tenant Notice will be concurrently posted in any common areas of the To-Be-Replaced-Buildings, such as laundry rooms and exterior passageways.

The Existing Tenant Notice shall also request that the Existing Tenants complete and return to Developer an attached response form within 30 days that notifies Developer of the Existing Tenant's intention to relocate to a Replacement Unit. The purpose of such response form is solely to provide information to Developer in order to plan for and facilitate the relocation process. Tenant's response indicating an interest in accepting or rejecting a Replacement Unit shall be wholly non-binding. In addition, the failure to return the response form shall have no legal effect on Existing Tenant's ability to later accept or reject a Replacement Unit.

C. Disputing the Existing Tenant Notice

If the recipient of an Existing Tenant Notice disagrees with the any information set forth in the Existing Tenant Notice, the Existing Tenant is encouraged to contact Parkmerced directly to clarify the information. In addition, within 45 days after service of the Existing Tenant Notice, any occupant or group of occupants may petition the Rent Board for a determination as to whether (i) a person or group of persons qualifies as an Existing Tenant, (ii) if a group of persons is an Existing Tenant, each person's seniority with such group of persons, or (iii) the Existing Tenant's seniority in the To-Be-Replaced Building for purposes of selecting units (as described in more detail in Section [__] below). The Rent

Board may accept petitions submitted up to 90 days after service of the Existing Tenant Notice if the recipient can shown a good cause for their delay. The decision of the Rent Board is final subject to each party's appellate rights as afforded by law The Rent Board will follow its standard procedures, as required by law, for processing Rent Board petitions.

D. Developer Issues Replacement Unit Availability Notice

Not sooner than 1 year or later than 6 months before the anticipated completion date of the Replacement Building, Developer will deliver a "Replacement Unit Availability Notice", via certified mailing, to the Existing Tenants' physical address on the premises, to any other addresses for the Existing Tenants on the operative rental agreement, and to any recognized residents' association. This notice shall also be posted in common areas and exterior passageways of the To-Be-Replaced Building and a copy (containing items (i) through (iv)) delivered to the Rent Board. This notice shall include the following information:

(i) a detailed explanation of the rights of Existing Tenants to relocate to a Replacement Unit in accordance with the terms of the Agreement, including the requirements for qualifying as an Existing Tenant;

(ii) notice that further information regarding such rights can be obtained from the Rent Board;

(iii) the anticipated completion date of the Replacement Building;

(iv) the anticipated relocation dates for Existing Tenants who elect to relocate to the Replacement Building;

(v) the Existing Tenant's confirmed unit type and numerical rank in seniority for the unit type (as described in Table 1) for which the Existing Tenant qualifies;

(vi) if more than one person occupies an Existing Unit, the confirmed numerical rank in seniority of each person occupying such Existing Unit as compared to the other persons occupying such unit;

(vii) at least three dates and times when Developer will arrange for an opportunity for the Existing Tenant to visit model Replacement Units (one of which shall be a time on Saturday between 9 am and 6 pm, Sunday between 10 am and 5 pm or on weekday evenings between 6 pm and 9 pm); the first site visit offered by Developer shall be no sooner than ten days after delivery of the Replacement Unit Availability Notice (unless an earlier date is agreed to by Developer and the Existing Tenant) and the last site visit shall be no more than 30 days after delivery of the Replacement Unit Availability Notice;

(viii) notice that the Existing Tenant must deliver a "Replacement Unit Preference Notice" (described in Section [__] below) and the date by which such notice must be returned to the Developer; and

(ix) a floor plan of the Replacement Unit indicating the unit type within such building for which that the Existing Tenant qualifies.

The site visit shall provide an opportunity for Existing Tenants to visit a model Replacement Unit with completed finishes. Such model Replacement Unit may be different than the unit type for which the Existing Tenant qualifies. Tours of the Replacement Building will only be conducted when safe, as determined by Developer, during the construction period. Tour participants may be required to sign a liability waiver.

E. Tenant's Time Period to Submit the Replacement Unit Preference Notice

Each Existing Tenant desiring to relocate to a Replacement Unit must deliver written notice to Developer of his or her decision to (a) relocate to a Replacement Building, and his or her selection of all available Replacement Units ranked in the order of preference, or (b) remain in his or her Existing Unit until the To-Be-Replaced Building's Vacancy Date (the date on which the building must be vacated in preparation for demolition). The Replacement Unit Availability Notice will state the date by which it must be returned to Developer (the "Selection Period"), which will be 20 days after the last of the three dates provided in the Replacement Unit Availability Notice for the Existing Tenant's visit of model Replacement Units. Developer will provide stamped Certified U.S. Mail envelopes to Existing Tenants with the delivery of the Replacement Unit Preference Notice, and Existing Tenants must return the Unit Preference Notice to Developer via certified mailing.

Delivery of the Replacement Unit Preference Notice by an Existing Tenant to Developer shall determine which Existing Tenants become Relocating Tenants and which remain Existing Tenants subject to relocation benefits under Section 37.9C of the Rent Ordinance. Upon receipt of the Replacement Unit Preference Notices, Developer shall begin the process of assigning Replacement Units. All Replacement Unit Preference Notices received by Developer shall be filed with the Rent Board within 10 days of receipt by Developer.

F. Multiple Existing Tenants in a Single Unit

Where more than one person per unit qualifies as an Existing Tenant, all such persons are collectively entitled to relocate to one (1) Replacement Unit. All such persons will qualify for a Replacement Unit only if the person with the most seniority (as compared to those in the unit) submits a Replacement Unit Preference Notice. If the senior-most Existing Tenant indicates they accept a Replacement Unit, then (a) all Existing Tenants within the unit will collectively qualify for a Replacement Unit, (b) none shall qualify for relocation benefits under Section 37.9C of the Rent Ordinance, and (c) any person who desires not to relocate may remain in the Existing Unit under the existing lease and paying full rent until Developer delivers a Notice to Terminate Tenancy (as described in Section V.G. below). If

the senior-most person indicates they reject the Replacement Unit, then all Existing Tenants may remain in the unit and will collectively qualify for relocation benefits under Section 37.9C of the Rent Ordinance.

G. Developer's Assignment of Replacement Units

Replacement Units will be allocated in order of tenant seniority, as determined by the commencement date of the Existing Tenant's lease relative to the commencement date of others who qualify for the same type of Replacement Unit (based on type, size and amenities as described in Section II above). Developer will first allocate a Replacement Unit to each Existing Tenant who delivers a Replacement Unit Preference Notice before the end of the Selection Period based upon the Existing Tenant's unit preference set forth in his or her Replacement Unit Preference Notice. Any conflict in such preferences shall be resolved by the Relocating Tenant's seniority status. However, for Replacement Units with patios or balconies, preference will be given to Existing Tenants with patios or balconies in their Existing Unit.

Developer will notify Existing Tenants of their allocated Replacement Unit through issuance of a "Replacement Unit Notice", to be delivered via certified mailing to the unit and to any other address for the Existing Tenant on the operative rental agreement. A copy will also be filed with the Rent Board.

Existing Tenants who wish to contest their assignment to a Replacement Unit must are encouraged to contact Parkmerced to review the assignment. In addition, within 30 days of receipt of the Replacement Unit Notice, the Existing Tenant may file a petition with the Rent Board. The Rent Board will conduct a hearing in accordance with the standard Rent Board procedures as established by applicable law.

H. Tenant's Time to Accept Replacement Units

Within 30 days of delivery of the Replacement Unit Notice, which shall be known as the "Acceptance Period," the Existing Tenant must send written notification of acceptance or rejection of the specified Replacement Unit to Developer (a "Replacement Unit Acceptance Notice" or "Replacement Unit Rejection Notice"). This notice must be delivered by certified U.S. mail. If no response is received during the Acceptance Period, Developer will issue, also by certified mailing, a "Second Replacement Unit Notice", informing the Existing Tenant of his or her right to occupy the specified Replacement Unit. A copy of the Second Replacement Unit Notice will also be delivered to the Rent Board. If an Existing Tenant fails to notify the Developer within 10 days after receipt of the Second Replacement Unit Notice, the Existing Tenant will have permanently waived his or her rights to a Replacement Unit. If this occurs, the Existing Tenant will be allowed to remain in the Existing Unit until the Building Vacancy Date.

Developer will provide stamped Certified U.S. Mail envelopes to Existing Tenants to be used for the Existing Tenant's acceptance notice or rejection notice, and Existing Tenants must return these notices to Developer via certified mailing. Developer will file all returned Replacement Unit Acceptance Notices or Replacement Unit Rejection Notices with the Rent Board within 10 days of receipt.

I. Developer Delivers Relocation Notice

Within 30 days of the City's issuance of a Certificate of Occupancy for a Replacement Unit, Developer will deliver a "Relocation Notice" to each Existing Tenant who delivered a Replacement Unit Acceptance Notice. The Relocation Notice will indicate that Developer intends to relocate the Existing Tenant to his or her Replacement Unit on a date reasonably agreed upon by Developer and the Existing Tenant, which date shall not be sooner than 30 days or later than 60 days after the delivery of the Relocation Notice unless an earlier date is agreed upon by Developer.

The Relocation Notice will be filed with the Rent Board and delivered to the Existing Tenant by certified mail to each unit as well as to any address on the operative lease agreement.

J. Relocation Occurs

At the time of relocation, Developer will assume responsibility, at Developer's sole cost, for moving the possessions of each Relocating Tenant from the Relocating Tenant's Existing Unit to the applicable Replacement Unit. Developer will not be responsible for the loss, damage, or destruction of any personal property. In addition, Developer will not be responsible for packing or unpacking the Relocating Tenant's possessions into or out of moving boxes or other containers. Developer will pay for any utility hook-up fees or charges incurred by a Relocating Tenant, including cable TV and internet service initiation fees incurred in relocating to a Replacement Unit, but only to the extent that the Relocating Tenant had such utilities, cable television, or internet service activated in his or her Existing Unit. Upon the relocation of a Relocating Tenant and payment of the utility hook-up fees, Developer will not be required to make any payments to the Existing Tenant pursuant to any state or local law, including any of the relocation payment requirements of Section 37.9C of the Rent Ordinance.

K. Annual Newsletter

In addition to all other notices required under the Tenant Relocation Plan, and after Developer submits the first "development phase application" to the City, Developer will prepare and deliver to each residential unit on the Project Site an annual newsletter that includes a description of the Project, the work completed to date, and work anticipated to be completed in the following year. Such newsletter will also include the date, time, and location of any known public hearings related to the Project, and contact information for the San Francisco Planning Department and the Rent Board. The newsletter will also include the time, date, and location of public meetings scheduled by Developer where Developer's representatives will answer questions relating to the Project.

V. Existing Tenants Who Elect Not to Relocate and the Building Vacancy Date

After an Existing Tenant rejects or is deemed to have rejected a Replacement Unit pursuant to the Agreement, Developer will continue to rent to the Existing Tenant his or her Existing Unit under the terms of the existing rental agreement until such time as (a) the Existing Tenant voluntarily terminates the tenancy, or (b) each of the following has occurred: (i) Developer stops leasing unoccupied units in the To-Be-Replaced Building to new tenants, and (ii) Developer delivers a "Notice to Terminate Tenancy" pursuant to Section 37.9(a)(15) of the Rent Ordinance to the Existing Tenants (the "Building Vacancy Date"). This Notice to Terminate Tenancy shall require Existing Tenants to vacate at the end of not less

than a 60-day period (beginning on the date the notice is served). The Notice to Terminate Tenancy shall be filed with the Rent Board and served in a manner allowed by state law on Existing Tenants who have rejected, or been deemed to have rejected, a Replacement Unit. Relocation payments shall be issued pursuant to Section 37.9C of the Rent Ordinance.

VI. New Tenants Renting Unoccupied Units

Until the Building Vacancy Date, Developer may rent unoccupied units in the To-Be-Replaced Building to new tenants where those units have been vacated due to relocation or otherwise. Developer must include in a written lease agreement with each such new tenant a statement of (i) Developer's intent to demolish the To-Be-Replaced Building, including an anticipated date for demolition, and (ii) Developer's right to terminate the lease with a "Notice to Terminate Tenancy" pursuant to Section 37.9(a)(15) of the Rent Ordinance. No relocation payments shall be due to any new tenant who does not qualify as an "Existing Tenant". Before a lease is entered into, Developer shall provide to prospective new tenants a then-current estimate of the demolition date of the To-Be-Replaced Building.

PARKMERCED TENANT RELOCATION PLAN

SAMPLE NOTICES

1. Notice of Community Meeting (Development Phase Presentation)
2. Existing Tenant Notice
3. Response to Existing Tenant Notice
4. Replacement Unit Notice
5. Replacement Unit Preference Notice
6. Second Replacement Unit Notice
7. Replacement Unit Availability Notice
8. Relocation Notice
9. Notice of Demolition Permit
10. Lease Termination Notice
11. New Tenant Lease Addendum

NOTICE OF COMMUNITY MEETING

Parkmerced Development Phase [___] *[Insert development phase number]*

TO ALL PARKMERCED RESIDENTS:

As you may know, Parkmerced is in the process of redeveloping the Parkmerced site in accordance with a development agreement between Parkmerced and the City and County of San Francisco (the "Development Agreement"). We are pleased to announce that Parkmerced Development Phase [___] *[insert development phase number]* has been approved by the City.

On_____ *[insert date and time of meeting]*, there will a community meeting at _____ *[insert location of meeting]*, in order to (1) review the details of the approved development phase, (2) describe new residential buildings to be constructed as replacements for existing buildings that will be demolished, (3) identify which residential buildings will be demolished after the construction of the new residential buildings, and (4) review the anticipated timing of construction within the approved development phase.

Under the terms of the Development Agreement, "Existing Tenants" are entitled to relocate to a new unit in the new, replacement buildings to be constructed as part of the approved development phase. The "Tenant Relocation Plan", which is a detailed explanation of these rights (including the requirements for qualifying as an "Existing Tenant"), is attached to this Notice of Community Meeting for your reference.

You are not required to attend the meeting. If you are unable or do not wish to attend, your rights under the Development Agreement will not be impacted in any way. In fact, as the project progresses, you will be receiving subsequent written notifications via U.S. certified mail that will formally apprise you of your rights and obligations, all in accordance with the attached Tenant Relocation Plan.

At this time, you are not required to take any action. We do hope to see you at the meeting, and we look forward to working together towards improving this wonderful neighborhood that we call home.

To find out more about this meeting, please contact:

Thank you.

Attachments: (1) Tenant Relocation Plan

Deliver to: (1) All Parkmerced residents

EXISTING TENANT NOTICE

To: Residents of Unit *[insert Unit/Building number]]*

As you may know, Parkmerced is in the process of replacing the building in which you reside with a new building located at [_____] *[insert location of building to which Existing Tenants will be relocated]* (the "Replacement Building"). Upon completion of this Replacement Building, Existing Tenants (as defined below) will have the opportunity to relocate to the Replacement Building under the same terms as their existing lease (including the amount of rent paid). After the Replacement Building is complete and all tenants in your existing building have relocated or vacated, the existing building will be demolished. This process and your rights are governed by the development agreement between Parkmerced and the City and County of San Francisco (the "Development Agreement").

The purpose of this Existing Tenant Notice is to explain (1) the rights afforded to the Existing Tenants, (2) who qualifies as an Existing Tenant with a right to relocate to the Replacement Building under the current lease, (3) the Existing Unit type and how that will translate to the new unit, (4) confirm Existing Tenant seniority (as a whole unit), (5) confirm each occupant's seniority (within the unit), (6) the process for choosing to relocate to the Replacement Building and (7) the estimated timing for completion of and relocation to the Replacement Building and demolition of your existing building. ***The purpose of this Notification is to provide you with information. We also request that you return the enclosed response card indicating whether you are interested in relocating to a Replacement Unit.***

1. Your Rights to Relocate to a Replacement Unit

The attached "**Tenant Relocation Plan**" provides a complete description of your rights to relocate to the Replacement Building. We ask that you review this document carefully. If you have any questions or desire further information about your rights, you may contact the San Francisco Rent Board:

San Francisco Rent Board
25 Van Ness, Suite 3250
San Francisco, CA
Telephone: (415) 252-4602
www.sfgov.org/rentboard

2. Existing Tenants

As described in the attached Tenant Relocation Plan, residents who qualify as "Existing Tenants" may relocate to the Replacement Building under the terms of their current lease.

You are hereby notified that the following residents, ranked in order of seniority (based on the initial date of occupancy), are deemed to be the sole Existing Tenants of the premises located at

[_____] *[insert Unit/Building number]*, San Francisco, California 94132 (the "Existing Unit"):

Occupant	Initial Date of Occupancy
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

[Insert the name of each tenant named on a valid lease, and that tenant's initial date of occupancy of the unit as described in that lease.]

Please note that if multiple Existing Tenants reside in a single unit, they are collectively entitled to relocate to only one (1) Replacement Unit. Furthermore, any Existing Tenants named above will cease to qualify as an Existing Tenant, and will not be entitled to relocate to the Replacement Building, if he or she voluntarily vacates the Existing Unit prior to relocating, or is evicted for "just cause" under the terms of the San Francisco Rent Stabilization and Arbitration Ordinance.

If you disagree with the list of Existing Tenants or Dates of Initial Occupancy above (including if you believe any other person qualifies as an Existing Tenant), we encourage you to contact Parkmerced immediately to resolve this issue. In addition, you have the right within forty-five (45) days to request that the San Francisco Rent Board review your case and make a final determination on which persons residing in your unit qualify as Existing Tenants or the seniority ranking among Existing Tenants in your unit.

3. Replacement Units

Based upon our records, your Unit is _____ *[insert square footage of this Existing Unit]* square feet and contains ___ bedrooms and ___ *[insert number of bedrooms or bathrooms for this Existing Unit]* bathrooms and is considered a _____ *[insert "Unit Type" as described on Development Agreement Table 4.3.4, e.g. "small 1-bedroom / 1-bathroom"]* unit type. As a result, under the terms of the Development Agreement, you are entitled to relocate to a unit in the Replacement Building that is no smaller than ____ square feet and contains ___ bedrooms and ___ bathrooms. *[Insert square footage and bedroom/bathroom requires corresponding to Unit Type based on Development Agreement Table 4.3.4]*

4. Unit Selection

As described in the attached Tenant Relocation Plan, Replacement Units will be allocated in order of tenant seniority based upon the date of initial occupancy. According to Parkmerced's records, the most senior Existing Tenants in this Existing Unit has the original occupancy date listed below. Therefore, if the Existing Tenants of this unit elect to relocate, you will have the seniority rank listed below for purposes of selecting a unit (subject to limitations for patios/balconies described in the attached Tenant Relocation Plan).

Date of initial occupancy:_____ Seniority: ___ of ___
[Insert the first date of occupancy listed in Section 2 above.] [Insert the seniority rank of this Existing Tenant and the total number of Existing Tenants who will have the option to relocate to the applicable Replacement Building.]

If you disagree with the date of initial occupancy or seniority status of an Existing Tenant, we encourage you to contact Parkmerced immediately to resolve the issue. In addition, you have the right to request that the San Francisco Rent Board review your case and make a final determination on the date of initial occupancy and seniority status. A Rent Board request must be submitted within 45 days after delivery of this Existing Tenant Notice (or within 90 days if you can show cause for the late submission).

5. Building Completion and Relocation Dates

The anticipated completion date for the Replacement Building is_____. As such, the anticipated relocation dates for each Existing Tenant who elects to relocate to the Replacement Building is between _____ and _____.

Please note that the construction schedule may vary and the dates listed above are estimates only. These dates are provided for your convenience only and do not bind Parkmerced in any manner.

6. Response Requested

In order to assist us in planning for the relocation of Existing Tenants, we request that you complete and return to Parkmerced the enclosed "Response Form" within forty-five (45) days indicating your preliminary interest in accepting or rejecting the opportunity to relocate to the Replacement Building. Your response is wholly non-binding and merely informational. In addition, the failure to return the Response Form shall have no legal effect on your ability to later accept or reject a unit in the Replacement Building.

Sincerely,
PARKMERCED

Attachments: (1) Tenant Relocation Plan; (2) Response Form.
Deliver to: (1) each occupied unit in the To-Be-Replaced Building; (2) the Rent Board; (3) each recognized residents' association of the To-Be-Replaced Building.
Deliver via: Certified U.S. Mail

[Form to be attached to and distributed with the Existing Tenant Notice, together with a postage pre-paid, Certified U.S. Mail return envelope]

TENANT RESPONSE FORM TO EXISTING TENANT NOTICE

(PLEASE RETURN VIA CERTIFIED U.S. MAIL IN THE ENCLOSED PRE-PAID ENVELOPE)

To: PARKMERCED, the Developer

PLEASE TAKE NOTICE that the following persons are Existing Tenants at the rental unit located at _____ in San Francisco, California.

1. _____ Move-in date:_____

2. _____ Move-in date:_____

3. _____ Move-in date:_____

Note: If you desire to challenge the list of Existing Tenants set forth on the "Existing Tenant Notice" that you received from Parkmerced (including if you believe any other person qualifies as an Existing Tenant with the right to relocate to the Replacement Building), you must contact Parkmerced and the San Francisco Rent Board which will consider your challenge and make a final determination. Writing additional names above will NOT cause any additional person to be considered an Existing Tenant.

The original lease agreement was entered into on this date (if known):_____

There have been the following addendums and modifications to the original rental agreement, described as follows (additional space for your answer is on page two):

The Existing Tenants listed above are currently: *(Check one box)*

_____ Interested in relocating to a Replacement Unit in the Replacement Building

_____ Not interested in relocating to a Replacement Unit in the Replacement Building

NOTE: This response is non-binding. The undersigned acknowledges that he/she is providing this information voluntarily, and that the failure to return this response form within thirty days, or at all, shall have no legal effect on any Existing Tenant's ability to later accept or reject a Replacement Unit. The undersigned further acknowledges that he/she may later amend or change their responses without any prejudice.

(Please sign and date below where indicated.)

_____ _____ _____ _____

_____ _____

Extra space, if required.

REPLACEMENT UNIT NOTICE

Please read this entire Notice. Your response is required by [_____] *[insert date that is 30 days from delivery of this notice]* to protect your right to relocate to the new building located at [_____] *[insert address of Replacement Building to which notice recipients may relocate]*.

TO:_____

As you know, Parkmerced is constructing a new building at [_____] *[insert address of Replacement Building to which notice recipients may relocate]* and will ultimately demolish the building in which you reside. By returning the Replacement Unit Preference Notice, you elected to relocate to this new building.

We are pleased to inform you that the following Replacement Unit has been assigned to you:

[insert unit # and building address of assigned Replacement Unit]

This assignment was based on your stated preference, the stated preferences of your neighbors at Parkmerced who also elected to relocate to the new building, and your seniority relative to others, based on the date on which your current lease commenced.

If you are not satisfied with this Replacement Unit, we encourage you to contact Parkmerced immediately to discuss the matter. In addition, you may petition the San Francisco Residential Rent Stabilization and Arbitration Board (the "Rent Board") if you are not satisfied with this Replacement Unit and wish to challenge the Replacement Unit designation. The deadline for filing a petition is 30 days from the date you receive this Replacement Unit Notice. The Rent Board is located at 25 Van Ness Avenue, Suite 320, San Francisco, California 94102-6033, tel. 415.252.4600, www.sfgov.org/rentboard.

Response Required. Enclosed herewith is "Replacement Unit Acceptance/Rejection Notice" form that MUST be returned to Parkmerced via Certified U.S. Mail by [_____] *[insert date that is 30 days from delivery of this Replacement Unit Notice]* indicating whether you will accept or reject the Replacement Notice. For your convenience, a Certified U.S. Mail pre-paid envelope is enclosed for your response. Even if you have contacted, or intend to contact, Parkmerced to discuss your assignment, or if you have filed, or intend to file, a Rent Board petition, you must still return the enclosed Replacement Unit Acceptance/Rejection Notice within 30 days.

Attachments: (1) Replacement Unit Acceptance/Rejection Notice; (2) postage-paid, Certified U.S. Mail envelope.

Delivered to: (1) Unit of each Existing Tenant who returned a Replacement Unit Preference Notice; (2) any other address set forth in the such Existing Tenant's lease; (3)

Deliver via: Certified U.S. Mail

REPLACEMENT UNIT ACCEPTANCE/REJECTION NOTICE

This Replacement Unit Acceptance/Rejection Notice must be signed by the senior-most Existing Tenant in the Unit, as determined by the initial date of occupancy.

Name and Current Address of all Existing Tenants:

ACCEPTANCE

Yes, I, _____, do accept the Replacement Unit described in the Replacement Unit Notice that I received from Parkmerced, and I will be relocating to that unit in accordance with the timeline to be established by Parkmerced.

I do____ /do not____ intend to file a petition with the Rent Board challenging the Replacement Unit that Parkmerced has selected.

Dated:_____ **_____**

Dated:_____ **_____**

REJECTION

We hereby decline to relocate to the Replacement Unit described in the Replacement Unit Notice we received from Parkmerced. We understand that we are permanently waiving our rights to live in a Replacement Unit under the same lease terms and conditions that we currently enjoy at our present address.

We have been provided with information about our relocation rights, and we have read and understood those disclosures.

We understand that this election cannot be rescinded. We also understand that Parkmerced will, in the near future, be able to terminate our tenancy and provide us with relocation payments to move. We know that this termination of the tenancy will forever sever our relationship with Parkmerced.

Dated:_____ **_____**

Dated:_____ **_____**

[To be attached to and delivered with the Replacement Unit Availability Notice]

REPLACEMENT UNIT PREFERENCE NOTICE

In order to exercise your right to move to a new unit in the new building located at [_____] *[insert address of Replacement Building]****, you must return this Replacement Unit Preference Noted to Parkmerced no later than [_____]*** *[insert date that is 30 days from the last site visit of the Replacement Building provided in the Replacement Unit Availability Notice]****, using Certified U.S. Mail.. A return envelope with pre-paid postage has been enclosed for your convenience.***

TO PARKMERCED:

NOTICE IS HEREBY GIVEN, by return of this "Replacement Unit Preference Notice" that the following Existing Tenants:

_____ _____

elect to (initial one):

_____(a) relocate to a Replacement Building; or,

_____(b) remain in our current unit.

Our current unit address is_____.

For Relocating Tenants: We have toured model units in the building located at [_____] *[insert address of building that tenants toured]*, reviewed buildings plans or otherwise familiarized ourselves with the type of unit for which we qualify (based on size and number of bedrooms and bathrooms) to our satisfaction. We desire to relocate to the following Replacement Units, listed in order of preference (with 1 being the most desired unit) in the newly constructed building located at:

YOU MUST RANK ALL OF THE AVAILABLE REPLACEMENT UNITS WITHIN YOUR UNIT TYPE. (If there are 20 Replacement Units in your Unit Type, you must rank all twenty regardless of your seniority.)

1. Unit _____	6. Unit _____	11. Unit _____	16. Unit _____
2. Unit _____	7. Unit _____	12. Unit _____	17. Unit _____
3. Unit _____	8. Unit _____	13. Unit _____	18. Unit _____
4. Unit _____	9. Unit _____	14. Unit _____	19. Unit _____
5. Unit _____	10. Unit _____	15. Unit _____	20. Unit _____

We understand that we qualify for the same type of unit (based on size, number of bedrooms and bathrooms, and patios/balconies) as our existing unit, and failure to list this type of unit above will result in Parkmerced awarding a unit other than those we listed above. We also understand that Replacement Units will be allocated based on seniority, and as a result, we may not be awarded our preferred unit.

For Existing Tenants Remaining in their current units: We understand that we will be allowed to occupy our current unit until Parkmerced issues a Termination Notice, which shall apprise us of the date when we must vacate and what rights we will have to relocation benefits.

THIS NOTICE MUST BE RETURNED, COMPLETED, TO PARKMERCED VIA THE ENCLOSED PRE-PAID CERTIFIED MAIL ENVELOPE BY _____ *[INSERT DATE THAT IS 30 DAYS AFTER THE LAST SCHEDULED VISIT PROVIDED IN THE REPLACEMENT UNIT AVAILABILITY NOTICE]*.

SECOND REPLACEMENT UNIT NOTICE

TO:_____ _____

This "Second Replacement Unit Notice" is being served on you because you have failed to respond to the Replacement Unit Notice that was delivered on _____, 2011 *[insert delivery date for Replacement Unit Notice]* within 30 days as required under the Development Agreement between Parkmerced and the City and County of San Francisco.

As you know, Parkmerced is in the process of constructing a new building located at [_____] *[insert address of Replacement Building]* and will ultimately demolish the building in which you reside. As a resident who qualifies as an "Existing Tenant" under the terms of the Development Agreement, you have the right to relocate to the new building under the same terms and conditions as your current lease, including the same rent that you currently pay. A copy of the Tenant Relocation Plan explaining your rights in detail is enclosed for your convenience.

Your failure to notify Parkmerced of a decision to either accept or reject a Replacement Unit shall cause you to permanently forfeit the right to relocate to a Replacement Unit.

Enclosed herewith is the Replacement Unit Notice and the attached Replacement Unit Acceptance/Rejection Notice and Replacement Unit Rejection Notice that was sent to you on_____, 2011 *[insert delivery date for Replacement Unit Notice]*. A pre-paid, certified U.S. mail return envelope is also enclosed for your response.

PLEASE NOTE: Failure to respond to this final notification by [_____] *[insert date 10 days from delivery of this notice]* will be deemed as an election to decline relocation, and you will thereafter be allowed to remain as a tenant in your current unit until such time that Parkmerced issues a notice terminating your tenancy in preparation for the demolition of the building.

If you have any questions regarding this Second Replacement Unit Notice, we encourage you to contact Parkmerced immediately. Advice regarding this Second Replacement Unit Notice is also available from the San Francisco Rent Board. The Rent Board is located at 25 Van Ness Avenue, Suite 320, San Francisco, California 94102-6033, tel. 415.252.4600, www.sfgov.org/rentboard.

Attachments: (1) Tenant Relocation Plan; (2) copy of Replacement Unit Notice delivered to this unit; (3) Replacement Unit Acceptance/Rejection Notice; (4) pre-paid, certified U.S. mail return envelope.

Deliver to: (1) unit of all Existing Tenants that did not respond to the Replacement Unit Notice; (2) any other notice address set forth in the lease for such Existing Tenants; (3) Rent Board.

Deliver via: Certified U.S. Mail.

REPLACEMENT UNIT AVAILABILITY NOTICE

PLEASE DO NOT DISCARD THIS NOTICE! You must take prompt action to protect your right to relocate to a new unit in the building currently under construction.

TO THE FOLLOWING EXISTING TENANTS: **("you")**

EXISTING RENTAL UNIT ADDRESS: **("Existing Unit")**

As you know, Parkmerced is in the process of replacing the building in which you reside with a new building located at [_____] *[insert building address]* (the "Replacement Building"). As the Existing Tenant named above, you have the right to relocate from your Existing Unit to a replacement unit in the Replacement Building in accordance with terms of the Development Agreement between Parkmerced and the City and County of San Francisco (the "Development Agreement"). This notice explains your rights to relocate to a Replacement Unit. ***In order to preserve your right to relocate to the Replacement Building, your response is required by _____, 20__.*** *[Insert date that is 20 days after the last site visit listed in Section 4 below]*

1. Your Right to Relocate to a Replacement Unit

As described in the "**Tenant Relocation Plan**" and the "**Existing Tenant Notice**" which you received on _____ *[insert date Existing Tenant Notice was delivered]*, Existing Tenants have the right to relocate to a new unit in the Replacement Building in accordance with the Development Agreement. Relocating Existing Tenants will continue to pay the same rent as they pay for their existing unit.

A copy of the Tenant Relocation Plan and the Existing Tenant Notice are attached for you convenience. In addition, you may contact the San Francisco Rent Board for further information. The San Francisco Rent Board is located at 25 Van Ness Avenue, Suite 3250, San Francisco, CA 94102, telephone (415) 252-4602, www.sfgov.org/rentboard.

2. Building Completion and Relocation Dates

The anticipated completion date for the Replacement Building is_____. As such, the anticipated relocation dates for each Existing Tenant who elects to relocate to the Replacement Building is between _____ and _____.

Please note that the construction schedule may vary and the dates listed above are estimates only. These dates are provided for your convenience only and do not bind Parkmerced in any manner.

3. <u>Your Seniority</u>

As described in the Tenant Relocation Plan, Replacement Units will be allocated in order of Existing Tenant seniority based on the initial occupancy date of each Existing Tenant relative to other Existing Tenants who qualify for the same type/size of unit.

Your seniority ranking for your Unit Type among Existing Tenants is: _____ of _____. *[Insert numerical ranking and total number of Existing Tenants for applicable unit type]*

In addition, as described in the Tenant Relocation Plan, if there are multiple Existing Tenant's residing in your unit, the senior-most Existing Tenant must submit the Replacement Unit Preference Notice described below. The Existing Tenant's residing in this unit, ranked in order of seniority within the unit (based on the date of initial occupancy) are:

1. _____
2. _____ *[Insert names Existing Tenants, with most senior listed first]*

4. <u>Viewing a Model Unit</u>

We are excited to offer you the opportunity to see a model unit in the Replacement Building. We have scheduled site visits for the following dates and times:

1. XX.XX.XX Time: 00:00
2. XX.XX.XX Time: 00:00
3. XX.XX.XX Time: 00:00

If you are unable to attend one of these site visits, please contact Parkmerced and we will attempt to set up another time for you to view the model unit. Unfortunately, we cannot accommodate any requests after the latest date and time provided.

Please note that by viewing the model unit, you agree to cooperate with all safety precautions during the site visit. You acknowledge that touring a construction site presents risk of personal injury, and you agree to assume those risks by participating in the site visit. You may be required to sign a liability waiver in order to participate.

**********************IMPORTANT!************************

PLEASE NOTE: YOU MUST COMPLETE AND RETURN THE ENCLOSED *REPLACEMENT UNIT PREFERENCE NOTICE* TO PARKMERCED VIA CERTIFIED U.S. MAIL BY

[_____] *[insert date that is 20 days after the last site visit listed in Section 4 above]***. IF MORE THAN ONE EXISTING TENANT RESIDES IN YOUR UNIT, THE SENIOR-MOST EXISTING TENANT MUST COMPLETE AND RETURN THE ENCLOSED *REPLACEMENT UNIT PREFERENCE NOTICE*.**

A POSTAGE-PAID ENVELOPE HAS BEEN PROVIDED FOR YOUR CONVENIENCE. FAILURE TO RETURN THE ENCLOSED REPLACEMENT UNIT PREFERENCE NOTICE WITHIN THIS TIME PERIOD MAY JEOPARDIZE YOUR ABILITY TO RELOCATE TO THE REPLACEMENT BUILDING.

Attachments: (1) Tenant Relocation Plan; (2) copy of the Existing Tenant Notice delivered to this unit; (3) Replacement Unit Preference Notice; (4) postage-paid, certified U.S. mail return envelope.

Deliver to: (1) Existing Tenants of the To-Be-Replaced Building; (2) residents' association of the To-Be-Replaced Building; (3) Rent Board.

Deliver via: Certified U.S. Mail.

RELOCATION NOTICE

TO:_____ _____

We are pleased to inform you that the construction of the new building located at [_____] *[insert address of Replacement Building]* has been completed. As you know, you have elected to relocate to a new unit in this building under the same terms as your existing lease, including rent.

Parkmerced is pleased to inform you that the date for moving you to the Replacement Unit is scheduled for:

[Insert relocation date and time]

Please confirm with Parkmerced if this scheduled date and time is or is not convenient for you. We will make every effort to work within your schedule to find a mutually acceptable moving date. Please note that due to the large number of tenants who will relocate to the Replacement Building, Parkmerced may not be able to accommodate all rescheduling requests.

Please also note that Parkmerced shall assume responsibility, at its sole cost, for moving your possessions from your Existing Unit to the Replacement Unit. Neither Parkmerced nor the movers that it hires shall be responsible for the loss, damage, or destruction of any personal property during the move. In addition, neither Parkmerced nor the movers shall be responsible for packing or unpacking your possessions into or out of the moving boxes and containers. Moving boxes and containers shall be made available in the lobby of your building seven (7) days prior to the moving date and shall be picked up from your Replacement Unit within fourteen (14) days after your move. Parkmerced shall pay for any utility hook-up fees or charges incurred by you, including cable TV and internet service initiation fees to the extent you had these utilities in your current residence. KEEP IN MIND THAT PARKMERCED IS PAYING THESE COSTS ONLY—NO OTHER TENANT RELOCATION OR MOVING EXPENSES SHALL BE PAID TO YOU, INCLUDING LOSS WAGES, YOUR TIME, OR RELOCATION BENEFITS.

Attachments: None.

Deliver to: (1) all Existing Tenants who submitted a Replacement Unit Acceptance Notice (to Parkmerced unit and any other notice address listed in the lease); (2) Rent Board.

Deliver via: Certified U.S. Mail

NOTICE OF DEMOLITION PERMIT

TO PARKMERCED RESIDENTS:

As you know, Parkmerced is in the process of redeveloping the Parkmerced site in accordance with a development agreement between Parkmerced and the City and County of San Francisco (the "Development Agreement"). You may have seen or heard about this exciting project that will provide new housing for the community, while protecting the Existing Tenants. In addition, you have likely seen the recent construction work on the new building located at [_____] *[insert address of building to which Relocating Tenants will relocate]* (the "Replacement Building").

Please note that Parkmerced is applying for a permit to demolish the building located at [_____] *[insert address of building for which demolition permit sought]* (the "To-Be-Replaced Building"). Tenants who have elected to relocate to the Replacement Building will be contacted separately regarding relocation. Tenants who have elected to remain in the To-Be-Replaced Building will be notified at least sixty (60) days prior to the date when they must permanently vacate their unit in preparation for the demolition.

At this time, you are not required to take any action. To find out more about the project, please contact:

Thank you.

Attachments: None.
Distribute to: (1) All residents of the To-Be-Replaced Building; (2) All applicable residents' associations
Distribute via: Certified U.S. Mail.

NOTICE TO TERMINATE TENANCY

San Francisco Administrative Code Section 37.9(a)(15)

In the event that an Existing or a New Tenant opts to stay in the unit up until the time that Developer elects to vacate the building in preparation for demolition, they will be served with a Notice to Terminate Tenancy that comports with the applicable law at the time of termination.

NEW TENANT LEASE ADDENDUM

Owner is in the process of redeveloping the property where the Premises is located. Owner has entered into a development agreement with the City and County of San Francisco, known as the "Development Agreement By and Between the City and County of San Francisco and Parkmerced Investors, LLC Relative to the Development Known as the Parkmerced Development Project" (the "Agreement").

The Agreement allows for the building containing the Premises to be demolished. The expected date for demolition is _____ *[insert anticipated demolition date]*. A new, replacement building will be built elsewhere on the property prior to the demolition of the Premises.

Please note that, due to the scheduled demolition of the building containing the Premises, your tenancy will terminate on or around _____ *[insert date on which tenants will be required to vacate prior to demolition]*. However, you will be given an official 60-day notice to terminate *at least* sixty (60) days before this date. Under the San Francisco Rent Ordinance, Section 37.9(a)(15) of the San Francisco Administrative Code, a landlord may terminate a tenancy pursuant to a development agreement, such as the Agreement.

Some tenants in your building will be given the right to relocate to the new replacement building at their same rent, and others will be paid relocation payments as required by the Agreement. However, because your tenancy began after the "Existing Tenant Notification" was delivered and the relocation process began, you will not receive any of these benefits. <u>To that end, you will have no right to relocate to the new building, and you will receive no relocation or moving costs when your tenancy terminates</u>. (If you desire to live in the new building under the terms of a new lease and new rent, you may submit an application to Parkmerced at the appropriate time.) You are being provided with this disclosure before your tenancy begins, and you may choose not to sign the Residential Tenancy Agreement if these terms and conditions are not acceptable to you.

By signing this addendum, you agree to vacate pursuant to the 60-day termination notice that will be served upon you at least sixty (60) days before the stated tenancy termination date. You agree that you are not entitled to any relocation money, moving costs, or any other compensation, including rent abatement. Rent shall be due for each day of occupancy, and pro-rated on a daily basis should the termination date not coincide with the last day of the month.

You may want to consult with an attorney and/or the San Francisco Residential Rent Stabilization and Arbitration Board before signing this addendum.

ACCEPTED AND AGREED TO BY:

_____	_____
Owner	Tenant

Exhibit S

Transit Subsidy Program