



AGENDA ITEM
Public Utilities Commission
City and County of San Francisco



DEPARTMENT Real Estate Services Division AGENDA NO. 10
MEETING DATE June 23, 2020

**Real Estate Purchase and Sale Agreement
and related Transaction Documents:** Regular Calendar
Deputy General Manager: Michael Carlin

Summary of Proposed Commission Action:	Adopt a finding declaring as surplus to its utility needs, approximately 16 acres of property (Property) owned by the City and County of San Francisco (City), under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), in San Francisco, California, commonly known as the Balboa Reservoir (portion of Assessor's Block 3180, Lot 190); Consent to the Balboa Reservoir Development Agreement with Reservoir Community Partners, LLC (Developer); Adopt findings pursuant to the California Environmental Quality Act (CEQA) and a Mitigation and Monitoring and Reporting Program (MMRP); Approve the terms and conditions of and recommend to the Board of Supervisors the authorization of the General Manager to sign: (i) an Agreement for Sale of Real Estate relating to the Property to the Developer for \$11,400,000; (ii) a Recognition Agreement recognizing performance, cure, and reassignment rights between the master co-developers of the project; (iii) a Promissory Note and a Deed of Trust securing complete payment of the purchase price; (iv) a Declaration of Restrictions to be recorded against City property allowing a portion of such property to be used as dedicated public right-of-way for the planned extension of Lee Avenue, and (v) a 20-year Open Space License with the Developer for use of an approximately 44,431 square-foot area south of the Property with either (i) a \$112,000 lump-sum use fee payable at the commencement of the License term or (ii) an annual use fee in the initial amount of \$32,380 commencing after the tenth year of the term, with 4% annual use fee increases; and Approve the terms and conditions of, and recommend to the Board of Supervisors the authorization of City's Director of Property to sign, an Amended and Restated Access Easement Agreement and Deed with City College.
Background:	City, under the jurisdiction of the SFPUC, owns the approximately 17.6-acre Balboa Reservoir, located immediately west of City College of San Francisco's Ocean Avenue Campus (City College), south of Archbishop Riordan High School, east of the Westwood Park neighborhood, and north

APPROVAL: _____

COMMISSION
SECRETARY

Donna Hood

	<p>of the Avalon Ocean Avenue apartments.</p> <p>The SFPUC originally constructed the Balboa Reservoir in 1957 for water storage but never used the site for its intended water storage purpose. In 2012, after a series of land transfers between various public agencies, the original Balboa Reservoir was reconfigured from the SFPUC's original land holdings into its current configuration. A portion of the Balboa Reservoir is licensed to City College for overflow student parking, and a portion is licensed to the San Francisco Municipal Transportation Agency for passenger vehicle parking.</p> <p>In March of 2015, the Board of Supervisors established the Balboa Reservoir Community Advisory Committee (BRCAC) to advise the Board of Supervisors, the Mayor, and City departments, and to provide a regular venue for interested community stakeholders and the general public to discuss any proposed development at the Balboa Reservoir.</p> <p>After extensive community outreach, the issuance of first a Request for Qualifications and then a Request for Proposals to solicit developers interested in acquiring the Balboa Reservoir to build housing and open space, in August of 2017 a selection panel including representatives from the City, City College, and the BRCAC selected the development team consisting of a joint venture comprised of the master co-developers, AvalonBay Communities and Bridge Housing (collectively, the Developer), with Mission Housing, Pacific Union Development Company, and Habitat for Humanity of Greater San Francisco participating on the development team.</p> <p>On November 14, 2017 by Resolution No. 17-0225, this Commission approved an Exclusive Negotiating Agreement (ENA) between City, through the SFPUC, and the Developer. The ENA authorized the parties to negotiate the terms and conditions for development and sale of the Balboa Reservoir.</p> <p>The parties have now negotiated a Development Agreement, which provides for the development of the Property with an anticipated 1,100 units of much needed housing, including 550 affordable housing units. The development project includes approximately 1,000 units of mixed-income multi-family rental residential housing, for-sale residential units, ground-floor community space, privately owned and publicly accessible open space, parking garages, and a child-care facility (Project).</p> <p>Since this Commission authorized the ENA, the parties have negotiated several transaction documents related to the sale and development of the Property. SFPUC staff seeks the Commission's consent to the Development Agreement, and approval of the terms and conditions of, and recommendation to the Board of Supervisors for approval of, (i) the Agreement for Sale of Real Estate (PSA); (ii) the Promissory Note; (iii) the Deed of Trust; (iv) the Recognition Agreement; (v) the Open Space License; (v) a Declaration of Restrictions (Declaration); and (vi) the Amended and Restated Access Easement Agreement and Deed (together, the SFPUC Transaction Documents). The forms of Promissory Note, Deed of Trust, Recognition Agreement, Open Space License and Amended and Restated</p>
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	<p>Access Easement Agreement and Deed (Access Easement) to which the parties have agreed are attached as exhibits to the PSA. The SFPUC Transaction Documents are subject to approval by the Board of Supervisors and the Mayor.</p> <p>In 2015, SFPUC executive management determined that the Balboa Reservoir was inessential to the SFPUC's utility needs. In February 2016, the SFPUC completed all noticing and other requirements of the State Surplus Lands Act. On January 1, 2020, new amendments to the State Surplus Lands Act under Assembly Bill 1486 took effect that imposed additional requirements on some projects but exclude from those requirements dispositions that have an existing exclusive negotiating agreement and will be conveyed by December 31, 2022. Because the City entered into the ENA in December of 2017 and the conveyance of the Balboa Reservoir will be completed by December 30, 2022, the 2020 amendments do not apply to the proposed transaction.</p> <p>Request to Adopt CEQA Findings</p> <p>On May 28, 2020, by Motion No. 20730, the Planning Commission certified the Balboa Reservoir Final Subsequent Environmental Impact Report (FSEIR) in accordance with the CEQA Public Resources Code sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Reg. sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code. On that same day, by Motion No. 20731, the Planning Commission adopted CEQA Findings, including the rejection of alternatives, a statement of overriding considerations, and a mitigation monitoring and reporting program for the Project. The actions before the SFPUC are within the scope of the FSEIR and fully addressed in the CEQA Findings. The SFPUC will adopt the Planning Commission CEQA Findings as its own.</p> <p>Request for Consent to the Development Agreement</p> <p>The Project will be constructed pursuant to the Development Agreement between the Developer and City. Similar to other large-scale, multi-phase projects with development agreements, the Development Agreement will provide the Developer with vested development rights for the Project in exchange for delivery of substantial public benefits. Public benefits include the following:</p> <ul style="list-style-type: none">• Fifty percent (50%) of the Project residential units, or approximately 550 units, will be affordable to low- and moderate-income households, including approximately 150 units of affordable educator housing;• Approximately four acres of open space will be constructed, operated and maintained by the Developer;• A 100-seat childcare facility and a community room;• The Developer will undertake workforce development activities in the Project construction, including Local Hire for Construction, Local Business Enterprise, First Source Hiring, and City prevailing wage rates.
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- 550 parking spaces for use by residents and up to 450 parking spaces for use by the general public; and
- New streets, sidewalks, sewer, power and water infrastructure, including an auxiliary water supply system, and bicycle and pedestrian facilities.

Request for Approval of Purchase and Sale Agreement

The City, through the SFPUC, and the Developer have negotiated the terms and conditions of a written Agreement for Sale of Real Estate (**PSA**). If this Commission and the Board of Supervisors approve the PSA, the Developer will purchase the Property from the City for \$11,400,000 by December 30, 2022. The purchase price is supported by a MAI appraisal dated June 2020, from Clifford Advisory, LLC, which finds that the fair market value of the Property is \$11,400,000.

The PSA provides that close of escrow on the Developer's purchase of the Property may be extended for the duration of litigation regarding the Project approvals, but in no event later than December 30, 2022. The Developer will pay to the SFPUC: (i) a non-refundable initial payment of \$500,000; and (ii) subsequent annual \$400,000 cash deposits prior to close of escrow. At the close of escrow, the Developer will either pay the balance of the purchase price to the City or will elect to have the City provide carry-back financing on that amount, in which case the Developer will pay to the City (i) annual post-closing loan payments between the close of escrow and December 31, 2028 pursuant to a promissory note secured by a first-lien deed of trust on the Property; (ii) a balloon payment in 2026; (iii) interest at a three percent annual rate on the unpaid balance of the loan; and (iv) a final balloon payment on December 31, 2028 of the unpaid balance of the loan. The Developer may pre-pay the loan balance at any time.

The Developer's obligation to make pre-closing deposits under the PSA (other than the Initial Payment) will be tolled on a day-by-day basis during litigation regarding the Project approvals, which is subject to the streamlined litigation period of Section 21185 of the California Public Resources Code, over any challenge under CEQA.

Request for Approval of Recognition Agreement

City, through the SFPUC, and the Developer negotiated the terms and conditions of a Recognition Agreement, which provides for the SFPUC's recognition of performance, cure, and reassignment rights between the master co-developers of the Project and which is an attachment to the PSA. The Recognition Agreement also recognizes certain reassignment rights between the co-developer entities so long as such assignments are made in accordance with the PSA and concurrently with an approved assignment of the Development Agreement. In addition, the Recognition Agreement sets the parameters for SFPUC approval of any other assignments made necessary due to a default under the joint development agreement between the master co-developers of the Project.

Request for Approval of Open Space License

Along the southern boundary of the Balboa Reservoir, north of Ocean

	<p>Avenue, is an 80-foot-wide approximately one-acre parcel of land under the jurisdiction of the SFPUC, with surface appurtenances and a subsurface SFPUC water transmission facility (Retained Fee). The Retained Fee, a vacant parcel except for utility appurtenances, is excluded from the sale of the Property under the PSA. The City will continue to own the Retained Fee under the SFPUC's jurisdiction. The Retained Fee has little or no economic value other than as a utility right of way.</p> <p>In connection with the Project, the City, through the SFPUC, will license to Developer for 20 years an approximate 44,431 square-foot portion of the Retained Fee to be developed by the Developer and used as open public space. The Retained Fee will continue to be occupied by SFPUC utility appurtenances, and a small remaining portion of the Retained Fee will be occupied by the planned extension of Lee Avenue where it crosses the Retained Fee, which will be accomplished through the recordation of a Declaration of Restrictions.</p> <p>Prior to the start of the Open Space License term, the Developer will assign the proposed Open Space License to a non-profit entity approved by the City who will operate and maintain the open space for public use. No later than December 31, 2024, the 20-year License Term will commence, during which the licensee will install and maintain public open space improvements for the Project and the general public, at no cost to the City or the SFPUC. The Open Space License contains the SFPUC's standard protections for the underlying pipeline, any future pipelines and the SFPUC's continued use of the property as a utility corridor. Installation of the improvements on the license area is not expected until the last phase of development.</p> <p>The Developer may elect to either (i) at the time the license term commences, pay a use fee as a lump sum of \$112,000 for the entire license term, or (2) make annual payments commencing in year 11 of the license term of \$32,380 per year, with a 4% annual increase for the remainder of the term. The parties have agreed that the license use fee will not commence until year 11 of the license term because the open space improvements will not be installed until the Project is substantially complete and a certificate of occupancy is issued for the last market rate building on the Property. The use fee amounts set forth above reflects a 50% discount off the fair market rental value. A fair market rental MAI appraisal of the licensed area was performed by Clifford Advisory, LLC in June 2020. The fee reduction is in recognition that the licensee will be a non-profit organization, and by maintaining the open space for the benefit of the public, the non-profit licensee will provide an important community benefit and further a proper public purpose. In addition, the licensee's use benefits the SFPUC's primary utility purpose under Section 5.3.2 of the 2015 Real Estate Guidelines by relieving the SFPUC of the costs of maintaining and securing the license area and by providing a means for the SFPUC to require the licensee to install and maintain educational signage on the license area relating to the water system and the important role of the transportation of water supply.</p> <p>The City, through the SFPUC, may terminate the Open Space License if (i) the City's legislative approval of the Project does not occur by June 30, 2021, (ii) if escrow on the Developer's purchase of the Property does not</p>
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	<p>close by December 30, 2022, or (iii) after an uncured Developer default.</p> <p>Request for Approval of the Promissory Note and the Deed of Trust</p> <p>The Developer may elect to have the City, acting by and through the SFPUC, provide seller carry-back financing, commencing on the closing of the sale of the Property. The City's loan would be evidenced by a promissory note and secured by a first lien priority deed of trust on the Property. The loan would accrue interest at three percent per annum. Annual post-closing loan payments between the closing and December 31, 2028 would be required, together with a balloon payment in 2026 and a final balloon payment on December 31, 2028. Upon repayment of one half of the purchase price, the City would release the lien of the deed of trust from the Phase 1 area of the Project, but the deed of trust would continue to be a first priority lien on the Phase 2 area of the Project. Complete payment of the loan would be required by December 31, 2028, and the loan would be pre-payable at any time.</p> <p>Request for Approval of an Amended and Restated Access Easement Agreement and Deed</p> <p>The Balboa Reservoir is currently subject to an Access Easement Agreement between City and City College (Original Easement). The Original Easement contemplated that City College would construct and maintain an Accessway on the Balboa Reservoir. City College has not yet constructed the Accessway as required by the Original Easement.</p> <p>To develop the Project, the Original Access Easement Area must be widened, and a public street must be constructed to City standards on the widened area. Therefore, the easement areas described in the Original Easement would be modified by the Amended and Restated Access Easement Agreement and Deed (Amended Easement) to include additional land, resulting in the Revised Easement Area.</p> <p>The Amended Easement provides that, in exchange for conveyance in fee of the Revised Easement Area from City College to the City, the City will relieve City College of its obligation to construct the Accessway to current City standards as required by the Original Easement, and if the Project is developed, then the Developer will assume the obligation to construct the Accessway in accordance with the Development Agreement and Master Infrastructure Plan relating to the Project. In addition, City College is relieved of liability associated with its construction of encroaching infrastructure utility facilities on the City's property. The Developer will construct the Accessway in accordance with the Amended Easement.</p> <p>Request for Approval of Declaration of Restriction</p> <p>Finally, SFPUC seeks Commission approval to record a Declaration of Restrictions (Declaration) on the Retained Fee which would allow a portion of the Retained Fee area to be used as dedicated public right-of-way for the planned extension of Lee Avenue where it crosses the Retained Fee. After the Board of Supervisors dedicates Lee Avenue as a public street and accepts it for City maintenance and liability, this portion of the Retained Fee would be treated similarly to any dedicated public street. The SFPUC would</p>
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	retain its right to use and maintain the SFPUC facilities in the street in the same manner as it does throughout the City for other dedicated public rights of way.
Environmental Review:	<p>On May 28, 2020, in Motion No. 20730, the Planning Commission certified the Final Subsequent Environmental Impact Report (FEIR) for the Balboa Reservoir Project (Case No 2018-007883ENV). On that same date, in Motion No. 20731, the Planning Commission adopted California Environmental Quality Act (CEQA) Findings, a Statement of Overriding Considerations, and a Mitigation, Monitoring, and Reporting Program (MMRP). The SFPUC, as a reviewing agency under CEQA, must adopt CEQA findings in considering approval of the Development Agreement.</p> <p>The FEIR is available for review at the Planning Department at 1650 Mission Street, San Francisco, CA 94103 and at http://ab900balboa.com. The Planning Commission Motions are attached to this agenda.</p>
Result of Inaction:	A delay in adopting the attached resolution will delay conveyance of the Property, potentially preventing the development of sorely needed housing on the Property and prevent or delay the SFPUC's receipt of revenue from the sale of the Property for the Water Enterprise's Fund Balance. The Fund Balance supports the Water Enterprise's core mission and provides reserves required under the debt (bonds) indenture.
Budget & Costs:	<p>The Developer will pay \$11,400,000 for the Property to the SFPUC, and pay any prorated assessments, and other charges as of the date of sale, plus escrow fees, recording costs, and other closing costs.</p> <p>For use of a portion of the Retained Fee under the Open Space License, the licensee will either make annual use fee payments starting in year 11 of the license term with an annual payment of \$32,380, which amount will increase by 4% every year thereafter, or make a one-time payment at the commencement of the license term of \$112,000.</p>

Description of Agreement for Sale of Real Estate for the Balboa Reservoir:	Parties to Agreement:	City, acting through the SFPUC, and Reservoir Community Partners LLC
	Purchase Price:	\$11,400,000
	Purpose:	Sale of approximately 16 acres of real property
	Location:	A portion of Assessor's Block 3180, Lot 190 (designated by the SFPUC as the Balboa Reservoir) located near Ocean Avenue and Frida Kahlo Way in San Francisco, California
	Agreement Effective Date:	The first date on which all of the following have been completed: (a) completion of all environmental/CEQA review and the granting of all approvals as required by applicable law;

		(b) occurrence of the Effective Date of the Development Agreement for the Balboa Reservoir Project; (c) approval of the PSA by this Commission, City's Board of Supervisors and Mayor; and (d) execution and delivery of the PSA (collectively, Approvals).
	Closing Date:	No later than December 30, 2022.
Description of the Promissory Note and Deed of Trust for the Balboa Reservoir:	Parties to Promissory Note and Deed of Trust:	City, acting through the SFPUC, and Reservoir Community Partners LLC or its assignee
	Purpose:	Secure payment of the entire purchase price for the Property
	Interest Rate	Three percent annual interest on the unpaid balance of the loan
	Loan Commencement Date:	Date of close of escrow on the sale of the Property
	Loan Maturity Date:	December 31, 2028
Description of the Open Space License:	Parties to Open Space License:	City, acting through the SFPUC, and Reservoir Community Partners, LLC. Prior to the commencement of the license term, the Developer will assign the license to a non-profit entity approved by the City.
	Term:	20 years, subject to the SFPUC's right to terminate if the City's legislative approval of the Project does not occur by June 30, 2021, escrow on the sale of the Balboa Reservoir does not close by December 30, 2022, or after an uncured Developer default.
	Use Fee:	Either annual use fee payments starting in year 11 of the license term with an annual payment of \$32,380, which amount will increase by 4% every year thereafter, or a pre-payment in one lump sum payment of \$112,000 on the Commencement Date.
	Purpose:	Installation and maintenance of open space improvements
	Location:	Approximately 44,431 square feet of the Retained Fee, being a portion of Assessor's Block 3180, Lot 190
	Effective Date:	Upon receipt of the Approvals defined above.
	Commencement Date:	No later than December 31, 2024.

Description of Amended and Restated Easement Agreement and Deed A:	Parties to Amended and Restated Easement Agreement and Deed:	City and County of San Francisco and City College
	Purpose:	Reconfigure property rights between the City and City College so that a widened accessway can be finished through the Property.
	Location:	A portion of Assessor's Block 3180, Lot 190 in San Francisco, California
Description of Declaration of Restrictions	Parties to Declaration of Restrictions:	SFPUC
	Purpose:	Restrict a portion of the Retained Fee area to be used as dedicated public right-of-way for purposes of constructing and subsequent use where the planned Lee Avenue extension crosses the Retained Fee.
	Location:	A portion of Assessor's Block 3180, Lot 190 in San Francisco, California
Attachments:	1. Consent to Development Agreement 2. Link to Development Agreement: https://sfpuc.sharefile.com/d-s70db1ca59124012b 3. Planning Commission Motion No. 20730 4. Planning Commission Motion No. 20731 5. Agreement for Sale of Real Estate, which includes as exhibits the Recognition Agreement, Promissory Note, Deed of Trust, Open Space License and Amended and Restated Easement Agreement and Deed 6. Declaration of Restrictions	

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. _____

WHEREAS, The City and County of San Francisco (City) owns approximately 17.6 acres of real property under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) near Frida Kahlo Way and Ocean Avenue, commonly known as the Balboa Reservoir; and

WHEREAS, The SFPUC originally constructed the Balboa Reservoir in 1957 for water storage, but it was never used for its intended water storage purpose. In 2012, after a series of land transfers between various public agencies, the original Balboa Reservoir was reconfigured into its current configuration, and the SFPUC has jurisdiction over the approximately 17.6 acres west of City College of San Francisco (City College) Ocean Avenue campus; and

WHEREAS, In March of 2015, the Board of Supervisors established the Balboa Reservoir Community Advisory Committee (BRCAC) to advise the Board of Supervisors, the Mayor, and City departments, to provide a regular venue for interested community stakeholders and the general public to discuss any proposed development at the Balboa Reservoir; and

WHEREAS, In February 2016, the SFPUC completed all noticing and other requirements under the California Government Code Section 54220 et seq. (State Surplus Lands Act); and

WHEREAS, In November of 2016, following nearly two years of community outreach, the SFPUC initiated the developer selection process by issuing a request for qualifications to solicit developers interested in acquiring the Balboa Reservoir site to build mixed income housing and develop open space. The three top-scoring teams were subsequently invited to respond to a request for proposals (RFP). The selected developer teams for the RFP submitted their final proposals and presented their proposals to the community in June of 2017. In August of 2017, a panel including representatives from the City, City College and the BRCAC selected a development team for the project; and

WHEREAS, On November 14, 2017, by Resolution No. 17-0225, this Commission approved an Exclusive Negotiating Agreement (ENA) between City, through the SFPUC, and the Developer, a joint venture comprised of AvalonBay Communities and Bridge Housing as co-master developers, with Mission Housing, Pacific Union Development Company, and Habitat for Humanity of Greater San Francisco participating on the development team. The ENA authorized the parties to negotiate the terms and conditions for the development and sale of the Balboa Reservoir; and

WHEREAS, The Developer seeks to purchase approximately 16 acres of the Balboa Reservoir (the Property) and to develop the Property with approximately 1,100 units of much needed housing including fifty percent (50%), or 550 homes, as affordable housing units. Thirty three percent (33%) of the housing will be made affordable by the Developer at the Developer's cost, and the remaining seventeen percent (17%) will be subsidized by City with non-SFPUC sources of funds. The development project includes approximately 1,000 units of multi-family rental residential housing, approximately 100 for-sale residential units, ground-floor community

space, approximately 4 acres of privately owned and publicly accessible open space, parking garages, and a child-care facility (the Project); and

WHEREAS, The Project includes affordable housing that exceeds the requirements of the Planning Code for inclusionary affordable housing and is in keeping with the goals of the Public Land for Housing Initiative established by Mayor Ed Lee, and with voter approved Proposition K in 2015; and

WHEREAS, The Project includes extensive investments in public infrastructure, including new water distribution, auxiliary water supply facilities, stormwater management improvements, sanitary sewer systems, power facilities, and street lighting that the City will accept, at no cost to the City, upon completion; and

WHEREAS, Under the ENA, the parties have negotiated several transaction documents for the sale and development of the Property, including a development agreement that provides the Developer with vested development rights for the Project in exchange for substantial public benefits (Development Agreement). Pursuant to the Development Agreement, the Project will be subject to specified ordinances, regulations, rules and policies governing the design, construction, fees and exactions, use or other aspects of the Project; and

WHEREAS, The parties have also negotiated an Agreement for Sale of Real Estate (PSA) for the SFPUC to sell the Property to the Developer for \$11,400,000. In June 2020, a MAI appraiser appraised the fair market value of the Property at \$11,400,000; and

WHEREAS, Under the PSA, the closing date will occur no later than December 31, 2022, and the Developer will pay to the SFPUC: (i) a non-refundable Initial Payment of \$500,000 upon City's execution of the PSA; (ii) annual pre-closing deposits of \$400,000; and (iii) annual interest at the rate of three percent on the unpaid balance of the purchase price; and

WHEREAS, Under the PSA, the Developer may elect to have the City provide carry-back financing on the balance of the purchase price, in which case the Developer will issue a promissory note (Promissory Note) to the City secured by a first-lien deed of trust (Deed of Trust) on the Property. If the Developer elects the carry-back financing, it will pay to the SFPUC: (i) post-closing annual loan payments until December 31, 2028; (ii) a partial balloon payment in 2026; and (ii) annual interest at the rate of three percent on the unpaid balance of the loan until the loan ends, which will be no later than December 31, 2028. Once the Developer has paid the principal balance of the loan down to \$5,700,000, the City will release the lien of its Deed of Trust from the Phase 1 portion of the Property and will retain the lien of the Deed of Trust on the Phase 2 portion of the Property. The Developer may pre-pay the loan in its entirety at any time without penalty; and

WHEREAS, The City, under the SFPUC's jurisdiction, will retain an 80-foot-wide approximately one-acre parcel of land (Retained Fee), with surface appurtenances and a subsurface SFPUC water transmission line, north of Ocean Avenue along the southern boundary of the Balboa Reservoir. SFPUC and the Developer have negotiated a 20-year open space license (Open Space License) for the use of approximately 44,431 square feet of the Retained Fee. The Developer will assign the Open Space License to a non-profit organization before the start of the license term, which shall be no later than December 31, 2024; and

WHEREAS, The Open Space License requires the Developer to use the license area for the installation and maintenance of public open space for the benefit of Project residents and the general public. Because the open space improvements will not be completed until the last phase of the development, the use fee will commence in year 11 of the license term, after construction of the Project has been substantially completed and the open space improvements have been installed in the license area; and

WHEREAS, The use fee for the Open Space License starting in year 11 of the license term will be \$32,380 per year, with 4% annual increases, or the Developer may elect to make an upfront lump sum payment of \$112,000. The fee amount reflects a 50% discount of the appraised fair market rent and such discount is based upon the fact that (1) the license will be assigned to a non-profit entity to operate for public use, (2) the license area has little to no revenue generating potential, (3) the license relieves the SFPUC of the costs of maintaining and securing the license area, and (4) and the license requires the licensee to install and maintain educational signage on the license area to educate users about the Hetch Hetchy Regional Water System and the important role the SFPUC Right-of-Way plays in the SFPUC's transportation of water supply; and

WHEREAS, In 2011, the SFPUC adopted the Community Benefits Program by its Resolution No. 11-0008, which seeks to serve and foster partnership with communities in SFPUC service areas and to ensure public benefits are shared across all communities; and

WHEREAS, The Project will provide an important community benefit to residents in San Francisco and promote a public purpose by creating significant housing and affordable housing, open space, and other public benefits as described in the Development Agreement, which has a 50% affordable housing component; and

WHEREAS, The parties have also negotiated a Recognition Agreement, which provides for the SFPUC's recognition of performance, cure, and reassignment rights between the master co-developers of the Project; and

WHEREAS, To facilitate planned street circulation for the Project, the SFPUC proposes recording a Declaration of Restrictions (Declaration) that will allow a portion of the Retained Fee area to be used as dedicated public right-of-way for purposes of constructing and subsequent use of the planned extension of Lee Avenue where it crosses the Retained Fee; and

WHEREAS, The Balboa Reservoir is subject to a 2012 Access Easement Agreement between City, through the SFPUC, and City College (Original Easement), which contemplated that City College would construct and maintain an Accessway on the Property, and City College has not yet constructed the Accessway as required by the Original Easement; and

WHEREAS, To develop the Project, the Original Access Easement Agreement Area must be widened, and a street must be constructed to City standards on the widened area. Therefore, the parties negotiated an amendment to the Original Easement (Amended Easement); and

WHEREAS, Under the Amended Easement, the City will obtain additional land to widen the Accessway, and in return for conveyance in fee of the revised easement area from City College to City, City will relieve City College of its obligation to construct the Accessway to current City standards as required by the Original Easement; and

WHEREAS, On January 1, 2020, new amendments to the State Surplus Lands Act under Assembly Bill 1486 took effect which imposed additional requirements on some projects but excludes from those requirements properties that have an existing exclusive negotiating agreement and will be conveyed by December 31, 2022. Because City entered into the ENA relating to the Property in December of 2017, and the disposition of the Balboa Reservoir will be completed by December 31, 2022, the additional requirements do not apply to the Project; and

WHEREAS, SFPUC staff recommend that this Commission consent to the Development Agreement and approve the terms and conditions of: (i) the PSA; (ii) the Open Space License; (iii) the Promissory Note; (iv) the Deed of Trust; (v) the Recognition Agreement; (vi) the Declaration; and (vii) the Amended Easement; and recommend approval of all of the foregoing to the Board of Supervisors and the Mayor; and

WHEREAS, On May 28, 2020, in Motion No. 20730, the Planning Commission certified the Balboa Reservoir Final Subsequent Environmental Impact Report (FSEIR) in accordance with the California Environmental Quality Act (CEQA) Public Resources Code sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Reg. sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code. On that same day, in Motion No. 20731, the Planning Commission adopted CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; and

WHEREAS, The Planning Commission Secretary is the custodian of records for the Planning Commission FSEIR materials and related records are available at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103 and at <http://ab900balboa.com>. These records have been made available to the SFPUC and the public for review. These records are incorporated herein by reference; and

WHEREAS, This Commission has reviewed and considered the information contained in the FSEIR, the findings contained in Planning Commission Motion Numbers 20730 and 20731, and all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project; now, therefore, be it

RESOLVED, That this Commission has reviewed and considered the FSEIR and record as a whole, finds that the FSEIR is adequate for its use as the decision-making body for the declaration of surplus property, consent to the Development Agreement, Approval of Purchase and Sale Agreement, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement, the Open Space License, and the Amended Easement, and incorporates the CEQA findings contained in Motion No. 20731, including the Statement of Overriding Considerations and the Mitigation and Monitoring Program as though set forth in this Resolution; and be it

FURTHER RESOLVED, That this Commission further finds that since the FSEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FSEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FSEIR, and be it

FURTHER RESOLVED, That this Commission finds that the Property is surplus to the SFPUC's utility needs and not necessary for the SFPUC's use; and, be it

FURTHER RESOLVED, That this Commission hereby consents to the Development Agreement between City and the Developer substantially in the form and on the terms as outlined in the Development Agreement with respect to the items under the SFPUC's jurisdiction, and authorizes the General Manager to execute the SFPUC Consent to the Development Agreement on behalf of this Commission; and be it

FURTHER RESOLVED, That, subject to appropriation of any necessary funds, this Commission authorizes the SFPUC General Manager, to take any and all steps (including, but not limited to, the execution and delivery of any and all land use approvals, easements, entitlements, permits, agreements, notices, consents, and other instruments or documents) as he or she deems necessary or appropriate, in consultation with the City Attorney, in order to consummate and perform its obligations under the Development Agreement in accordance with this Resolution and legislation by the Board of Supervisors, or otherwise to effectuate the purpose and intent of this Resolution and such legislation; and be it

FURTHER RESOLVED, That, in the event that implementation of the Development Agreement and Infrastructure Plan necessitates the vacation of any streets or easements in which the SFPUC has assets or an ownership interest, the Commission hereby declares such assets to be surplus to its utility needs conditioned upon the Developer's satisfaction of all obligations in the Development Agreement and Infrastructure Plan and subject to SFPUC's receipt of assets or other consideration of equivalent value; and be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager of the SFPUC and/or City's Director of Property to seek approval from the Board of Supervisors of the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; and be it

FURTHER RESOLVED, That subject to and upon approval by City's Board of Supervisors and the Mayor, the General Manager is authorized to execute the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, and the Recognition Agreement in substantially the same forms presented to this Commission, including changes to the documents that may be required by the Board of Supervisors, if any; and, be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the City's Director of Property to execute the Amended Easement; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with the Development Agreement, the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes City's Director of Property and/or the SFPUC General Manager to enter into any amendments or modifications to each of the Development Agreement, the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement,

including without limitation, the exhibits to such documents, that City's Director of Property and/or the SFPUC's General Manager determines, in consultation with the City Attorney, are in the best interest of City; do not materially increase the obligations or liabilities of City; are necessary or advisable to effectuate the purposes and intent of each of the documents or this Resolution; and are in compliance with all applicable laws, including the City Charter; and be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the SFPUC General Manager and/or City's Director of Property to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 23, 2020.

Secretary, Public Utilities Commission

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. Except as otherwise defined in this SFPUC Consent, initially capitalized terms have the meanings given in the Development Agreement to which this SFPUC Consent is attached (as amended from time to time in accordance therewith, the “Development Agreement”).

By executing this SFPUC Consent, the undersigned confirms that the SFPUC, after considering at a duly noticed public hearing the Development Agreement, the Infrastructure Plan, the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, and utility-related Mitigation Measures, consented to:

1. The Development Agreement as it relates to matters under the SFPUC’s jurisdiction, including the Infrastructure Plan and the SFPUC-related Mitigation Measures.
2. Subject to the Developer satisfying the SFPUC’s requirements for construction, operation and maintenance that are consistent with the Applicable Standards and the plans and specifications approved by the SFPUC in accordance with 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.
3. Delegating to the SFPUC General Manager any Later Approvals of the SFPUC under the Development Agreement.

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

By: _____

Harlan L. Kelly, Jr., General Manager



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20730

HEARING DATE: MAY 28, 2020

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Case No.: 2018-007883ENV
Project Title: **Balboa Reservoir Project**
Zoning: P (Public)
40-X and 65-X Height District
Balboa Park Station Plan Area
Block/Lot: Assessor's Block 3180/Lot 190
Project Sponsors: Reservoir Community Partners, LLC
Joe Kirchofer, Avalon Bay Communities
(415) 284-9082 or Joe_Kirchofer@avalonbay.com
Brad Wiblin, Bridge Housing
(415) 321-3565 or bwiblin@bridgehousing.com
Staff Contact: Jeanie Poling
(415) 575-9072 or jeanie.poling@sfgov.org

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED BALBOA RESERVOIR PROJECT. THE SUBSEQUENT EIR EVALUATES TWO DIFFERENT OPTIONS FOR THE SITE'S RESIDENTIAL DENSITY: (1) THE DEVELOPER'S PROPOSED OPTION (1,100 DWELLING UNITS), PROPOSED BY RESERVOIR COMMUNITY PARTNERS LLC; AND (2) THE ADDITIONAL HOUSING OPTION (1,550 DWELLING UNITS), PROPOSED BY THE CITY. OVERALL, THE PROPOSED PROJECT WOULD CONSTRUCT UP TO APPROXIMATELY 1.8 MILLION GROSS SQUARE FEET OF USES, INCLUDING BETWEEN APPROXIMATELY 1.3 AND 1.5 MILLION GROSS SQUARE FEET OF RESIDENTIAL SPACE, APPROXIMATELY 10,000 GROSS SQUARE FEET OF COMMUNITY SPACE, APPROXIMATELY 7,500 GROSS SQUARE FEET OF RETAIL, UP TO 550 RESIDENTIAL PARKING SPACES AND 750 PUBLIC PARKING SPACES IN THE DEVELOPER'S PROPOSED OPTION, AND UP TO 650 RESIDENTIAL PARKING SPACES IN THE ADDITIONAL HOUSING OPTION. THE BUILDINGS WOULD RANGE IN HEIGHT FROM 25 TO 78 FEET IN THE DEVELOPER'S PROPOSED OPTION AND FROM 25 TO 88 FEET IN THE ADDITIONAL HOUSING OPTION.

MOVED, that the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the final subsequent environmental impact report identified as Case No. 2018-0078838ENV, the "Balboa Reservoir Project" (hereinafter "Project"), based upon the following findings:

1. The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin.

Code Title 14, Section 15000 *et seq.*, (hereinafter “CEQA Guidelines”), and Chapter 31 of the San Francisco Administrative Code (hereinafter “Chapter 31”).

- A. The Department determined that an environmental impact report (hereinafter “EIR”) was required and provided public notice of that determination by publication in a newspaper of general circulation on October 10, 2018.
 - B. The Department held a public scoping meeting on October 30, 2018, in order to solicit public comment on the scope of the Project’s environmental review.
 - C. On August 7, 2019, the Department published the draft subsequent environmental impact report (hereinafter “DSEIR”) and provided public notice in a newspaper of general circulation of the availability of the DSEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DSEIR; this notice was mailed to the Department’s list of persons requesting such notice.
 - D. Notices of availability of the DSEIR and of the date and time of the public hearing were posted near the project site on August 7, 2019.
 - E. On August 7, 2019, copies of the DSEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DSEIR, and to government agencies, the latter both directly and through the State Clearinghouse.
 - F. A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on August 7, 2019.
2. The Commission held a duly advertised public hearing on said DSEIR on September 12, 2019, at which opportunity for public comment was given, and public comment was received on the DSEIR. The period for acceptance of written comments ended on September 23, 2019.
 3. The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 47-day public review period for the DSEIR, prepared revisions to the text of the DSEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DSEIR. This material was presented in a responses to comments (RTC) document published on April 29, 2020 and distributed to the Commission; other boards, commissions and departments that will carry out or approve the project; and all parties who commented on the DSEIR. The RTC document was also made available to others upon request.
 4. A final subsequent environmental impact report (hereinafter “FSEIR”) has been prepared by the Department, consisting of the DSEIR, any consultations and comments received during the review process, any additional information that became available, and the RTC document, all as required by law.

5. Project EIR files have been made available for review by the Commission and the public. These files are available for public review at <http://ab900balboa.com/>, and are part of the record before the Commission.
6. On May 28, 2020, the Commission reviewed and considered the information contained in the FSEIR and hereby does find that the contents of said report and the procedures through which the FSEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code.
7. The Planning Commission hereby does find that the FSEIR concerning File No. 2018-007883ENV reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate, and objective, and that the RTC document contains no significant revisions to the DSEIR that would require recirculation of the document pursuant to CEQA Guideline section 15088.5, and hereby does CERTIFY THE COMPLETION of said FSEIR in compliance with CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.
8. The Commission, in certifying the completion of said FSEIR, hereby does find that the Project described in the FSEIR would have the following significant unavoidable environmental impacts, which cannot be mitigated to a level of insignificance:
 - A. **TR-6b:** Operation of the proposed project, including proposed street network changes, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit.
 - B. **C-TR-4:** The proposed project, in combination with reasonably foreseeable future projects, may result in a potentially significant cumulative impact related to public transit delay and the project could contribute considerably.
 - C. **C-TR-6b:** Operation of the proposed project, including proposed street network changes, in combination with reasonably foreseeable future projects, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit.
 - D. **NO-1:** Project construction would cause a substantial temporary or periodic increase in ambient noise levels at noise-sensitive receptors above levels existing without the project.
 - E. **C-NO-1:** Cumulative construction of the proposed project, in combination with construction of reasonably foreseeable future projects, could cause a substantial temporary or periodic increase in ambient noise levels.
 - F. **AQ-2a:** During construction, the proposed project would generate criteria air pollutants which would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.

- G. **AQ-4:** Construction and operation of the proposed project would generate toxic air contaminants, including DPM, which could expose sensitive receptors to substantial pollutant concentrations.
 - H. **C-AQ-1:** The proposed project, in combination with reasonably foreseeable future projects, would contribute to cumulative regional air quality
 - I. **C-AQ-2:** The proposed project, in combination with reasonably foreseeable future projects, could contribute to cumulative health risk impacts on sensitive receptors.
9. The Commission reviewed and considered the information contained in the FSEIR prior to approving the Project.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting May 28, 2020.



Jonas P. Ionin
Commission Secretary

AYES: Koppel, Moore, Chan, Diamond, Fung, Imperial, Johnson
NOES: None
ABSENT: None
ADOPTED: May 28, 2020



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 20731

HEARING DATE: MAY 28, 2020

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Case No.: 2018-007883ENV
Project Title: **Balboa Reservoir Project**
Zoning: P (Public)
40-X and 65-X Height District
Balboa Park Station Plan Area
Block/Lot: Assessor's Block 3180/Lot 190
Project Sponsors: Reservoir Community Partners, LLC
Joe Kirchofer, Avalon Bay Communities
(415) 284-9082 or Joe_Kirchofer@avalonbay.com
Brad Wiblin, Bridge Housing
(415) 321-3565 or bwiblin@bridgehousing.com
Staff Contact: Seung Yen Hong
(415) 575-9026 or seungyen.hong@sfgov.org

ADOPTING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") AND THE CEQA GUIDELINES INCLUDING FINDINGS OF FACT, FINDINGS REGARDING SIGNIFICANT AND UNAVOIDABLE IMPACTS, EVALUATION OF MITIGATION MEASURES AND ALTERNATIVES, THE ADOPTION OF A MITIGATION, MONITORING AND REPORTING PROGRAM AND THE ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS IN CONNECTION WITH APPROVALS FOR THE BALBOA RESERVOIR PROJECT.

PREAMBLE

The Balboa Reservoir project site is a 17.6-acre rectangular parcel and encompasses Assessor's Block 3180/Lot 190. The site is bounded by City College to the east, Archbishop Riordan High School to the north, the Westwood Park neighborhood to the west, and mixed-use multifamily residential development along Ocean Avenue to the south. The site is less than 0.25 mile north of Ocean Avenue, the primary retail corridor in the Ingleside-Westwood Park neighborhood. The project site is within a P (Public) District and located in 40-X and 65-A Height and Bulk Districts. The project site is within the central portion of the Balboa Park Station Plan Area. The City adopted the area plan in 2009, but the City did not rezone the site as part of plan adoption.

The project site is bounded on three sides by sloping western, northern, and eastern edges that surround a sunken paved surface at the center. It is bounded on the southern side by mixed-use development along Ocean Avenue. An approximately 30-foot-tall earthen berm is located at the western edge of the property. The asphalt-paved surface is relatively level with a slope of 0 to 5 percent, sloping gently up from west to east. There is an approximately 18- and 30-foot increase in elevation between the project site bottom and the top of the eastern and northern slopes, respectively. Along the southern boundary of the site is an 80-foot-wide section of the parcel where a high-pressure underground pipeline maintained by the SFPUC is located

(SFPUC right-of-way). The site does not contain any permanent structures and currently contains 1,007 surface vehicular parking spaces. The lot provides overflow vehicular parking for City College students, faculty, and staff. A cargo storage container is located on the west side of the site, at the foot of the berm slope. The parking lot is entirely paved with no vegetation. The western and northern slopes contain scattered trees and shrubs, with paved pathways along the tops of these slopes. Paved walkways, stairs, vegetation, and lighting are located on the eastern slope, providing pedestrian connections between the project site and adjacent City College property containing parking and the College's Multi-Use Building.

The Project is analyzed as the "Developer's Proposed Option" in the Balboa Reservoir Final Subsequent Environmental Impact Report (hereafter, "FSEIR"), except that the height limit of the easternmost 58 feet of Blocks TH1, TH2 and H is 48 feet, as analyzed in the Additional Housing Option in the FSEIR, rather than 35 feet as analyzed in the Developer's Proposed Option. There would be no additional units associated with this change in height limit. The Project would rezone the site and establish development controls for the development of mixed-income housing, open space, community facilities, small retail, parking, streets, and other infrastructure. The project would include amendments to the General Plan and the Planning Code, and would create a new Balboa Reservoir Special Use District ("SUD"). The special use district would establish land use zoning controls and incorporate design standards and guidelines for the site. The Zoning Map would be amended to show changes from the current use district (P [Public]) to the proposed special use district, except for the SFPUC Right-of-Way which would remain in the P district. The existing height limits of 40 to 65 feet would be modified to varying heights up to 78 feet, as measured by the Planning Code. The Project would include new publicly accessible open space, transportation and circulation changes, and new utilities and other infrastructure. Transportation and circulation changes would include the extension of the existing north-south Lee Avenue across the site and a new internal street network. The project would include a roadway network to be accessible for people walking, including people with disabilities, bicycling, and driving.

The Project would include up to 1.64 million gross square feet in new construction on 10 Blocks and provide approximately 1,100 residential units totaling about 1.3 million gross square feet. A total of up to 50 percent of the new units would be designated affordable to low- and moderate-income households and would include up to 150 units restricted to occupancy by educator households. The Project would contain approximately 10,000 gross square feet of childcare and community space, approximately 7,500 gross square feet of retail space, approximately 550 off-street residential parking spaces and up to 450 off-street public parking spaces for use by the public.

The Planning Department determined that a subsequent environmental impact report (hereinafter "SEIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on October 10, 2018.

The Department held a public scoping meeting on October 30, 2018, in order to solicit public comment on the scope of the Project's environmental review.

On August 7, 2019, the Department published the draft subsequent environmental impact report (hereinafter "DSEIR") and provided public notice in a newspaper of general circulation of the availability

of the DSEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DSEIR; this notice was mailed to the Department's list of persons requesting such notice.

Notices of availability of the DSEIR and of the date and time of the public hearing were posted near the project site on August 7, 2019.

On August 7, 2019, copies of the DSEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DSEIR, and to government agencies, the latter both directly and through the State Clearinghouse.

A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on August 7, 2019.

The Commission held a duly advertised public hearing on said DSEIR on September 12, 2019, at which opportunity for public comment was given, and public comment was received on the DSEIR. The period for acceptance of written comments ended on September 23, 2019.

The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 47-day public review period for the DSEIR, prepared revisions to the text of the DSEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DSEIR. This material was presented in a responses to comments (RTC) document published on April 29, 2020, and distributed to the Commission, other boards, commissions, and departments that will carry out or approve the project, and all parties who commented on the DSEIR. The RTC document was also made available to others upon request.

A FSEIR has been prepared by the Department, consisting of the DSEIR, any consultations and comments received during the review process, any additional information that became available, and the RTC document, all as required by law.

Project SEIR files have been made available for review by the Commission and the public. These files are available for public review at <http://ab900balboa.com>, and are part of the record before the Commission.

The Commission reviewed and considered the FSEIR for the Project and found the contents of said report and the procedures through which the FSEIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (Public Resources Code sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Reg. sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code.

The Commission found the FSEIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Planning Commission, and that the summary of comments and responses contained no significant revisions to the DEIR, and certified the FSEIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31 by its Motion No. 20730.

The Commission, in certifying the completion of said FSEIR, found that the Project described in the FSEIR would have the following significant unavoidable environmental impacts that cannot be mitigated to a level of insignificance:

- A. **TR-6b:** Operation of the proposed project, including proposed street network changes, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit.
- B. **C-TR-4:** The proposed project, in combination with reasonably foreseeable future projects, may result in a potentially significant cumulative impact related to public transit delay and the project could contribute considerably.
- C. **C-TR-6b:** Operation of the proposed project, including proposed street network changes, in combination with reasonably foreseeable future projects, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit.
- D. **NO-1:** Project construction would cause a substantial temporary or periodic increase in ambient noise levels at noise-sensitive receptors above levels existing without the project.
- E. **C-NO-1:** Cumulative construction of the proposed project, in combination with construction of reasonably foreseeable future projects, could cause a substantial temporary or periodic increase in ambient noise levels.
- F. **AQ-2a:** During construction, the proposed project would generate criteria air pollutants which would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants.
- G. **AQ-4:** Construction and operation of the proposed project would generate toxic air contaminants, including DPM, which could expose sensitive receptors to substantial pollutant concentrations.
- H. **C-AQ-1:** The proposed project, in combination with reasonably foreseeable future projects, would contribute to cumulative regional air quality
- I. **C-AQ-2:** The proposed project, in combination with reasonably foreseeable future projects, could contribute to cumulative health risk impacts on sensitive receptors.

The Commission reviewed and considered the information contained in the FSEIR prior to approving the Project.

The Commission Secretary is the Custodian of Records for the Planning Department materials, located in the File for Case No. 2018-007883ENV. Such records are available at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103.

On May 28, 2020, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case No. 2018-007883ENV to consider the approval of the Project. The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written

materials and oral testimony presented on behalf of the Project, the Planning Department staff, expert consultants and other interested parties.

The Commission has reviewed the entire record of this proceeding, the CEQA Findings, attached to this Motion as Attachment A and incorporated fully by this reference, regarding the rejection of alternatives, mitigation measures, environmental impacts analyzed in the FSEIR and overriding considerations for approving the Project, and the proposed Mitigation Monitoring and Reporting Program ("MMRP") attached as Attachment B and incorporated fully by this reference. These material were made available to the public as part of the records on file with the Commission Secretary.

MOVED, That the Commission finds that the FSEIR addressed the full scope of the Project under consideration and hereby adopts these findings under CEQA, including rejecting alternatives as infeasible and adopting a Statement of Overriding Considerations, as further set forth in Attachment A hereto, and adopts the MMRP attached as Attachment B, based on substantial evidence in the entire record of this proceeding.

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting May 28, 2020.



Jonas P. Ionin
Commission Secretary

AYES: Chan, Diamond, Fung, Imperial, Johnson, Koppel, Moore

NOES: None

ABSENT: None

ADOPTED: May 28, 2020

Attachment A

California Environmental Quality Act Findings

PREAMBLE

In determining to approve the Balboa Reservoir project described in Section I below (the "Project"), the San Francisco Planning Commission (the "Commission") makes and adopts the following findings of fact and decisions regarding the Project description and objectives, significant impacts, significant and unavoidable impacts, mitigation measures and alternatives, and a statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and pursuant to the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. ("CEQA"), particularly Section 21081 and 21081.5, the Guidelines for Implementation of CEQA, 14 California Code of Regulations Sections 15000 et seq. ("CEQA Guidelines"), in particular Sections 15091 through 15093, and Chapter 31 of the San Francisco Administrative Code ("Chapter 31"). The Commission adopts these findings in conjunction with the Approval Actions described in Section I(c), below, as required by CEQA, separate and apart from the Commission's certification of the Project's final subsequent environmental impact report ("FEIR"), which the Commission certified prior to adopting these CEQA findings.

These findings are organized as follows:

Section I provides a description of the proposed Balboa Reservoir Project, the environmental review process for the Project, the City approval actions to be taken, and the location and custodian of the record.

Section II lists the Project's less-than-significant impacts that do not require mitigation.

Section III identifies potentially significant impacts that can be avoided or reduced to less-than-significant levels through mitigation and describes the disposition of the mitigation measures.

Section IV identifies significant project-specific or cumulative impacts that would not be eliminated or reduced to a less-than-significant level and describes any applicable mitigation measures as well as the disposition of the mitigation measures. The FEIR identified mitigation measures to address these impacts, but implementation of the mitigation measures will not reduce the impacts to a less than significant level.

Sections III and IV set forth findings as to the mitigation measures proposed in the FEIR. (The draft subsequent EIR ("DEIR") and the comments and responses document together comprise the FEIR.) Attachment B to the Planning Commission Motion contains the mitigation monitoring and reporting program ("MMRP"), which provides a table setting forth each mitigation measure listed in the FEIR that is required to reduce a significant adverse impact.

Section V identifies the project alternatives that were analyzed in the DEIR and discusses the reasons for their rejection.

Section VI sets forth the Planning Commission's Statement of Overriding Considerations pursuant to CEQA Guidelines Section 15093.

The MMRP for the mitigation measures that have been proposed for adoption is attached with these findings as **Attachment B** to this Motion. The MMRP is required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. Attachment B provides a table setting forth each mitigation measure listed in the FEIR that is required to reduce a significant adverse impact. Attachment B also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule. The full text of the mitigation measures is set forth in Attachment B.

These findings are based upon substantial evidence in the entire record before the Commission. The references set forth in these findings to certain pages or sections of the DEIR or the responses to comments document, with together comprise the FEIR, are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

I. PROJECT DESCRIPTION AND PROCEDURAL BACKGROUND

A. Project Description

The project site is a 17.6-acre rectangular parcel and encompasses Assessor's Block 3180/Lot 190. The site is bounded by City College to the east, Archbishop Riordan High School to the north, the Westwood Park neighborhood to the west, and mixed-use multifamily residential development along Ocean Avenue to the south. The site is less than 0.25 mile north of Ocean Avenue, the primary retail corridor in the Ingleside-Westwood Park neighborhood. The project site is within a P (Public) District and located in 40-X and 65-A Height and Bulk Districts. The project site is within the Balboa Park Station Plan Area. The City adopted the area plan in 2009, but the City did not rezone the site as part of plan adoption.

The project site is bounded on three sides by sloping western, northern, and eastern edges that surround a sunken paved surface at the center. It is bounded on the southern side by mixed-use development along Ocean Avenue. An approximately 30-foot-tall earthen berm is located at the western edge of the property. The asphalt-paved surface is relatively level with a slope of 0 to 5 percent, sloping gently up from west to east. There is an approximately 18- and 30-foot increase in elevation between the project site bottom and the top of the eastern and northern slopes, respectively. Along the southern boundary of the site is an 80-foot-wide section of the parcel where a high-pressure underground pipeline maintained by the SFPUC is located (SFPUC right-of-way). The site does not contain any permanent structures and currently contains 1,007 surface vehicular parking spaces. The lot provides overflow vehicular parking for City College students, faculty, and staff. A cargo storage container is located on the west side of the site, at the foot of the berm slope. The parking lot is entirely paved with no vegetation. The western and northern slopes contain scattered trees and shrubs, with paved pathways along the tops of these slopes. Paved walkways, stairs, vegetation, and lighting are located on the eastern slope, providing pedestrian connections between the project site and adjacent City College property containing parking and the college's four-story Multi-Use Building.

The Project would include up to 1.64 million gross square feet in new construction on 10 blocks and would provide approximately 1,100 residential units totaling about 1.3 million gross square feet. A total of up to 50 percent of the new units would be designated affordable to persons earning between 55 and 120 percent of the area median income and would include up to 150 units restricted to occupancy by educator

households with an average income of 100 percent of the area median income. The Project would contain approximately 10,000 gross square feet of childcare and community space, approximately 7,500 gross square feet of retail space, approximately 550 off-street residential parking spaces and up to 450 off-street public parking spaces for use by the public. Maximum heights of new buildings would range between 25 feet and 78 feet. The Project is analyzed as the “Developer’s Proposed Option” in the FEIR, except that the height limit of the easternmost 58 feet of Blocks TH1, TH2 and H is 48 feet. The 48-foot height on these blocks is consistent with the analysis for the Additional Housing Option in the FEIR, rather than 35 feet as analyzed in the Developer’s Proposed Option in the FEIR. There would be no additional units in the Project associated with this change in height limit. On December 30, 2019, the Project was certified as an eligible project under the Jobs and Economic Improvement Through Environmental Leadership Act of 2011.

The Project would rezone the site and establish development controls for the development of mixed-income housing, open space, community facilities, small retail, parking, streets, and other infrastructure. The project would include amendments to the General Plan and the Planning Code and would create a new Balboa Reservoir Special Use District (“SUD”). The special use district would establish land use zoning controls and incorporate design standards and guidelines for the site. The Zoning Map would be amended to show changes from the current use district (P [Public]) to the proposed special use district, except for the SFPUC right-of-way, which would remain in the P district. The existing height limits of 40 to 65 feet would be modified to varying heights up to 78 feet, as measured by the Planning Code. The Project would include new publicly accessible open space, transportation and circulation changes, and new utilities and other infrastructure. Transportation and circulation changes would include the extension of the existing north-south Lee Avenue across the site and a new internal street network. The project would include a roadway network to be accessible for people walking, including people with disabilities, bicycling, and driving.

B. Project Objectives

The City and County of San Francisco and the SFPUC, as the current owner of the project site, and be BHC Balboa Builders LLC, the project sponsor, seek to fulfill the following shared objectives associated with the Balboa Reservoir project:

- Implement the goals of the City’s 2014 Public Land for Housing program and the Surplus Public Lands Initiative (Proposition K), passed by the voters in November 2015, by replacing an underused surface parking lot located on surplus public land with a substantial amount of new housing, including a high percentage of affordable housing.
- Implement the objectives and goals of the General Plan Housing Element and of the 2009 Balboa Park Station Area Plan that calls for the development of a mixed-use residential neighborhood on the west reservoir to address the citywide demand for housing.
- Contribute to the City’s goal of creating 5,000 housing units each year on a site specifically identified in the General Plan for additional housing in close proximity to local and regional public transportation by maximizing the number of housing units in the project.
- Build a high-quality residential community with a wide range of building types and heights, and a range of dwelling unit type and tenure, which will provide new residents with the greatest variety of housing options.

- Build a mixed-income community with a high percentage of affordable units to provide housing options for households at a range of income levels, and by doing so facilitate a neighborhood that fosters personal connections across income ranges.
- Replace the reservoir's abandoned infrastructure with new infrastructure improvements, including new streets and sidewalks, bicycle and pedestrian amenities, pedestrian paseos and multiuse paths, water, sewer and gas/electric utilities, new fire hydrant infrastructure and an extension of the City's Auxiliary Water Supply System (AWSS), and community facilities including one new public park, another major open space, a community center, and a childcare facility.
- Establish pedestrian and bicycle connections from the project site to adjacent neighborhoods including City College of San Francisco, Ocean Avenue, Sunnyside and Westwood Park, and increase and improve pedestrian access to transit connections in the area including Bay Area Rapid Transit (BART), Municipal Railway (Muni) light-rail and bus lines, and Muni's City College Terminal.
- As stated in the City's Balboa Reservoir Request for Proposals, work with City College to address parking needs by identifying substitute parking and transportation solutions.
- Develop a project that is financially feasible and able to support the financial investment that will be required to realize it, including equity and debt return levels that will be required by investors and lenders to finance residential developments, as well as eligibility for required federal, state, regional, and local sources of subsidy for infrastructure and utility construction and affordable housing.

The City and SFPUC have the following additional objective:

- Provide SFPUC's water utility ratepayers with fair market value for this utility land asset as required by the city's charter and applicable law.

C. Project Approvals

The Project requires the following public agency approvals:

California Regional Water Quality Control Board – San Francisco Bay Region

- Approval of Section 401 water quality certification
- Approval of General Construction Stormwater Permit

Bay Area Air Quality Management District

- Approval of any necessary air quality permits (e.g., Authority to Construct and Permit to Operate) for individual air pollution sources, such as emergency diesel generators

San Francisco Community College District

- Act as responsible agency under CEQA
- Approval of an amended easement and access agreement

San Francisco Board of Supervisors

- Adoption of CEQA findings

- Approval of General Plan amendments
- Approval of Planning Code amendments (SUD) and associated zoning map and height map amendments
- Approval of a development agreement
- Approval of dedications and easements for public improvements, and acceptance of public improvements, as necessary
- Approval of an amended easement and access agreement with the San Francisco Community College District for roadway access and any joint development of streets, if applicable
- Approval of a resolution(s) authorizing the sale of property under SFPUC jurisdiction and various license agreements for use, construction, and open space on SFPUC property

San Francisco Planning Commission

- Certification of the FEIR
- Adoption of CEQA findings
- Initiation and recommendation to the San Francisco Board of Supervisors to approve amendments to the General Plan
- Recommendation to the San Francisco Board of Supervisors to approve Planning Code amendments adopting an SUD and associated zoning map amendments
- Approval of Design Standards and Guidelines
- Approval of the Project as part of the development agreement and recommendation to the San Francisco Board of Supervisors to approve a development agreement

San Francisco Public Utilities Commission or General Manager

- Adoption of CEQA findings
- Actions and approvals related to a development agreement and an agreement for the sale of property under SFPUC jurisdiction, and various license agreements for use, construction, and open space on SFPUC property and other actions and approvals related to its jurisdictional authority
- Approval of an amended easement and access agreement with the San Francisco Community College District for roadway access and any joint development of streets, if applicable

San Francisco Department of Public Works

- Actions and approvals related to its jurisdictional authority

San Francisco Municipal Transportation Agency

- Actions and approvals related to a development agreement and approval of transit improvements, public improvements and infrastructure, including certain roadway improvements, stop controls, bicycle infrastructure and loading zones, to the extent included in the project

San Francisco Fire Department

- Actions and approvals related to its jurisdictional authority

San Francisco Department of Building Inspection

- Approval and issuance of demolition, grading, and site construction permits
- Nighttime construction permit, if required

San Francisco Department of Public Health

- Actions and approvals related to its jurisdictional authority

D. Environmental Review

The project sponsor filed an environmental evaluation application with the Planning Department on May 31, 2018. This filing initiated the environmental review process. The EIR process includes an opportunity for the public to review and comment on the Project's potential environmental effects and to further inform the environmental analysis.

On October 10, 2018, the Planning Department issued the notice of preparation (NOP) of an EIR on the proposed Balboa Reservoir project and made the NOP available on its website. The NOP was sent to governmental agencies, organizations, and persons interested in the Project, and publication of the NOP initiated the 30-day public scoping period for this DEIR, which started on October 10, 2018, and ended on November 12, 2018. The NOP included a description of the Project and a request for agencies and the public to submit comments on the scope of environmental issues.

The Planning Department held a public scoping meeting on Tuesday, October 30, 2018, at the Lick Wilmerding High School Cafeteria, 755 Ocean Avenue, San Francisco, to receive oral comments on the scope of the DEIR. During the scoping period, a total of 84 comment letters and emails were submitted to the Planning Department and 16 speakers provided oral comments at the public scoping session. The Planning Department considered all of these comments in preparing the FEIR for the Project.

On August 7, 2019, the Department published a draft environmental impact report (hereinafter "DEIR"), including an initial study, and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.

Notices of availability of the DEIR and of the date and time of the public hearing were posted near the Project site by the project sponsor on August 7, 2019.

On August 7, 2019, copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.

A Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on August 7, 2019.

The Commission held a duly advertised public hearing on the DEIR on September 12, 2019, at which opportunity for public comment was given, and public comment was received on the DEIR. The period for commenting on the DEIR ended on September 23, 2019.

The Department prepared responses to comments on environmental issues received during the 47-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected clerical errors in the DEIR. This material was presented in a responses to comments document, published on April 29, 2020, distributed to the Commission and all parties who commented on the DEIR, to any board(s), commission(s) or department(s) that will carry out or approve the project, and made available to others upon request at the Department.

A final environmental impact report (hereinafter "FEIR") has been prepared by the Department, consisting of the DEIR, any consultations and comments received during the review process, any additional information that became available, and the responses to comments document all as required by law. The initial study is included as Appendix B to the DEIR and is incorporated by reference thereto.

Project FEIR files have been made available for review by the Commission and the public. These files are available for public review at <http://ab900balboa.com/> and are part of the record before the Commission.

On May 28, 2020, the Commission reviewed and considered the FEIR and found that the contents of said report and the procedures through which the FEIR was prepared, publicized, and reviewed comply with the provisions of CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code. The FEIR was certified by the Commission on May 28, 2020, by adoption of its Motion No. 20730.

E. Content and Location of Record

The record upon which all findings and determinations related to the adoption of the Project are based include the following:

- The FEIR, and all documents referenced in or relied upon by the FEIR, including the initial study;
- All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the FEIR, the proposed approvals and entitlements, the Project, and the alternatives set forth in the FEIR;
- All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the FEIR, or incorporated into reports presented to the Planning Commission;
- All information (including written evidence and testimony) presented to the City from other public agencies relating to the project or the FEIR;
- All applications, letters, testimony, and presentations presented to the City by the Project Sponsor and its consultants in connection with the Project;

- All information (including written evidence and testimony) presented at any public hearing or workshop related to the Project and the DEIR;
- The MMRP; and,
- All other documents comprising the record pursuant to Public Resources Code Section 21167.6(e).

The public hearing transcripts and audio files, a copy of all letters regarding the FEIR received during the public review period, the administrative record, and background documentation for the FEIR are available at <http://ab900balboa.com/>. The Planning Department, Jonas P. Ionin, is the custodian of these documents and materials.

F. Findings about Environmental Impacts and Mitigation Measures

The following Sections II, III, and IV set forth the Commission's findings about the FEIR's determinations regarding significant environmental impacts and the mitigation measures proposed to address them. These findings provide the written analysis and conclusions of the Commission regarding the environmental impacts of the Project and the mitigation measures included as part of the FEIR and adopted by the Commission as part of the Project. To avoid duplication and redundancy, and because the Commission agrees with, and hereby adopts, the conclusions in the FEIR, these findings will not repeat the analysis and conclusions in the FEIR but instead incorporate them by reference and rely upon them as substantial evidence supporting these findings.

In making these findings, the Commission has considered the opinions of staff and experts, other agencies, and members of the public. The Commission finds that (i) the determination of significance is a judgment decision within the discretion of the City and County of San Francisco; (ii) the significance determinations used in the FEIR are supported by substantial evidence in the record, including the expert opinion of the FEIR preparers and City staff; and (iii) the significance determinations used in the FEIR provide reasonable and appropriate means of assessing the significance of the adverse environmental effects of the Project. Thus, although, as a legal matter, the Commission is not bound by the significance determinations in the FEIR (see Public Resources Code, Section 21082.2, subdivision (e)), the Commission finds them persuasive and hereby adopts them as its own.

These findings do not attempt to describe the full analysis of each environmental impact contained in the FEIR. Instead, a full explanation of these environmental findings and conclusions can be found in the FEIR, and these findings hereby incorporate by reference the discussion and analysis in the FEIR supporting the determination regarding the project impact and mitigation measures designed to address those impacts. In making these findings, the Commission ratifies, adopts and incorporates in these findings the determinations and conclusions of the FEIR relating to environmental impacts and mitigation measures, except to the extent any such determinations and conclusions are specifically and expressly modified by these findings, and relies upon them as substantial evidence supporting these findings.

As set forth below, the Commission adopts and incorporates the mitigation measures set forth in the FEIR, which are set forth in the attached MMRP, to reduce the significant and unavoidable impacts of the Project. The Commission intends to adopt the mitigation measures proposed in the FEIR. Accordingly, in the event a mitigation measure recommended in the FEIR has inadvertently been omitted in these findings or the

MMRP, such mitigation measure is hereby adopted and incorporated in the findings below by reference. In addition, in the event the language describing a mitigation measure set forth in these findings or the MMRP fails to accurately reflect the mitigation measures in the FEIR due to a clerical error, the language of the policies and implementation measures as set forth in the FEIR shall control. The impact numbers and mitigation measure numbers used in these findings reflect the information contained in the FEIR.

In Sections II, III and IV below, the same findings are made for a category of environmental impacts and mitigation measures. Rather than repeat the identical finding to address each and every significant effect and mitigation measure, the initial finding obviates the need for such repetition because in no instance is the Commission rejecting the conclusions of the FEIR or the mitigation measures recommended in the FEIR for the Project.

These findings are based upon substantial evidence in the entire record before the Planning Commission. The references set forth in these findings to certain pages or sections of the DEIR or responses to comments in the FFEIR are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

II. LESS-THAN-SIGNIFICANT IMPACTS

The FEIR finds that implementation of the Project would result in less-than-significant impacts in the following environmental topic areas: Land Use and Land Use Planning, Population and Housing, Greenhouse Gas Emissions, Wind, Shadow, Recreation, Utilities and Services Systems, Public Services, Biological Resources, Hydrology and Water Quality, Hazards and Hazardous Materials, Energy, Mineral Resources, Agriculture and Forestry Resources, and Wildfire.

III. FINDINGS OF SIGNIFICANT IMPACTS THAT CAN BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL THROUGH MITIGATION AND THE DISPOSITION OF THE MITIGATION MEASURES

CEQA requires agencies to adopt mitigation measures that would avoid or substantially lessen a project's identified significant impacts or potential significant impacts if such measures are feasible. The findings in this section concern eight impacts and nine mitigation measures identified in the FEIR. These mitigation measures are in the MMRP, which is included as Attachment B to the Planning Commission Motion adopting these findings.

The project sponsor has agreed to implement the following mitigation measures to address the potential noise, air quality, cultural resources, tribal cultural resources, and geology and soils identified in the FEIR. As authorized by CEQA Section 21081 and CEQA Guidelines Section 15091, 15092, and 15093, based on substantial evidence in the whole record of this proceeding, the Planning Commission finds that, unless otherwise stated, the Project will be required to incorporate mitigation measures identified in the FEIR into the Project to mitigate or to avoid significant or potentially significant environmental impacts. Except as otherwise noted, these mitigation measures will reduce or avoid the potentially significant impacts described in the FEIR, and the Commission finds that these mitigation measures are feasible to implement and are within the responsibility and jurisdiction of the City and County of San Francisco to implement or enforce.

Additionally, the required mitigation measures are included as conditions of project approval and will be enforced through conditions of approval in any building permits issued for the Project by the San Francisco Department of Building Inspection. With the required mitigation measures, these impacts would be avoided or reduced to a less-than-significant level:

Noise Impacts

Impact NO-3: Operation of the fixed mechanical equipment on the project site could result in a substantial permanent increase in ambient noise levels in the immediate project vicinity, and permanently expose noise-sensitive receptors to noise levels in excess of standards in the San Francisco Noise Ordinance. However, implementation of the following mitigation measure would reduce operational noise impacts to less than significant for the reasons cited on DEIR pages 3.C-35 through 3.C-36. :

M-NO-3: Fixed Mechanical Equipment Noise Controls

Impact C-NO-3: Cumulative mechanical equipment noise of the proposed project, in combination with reasonably foreseeable future projects, could cause a substantial permanent increase in ambient noise levels in the project vicinity; however, the proposed project would not contribute considerably with implementation of the following mitigation measure for the reasons cited on DEIR pages 3.C-41 through 3.C-42:

M-NO-3: Fixed Mechanical Equipment Noise Controls

Impacts to Air Quality

Impact AQ-2b: During construction phases that overlap with project operations, the proposed project would generate criteria air pollutants which would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants. However, this impact would be reduced to less than significant with the following mitigation measures for the reasons cited on DEIR pages 3.D-61 through 3.D-62:

M-AQ-2a: Construction Emissions Minimization

M-AQ-2b: Low-VOC Architectural Coatings

Impact AQ-5: The Project could conflict with implementation of the Bay Area 2017 Clean Air Plan; however, this impact would be reduced to a less-than-significant level with the following mitigation measures for the reasons cited on DEIR page 3.D-86:

M-AQ-2a: Construction Emissions Minimization

M-AQ-2b: Low-VOC Architectural Coatings

M-AQ-4a: Diesel Backup Generator Specifications

M-AQ-4b: Install MERV 13 Filters at the Daycare Facility

Impacts to Cultural Resources

Impact CR-2: The Project could cause a substantial adverse change in the significance of an archeological resource pursuant to CEQA Guidelines Section 15064.5(f); however, for the reasons cited on DEIR page B-29., this impact would be reduced to a less-than-significant level with the following mitigation measure:

M-CR-2: Accidental Discovery of Archeological Resources

Impact CR-3: The Project may disturb human remains, including those interred outside of formal cemeteries. However, for the reasons cited on DEIR page B-30, this impact would be reduced to less than significant with the following mitigation measure:

M-CR-3: Accidental Discovery of Human Remains and of Associated or Unassociated Funerary Objects

Tribal Cultural Resource Impacts

Impact TC-1: The Project may result in a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074. However, for the reasons stated on DEIR page B-34, this impact would be reduced to less than significant with the following mitigation measure:

M-TC-1: Tribal Cultural Resources Interpretive Program

Impacts to Geology and Soils

Impact GE-6: The Project could directly or indirectly destroy a unique paleontological resource or site. However, for the reasons stated on DEIR page B-105, this impact would be reduced to less than significant with the following mitigation measure:

M-GE-6: Inadvertent Discovery of Paleontological Resources

IV. SIGNIFICANT IMPACTS THAT CANNOT BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL

Based on substantial evidence in the whole record of these proceedings, the Planning Commission finds that there are nine significant project-specific and cumulative impacts that would not be eliminated or reduced to an insignificant level by the mitigation measures listed in the MMRP. The FEIR identified three significant and unavoidable impacts on transportation and circulation, two significant and unavoidable impacts on noise, and four significant and unavoidable impacts on air quality.

The Planning Commission further finds based on the analysis contained within the FEIR, other considerations in the record, and the significance criteria identified in the FEIR, that feasible mitigation measures are not available to reduce the significant Project impacts to less-than-significant levels, and thus those impacts remain significant and unavoidable. The Commission also finds that, although measures were considered in the FEIR that could reduce some significant impacts, certain measures, as described in this Section IV below, are infeasible for reasons set forth below, and therefore those impacts remain significant and unavoidable or potentially significant and unavoidable.

Thus, the following significant impacts on the environment, as reflected in the FEIR, are unavoidable. But, as more fully explained in Section VI, below, under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines 15091(a)(3), 15092(b)(2)(B), and 15093, the Planning Commission finds that these impacts are acceptable for the legal, environmental, economic, social, technological and other benefits of the Project. This finding is supported by substantial evidence in the record of this proceeding.

The FEIR identifies the following impacts for which no feasible mitigation measures were identified that would reduce these impacts to a less than significant level:

Impacts to Transportation and Circulation

Impact TR-6b: Operation of the Project, including proposed street network changes, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the Project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit. No feasible mitigation measures were identified that would reduce this impact to a less than significant after consideration of several potential mitigation measures. The Commission finds that, for the reasons set forth in the FEIR, this impact would remain significant and unavoidable.

Impact C-TR-4: The Project, in combination with reasonably foreseeable future projects, may result in a potentially significant cumulative impact related to public transit delay and the project could contribute considerably. No feasible mitigation measures were identified that would reduce this impact to a less than significant level after the City considered several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measure:

- *Mitigation Measure M-C-TR-4: Implement Measures to Reduce Transit Delay*

Implementation of these measures would reduce transit delay for the identified segments of the K/T Third/Ingleside, 29 Sunset, and 43 Masonic. However, given the uncertainty of SFMTA approval of these measures, and because SFMTA cannot commit funding to these capital improvements, the impact of the proposed project options would remain significant and unavoidable with mitigation, even with implementation of Mitigation Measure M-C-TR-4.

Impact C-TR-6b: Operation of the Project, including proposed street network changes, in combination with reasonably foreseeable future projects, would impact existing passenger and freight loading zones along Lee Avenue between Ocean Avenue and the project site, and may create potentially hazardous conditions for people bicycling and may substantially delay public transit. No feasible mitigation measures were identified that would reduce this impact to a less than significant after the City considered several potential mitigation measures. The Commission finds that, for the reasons set forth on pages 3.b-100 through 3.B-101 of the FEIR, this impact would remain significant and unavoidable.

Impacts to Noise

Impact NO-1: Project construction would cause a substantial temporary or periodic increase in ambient noise levels at noise-sensitive receptors above levels existing without the project. No feasible mitigation measures were identified that would reduce this impact to a less-than-significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measure; ; however, as cited on page 3.C-40 of the DEIR, the mitigation measure would reduce the impact but not to a less-than-significant level:

- *Mitigation Measure M-NO-1: Construction Noise Control Measures*

Impact C-NO-1: Cumulative construction of the Project, in combination with construction of reasonably foreseeable future projects, could cause a substantial temporary or periodic increase in ambient noise levels. No feasible mitigation measures were identified that would reduce this impact to a less-than-significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measure; however, as cited on page 3.C-31 of the DEIR, the mitigation measure would reduce the impact but not to a less-than-significant level:

- *Mitigation Measure M-NO-1: Construction Noise Control Measures*

FEIR Impact to Air Quality

Impact AQ-2a: During construction, the Project would generate criteria air pollutants that would violate an air quality standard, contribute substantially to an existing or projected air quality violation, or result in a cumulatively considerable net increase in criteria air pollutants). No feasible mitigation measures were identified that would reduce this impact to a less than significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measures that, for the reasons stated on DEIR page 3.D-54, would reduce impacts but not to a less-than-significant level:

- *Mitigation Measure M-AQ-2a: Construction Emissions Minimization*
- *Mitigation Measure M-AQ-2b: Low-VOC Architectural Coatings*
- *Mitigation Measure M-AQ-2c: On-Road Truck Emissions Minimization for the Compressed Construction Schedule*
- *Mitigation Measure M-AQ-2d: Offset Construction Emissions for the Compressed Schedule*

Impact AQ-4: Construction and operation of the Project would generate toxic air contaminants, including DPM, which could expose sensitive receptors to substantial pollutant concentrations. No feasible mitigation measures were identified that would reduce this impact to a less -than -significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measures; however, for the reasons stated on DEIR pages 3.D-71 through 3.D-78, these mitigation measures would reduce impacts but not to a less-than-significant level:

- *Mitigation Measure M-AQ-2a: Construction Emissions Minimization*
- *Mitigation Measure M-AQ-4a: Diesel Backup Generator Specifications*
- *Mitigation Measure M-AQ-4b: Install MERV 23 Filters at the Daycare Facility*

Impact C-AQ-1: The Project, in combination with reasonably foreseeable future projects, would contribute to cumulative regional air quality impacts. No feasible mitigation measures were identified that would reduce this impact to a less-than-significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation measures; however, for the reasons cited on DEIR page 3.D-90, these mitigation measures would not reduce the impact to a less-than-significant level:

- *Mitigation Measure M-AQ-2a: Construction Emissions Minimization*
- *Mitigation Measure M-AQ-2b: Low-VOC Architectural Coatings*
- *Mitigation Measure M-AQ-2c: On-Road Truck Emissions Minimization for the Compressed Construction Schedule*
- *Mitigation Measure M-AQ-2d: Offset Construction Emissions for the Compressed Schedule*
- *Mitigation Measure M-AQ-4a: Diesel Backup Generator Specifications*

Impact C-AQ-2: The Project, in combination with reasonably foreseeable future projects, could contribute to cumulative health risk impacts on sensitive receptors. No feasible mitigation measures were identified that would reduce this impact to a less-than-significant level after consideration of several potential mitigation measures. The project sponsor has agreed to implement the following mitigation

measures; however, for the reasons cited on DEIR pages 3.d-91 through 3.D-92, these mitigation measures would reduce impacts but not to a less-than-significant level:

- *Mitigation Measure M-AQ-2a: Construction Emissions Minimization*
- *Mitigation Measure M-AQ-4a: Diesel Backup Generator Specifications*
- *Mitigation Measure M-AQ-4b: Install MERV 13 Filters at the Daycare Facility*

V. EVALUATION OF PROJECT ALTERNATIVES

A. Alternatives Analyzed in the FEIR

This section describes the alternatives analyzed in the Project FEIR and the reasons for rejecting the alternatives as infeasible. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the project or the project location that generally reduce or avoid potentially significant impacts of the Project. CEQA requires that every EIR also evaluate a “No Project” alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

The Planning Department considered a range of alternatives in Chapter 6 of the FEIR. The FEIR analyzed the No Project Alternative, the Reduced Density Alternative, the San Ramon Way Passenger Vehicle Access Alternative, and the Six-Year Construction Schedule Alternative. Each alternative is discussed and analyzed in these findings, in addition to being analyzed in the FEIR, including Chapter 6. The Planning Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the FEIR and in the record. The FEIR reflects the Planning Commission’s and the City’s independent judgment as to the alternatives. The Planning Commission finds that the Project provides the best balance between satisfaction of project objectives and mitigation of environmental impacts to the extent feasible, as described and analyzed in the FEIR.

B. Reasons for Approving the Project

- To implement the goals of the City’s 2014 Public Land for Housing program and the Surplus Public Lands Initiative (Proposition K), passed by the voters in November 2015, by replacing an underused surface parking lot located on surplus public land with a substantial amount of new housing, including a high percentage of affordable housing.
- To implement the objectives and goals of the General Plan Housing Element and of the 2009 Balboa Park Station Area Plan that calls for the development of a mixed-use residential neighborhood on the west reservoir to address the citywide demand for housing.
- To contribute to the City’s goal of creating 5,000 housing units each year on a site specifically identified in the General Plan for additional housing in close proximity to local and regional public transportation by maximizing the number of housing units in the project.
- To build a high-quality residential community with a wide range of building types and heights, and a range of dwelling unit type and tenure, which will provide new residents with the greatest variety of housing options.
- To build a mixed-income community with a high percentage of affordable units to provide housing options for households at a range of income levels, and by doing so facilitate a neighborhood that fosters personal connections across income ranges.

- To replace the reservoir's abandoned infrastructure with new infrastructure improvements, including new streets and sidewalks, bicycle and pedestrian amenities, pedestrian paseos and multiuse paths, water, sewer and gas/electric utilities, new fire hydrant infrastructure and an extension of the City's Auxiliary Water Supply System (AWSS), and community facilities including one new public park, another major open space, a community center, and a childcare facility.
- To establish pedestrian and bicycle connections from the project site to adjacent neighborhoods including City College of San Francisco, Ocean Avenue, Sunnyside and Westwood Park, and increase and improve pedestrian access to transit connections in the area including Bay Area Rapid Transit (BART), Municipal Railway (Muni) light-rail and bus lines, and Muni's City College Terminal.¹
- As stated in the City's Balboa Reservoir Request for Proposals, to work with City College to address parking needs by identifying substitute parking and transportation solutions.
- To develop a project that is financially feasible and able to support the financial investment that will be required to realize it, including equity and debt return levels that will be required by investors and lenders to finance residential developments, as well as eligibility for required federal, state, regional, and local sources of subsidy for infrastructure and utility construction and affordable housing.
- To provide SFPUC's water utility ratepayers with fair market value for this utility land asset as required by the city's charter and applicable law.

C. Evaluation of Project Alternatives

CEQA provides that alternatives analyzed in an EIR may be rejected if "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible . . . the project alternatives identified in the EIR." (CEQA Guidelines § 15091(a)(3).) The Commission has reviewed each of the alternatives to the Project as described in the FEIR that would reduce or avoid the impacts of the Project and finds that there is substantial evidence of specific economic, legal, social, technological and other considerations that make these Alternatives infeasible, for the reasons set forth below.

In making these determinations, the Planning Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project, and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

Five additional alternatives were considered as part of the FEIR's overall alternatives analysis but were rejected from detailed analysis for the following reasons:

Alternative Location. CEQA Guidelines section 15126.6(f)(2) states that alternative locations should be considered if they would avoid or substantially lessen any of the significant effects of a project. While an alternative location might lessen or avoid the operational impacts associated with transportation and

circulation and construction impacts associated with noise and air quality, it was rejected from further consideration because the project objectives are specific to the Balboa Reservoir site, based on policy considerations evaluated by the city. Construction noise and air quality impacts would occur regardless of the site of the project, and no alternative location would eliminate these effects. These impacts are associated with any project that involves demolition, grading, excavation, and/or building construction activities. For this reason, an alternative location for the same number of dwelling units would likely result in the same potential noise and air quality impacts and require the same mitigation measures if demolition, grading, and excavation were required, and because the same number of units would be built. Moreover, no feasible alternative locations within the Balboa Park Station Area Plan area exist for an equivalent or similar level of housing development, including affordable housing. No comparable parcel of land is available within the plan area that the project sponsor could reasonably acquire, control, or otherwise have access. An alternative location, if one were available, would not be consistent with the project objectives related to developing the reservoir site with a mixed-use residential neighborhood, including a substantial number of affordable housing units, site infrastructure, and bicycle and pedestrian connections. Furthermore, an alternative location would not meet the project objective related to developing an underutilized site under the Public Land for Housing program.

One site identified under the Public Land for Housing in the plan area was the 2-acre site at 2340 San Jose Avenue, known as the Upper Yard. A developer for the Upper Yard was selected in 2016 and a building permit was issued in 2018 for the construction of 131 residential units; thus, the Upper Yard location, which is an order of magnitude smaller than the Project, is not available to the project sponsor for development. For these reasons, an alternative location was rejected from further consideration.

Higher Density Alternative. Variations of a higher density alternative (greater than 1,550 units) were raised during the scoping process for this DEIR. A higher density alternative could meet all project objectives; however, this alternative would not address any of the significant and unavoidable environmental impacts. Therefore, this alternative was rejected from further consideration.

Lee Avenue Exit Only Alternative. This alternative would allow southbound egress from the project site onto Ocean Avenue via Lee Avenue and prohibit northbound ingress to the site from Ocean Avenue via Lee Avenue. Two-way operations of Lee Avenue between Ocean Avenue and the project site would be maintained only for delivery vehicles that require access to the Whole Foods off-street loading dock. This alternative would reduce the number of project-generated vehicles on Ocean Avenue, thereby reducing transit delay along the corridor; however, it would limit access to the project site and add vehicle traffic to Frida Kahlo Way and, potentially, to San Ramon Way, if the San Ramon Way Passenger Vehicle Access Alternative were selected. The westbound right-turn lane at Ocean Avenue/Frida Kahlo Way/Geneva Avenue and the northbound left-turn lane at Frida Kahlo Way/North Access Road currently operate near or over capacity during the peak hours, and the additional vehicle traffic under this alternative could cause spillover into the through lanes, which would cause delays to transit on Ocean Avenue and Frida Kahlo Way.

The alternative would not reduce conflicts between people bicycling southbound on Lee Avenue and loading vehicles accessing the loading dock or conducting curbside loading on Lee Avenue. Additionally, people unfamiliar with the site access and circulation may attempt to enter the site from northbound Lee Avenue and would either: (1) complete a U-turn maneuver and continue to the Frida Kahlo Way/North Access Road

entrance or (2) ignore the one-way operations and continue north to enter the site. These actions would result in potentially hazardous conditions and conflicts between vehicles making a U-turn and vehicles exiting the Whole Foods driveway or accessing the loading dock and between vehicles continuing north on Lee Avenue and oncoming southbound traffic.

For these reasons, southbound exit-only operations on Lee Avenue was rejected from further consideration.

Open Space Only Alternative. This alternative would develop the project site with only open space uses, and no residential uses. The Open Space Only Alternative was rejected from further consideration because it would not meet any of the key project objectives related to providing housing to address citywide demand for housing and building a mixed-income community including affordable units.

Fully Affordable Housing Alternative. FEIR A Fully Affordable Housing Alternative would include 100 percent affordable housing at the project site. A 100 percent affordable housing alternative would not meet the project objective to build “a mixed-income community with a high percentage of affordable units to provide housing options for households at a range of income levels.” This alternative also would potentially fail to meet, or at least fully meet, the following project objective:

- Develop a project that is financially feasible and able to support the financial investment that will be required to realize it, including equity and debt return levels that will be required by investors and lenders to finance residential developments, as well as eligibility for required federal, state, regional, and local sources of subsidy for infrastructure and utility construction and affordable housing.
- Provide SFPUC’s water utility ratepayers with fair market value for this utility land asset as required by the city’s charter and applicable law.

This alternative would be a fundamentally different project given the request for qualifications process that occurred for the project site. As noted on DEIR, 100 percent affordable housing developments in San Francisco are typically sponsored by the Mayor’s Office of Housing and Community Development, which provides substantial financial support for such projects and which typically seeks out not-for-profit developers who specialize in the production of fully affordable residential projects. Accordingly, it has never been the case that the planning for this project assumed or required a 100 percent affordable housing development, which would require a substantially different financial structure and City development partner(s).

Finally, this alternative would not eliminate or substantially lessen the project’s significant, unavoidable impacts because it would contain the same amount of development as the Project. For these reasons, fully affordable housing alternative was rejected from further consideration.

The following alternatives and option were fully considered and compared in the FEIR:

1. No Project Alternative (Alternative A)

Under Alternative A, the Balboa Reservoir site would not be developed with the Project. Under Alternative A, there would be no change to the existing site circulation. The surface parking lot would not be altered, and the existing 1,007 surface vehicular parking spaces would remain. The project site would be

accessed from the North Access Road as under existing conditions. In addition, the Lee Avenue extension, new infrastructure, and streetscape and open space improvements would not be constructed.

The existing development controls on the project site would continue to govern site development and would not be changed. There would be no amendments to the General Plan, Planning Code, or zoning map. No changes related to a new Balboa Reservoir Special Use District or design standards and guidelines would occur. The project site would remain under the existing P (Public) District and the 40-X and 65-A Height and Bulk Districts. Any specific detail about the characteristics of future development under the No Project Alternative would be speculative.

The Planning Commission rejects the No Project Alternative as infeasible because it would fail to meet the project objectives for the following reasons:

- 1) The No Project Alternative would not meet any of the project objectives;
- 2) The No Project Alternative would not implement the goals of the City's 2014 Public Land for Housing program and the Surplus Public Lands Initiative by replacing an underused surface parking lot located on surplus public land with a substantial amount of new housing, including a high percentage of affordable housing.
- 3) The No Project Alternative would not implement the objectives and goals of the General Plan Housing Element and of the 2009 Balboa Park Station Area Plan that calls for the development of a mixed-use residential neighborhood on the west reservoir to address the citywide demand for housing.
- 4) The No Project Objective would not contribute to the City's goal of creating 5,000 housing units each year on a site specifically identified in the General Plan for additional housing in close proximity to local and regional public transportation by maximizing the number of housing units in the project, would not build a high-quality residential community with a wide range of building types and heights, and a range of dwelling unit type and tenure, with a high percentage of affordable units..
- 5) The No Project Objective would not replace the reservoir's abandoned infrastructure with new infrastructure improvements and community facilities including one new public park, another major open space, a community center, and a childcare facility, nor establish pedestrian and bicycle connections from the project site to adjacent

For the foregoing reasons, the Planning Commission rejects the No Project Alternative as infeasible.

2. Reduced Density Alternative (Alternative B)

Alternative B would be identical to the Project options with respect to the types of land uses, street configurations, and site plan block configurations. Under Alternative B, the site would be developed with approximately 936,590 gross square feet of residential uses (800 dwelling units). This alternative would include 7,500 gross square feet of retail space and 10,000 gross square feet of childcare and community space. Alternative B would not include a public parking garage. There would be approximately 143,930 gross square feet of parking, providing 400 residential parking spaces. The total building area would be about 66 percent of the Project. Building heights on Blocks A through G would be reduced by one story compared to the project. Blocks TH1, TH2, and H would remain the same as under the Developer's

Proposed Option, with building heights up to 35 feet. The building heights for Blocks A through G for Alternative B would range in height from 25 to 68 feet.

Similar to the Project, this alternative would include approximately 4 acres of open space. The open spaces and parks would be connected by new internal networks such as pedestrian passages, sidewalks, and roadways. The SFPUC would retain ownership of an 80-foot-wide strip of land located along the southern edge of the site where an underground water transmission pipeline is located.

The transportation and circulation improvements under Alternative B would be identical to those under the Project, including the Lee Avenue extension, interior streets, streetscape improvements, bicycle facilities, and Ocean Avenue streetscape modifications.

Operations of the retail, childcare and community facilities space under Alternative B would be the same as that for the Project. The reduction in the number of residential units under Alternative B would also reduce the number of vehicle, pedestrian, and bicycle trips compared to the Project.

Construction of Alternative B would be similar to the Project, though reduced in both magnitude and duration. In general, the same types of construction activities and equipment would be required. It is anticipated that construction would start in 2021 and be completed in 2027. The initial phase (Phase 0) for Alternative B would include demolition of the west side berm and north and east embankments, followed by grading, excavation, and construction of site infrastructure over 12 months from 2021 to 2022. Two phases of vertical construction would follow, each lasting approximately 24 to 30 months. The construction activities during Phases 1 and 2 would include, but not be limited to, finish grading, excavation for subgrade parking, construction of building foundations, building construction, architectural coatings, and paving. Construction of Phase 1 (400 units) would occur from 2022 to 2024. Construction of Phase 2 (400 units) would occur from 2024 to 2027, after Phase 1 is complete. Buildings constructed in Phase 1 would be occupied during construction of Phase 2. Like the Project, the phasing of project implementation would be subject to changes due to market conditions and other unanticipated factors. Therefore, construction could be accelerated and complete as early as 2023 or extend beyond 2027.

The Planning Commission rejects the Reduced Density Alternative as infeasible because it would not eliminate any of the significant unavoidable individual impacts of the Project and it would not meet the project objectives as well as the Project for reasons including, but not limited to, the following:

- 1) The Reduced Density Alternative would limit the Project to 800 dwelling units; whereas the Project would add 1,100 units to the City's housing stock and maximize the creation of new residential units. The City's important policy objective as expressed in Policy 1.1 of the Housing Element of the General Plan is to increase the housing stock whenever possible to address a shortage of housing in the City.
- 2) The Reduced Density Alternative would also limit the Project to 400 total affordable units; whereas the Project would add approximately 550 affordable units to the City's stock of affordable housing. The City's important policy objective as expressed in Policy 1.1 of the Housing Element of the General Plan is to increase the affordable housing stock whenever possible to address a shortage of housing in the City.

- 3) The subsidy required to build each affordable dwelling unit in the Reduced Density Alternative would be higher than for the Proposed Project because the scale of the affordable housing buildings in the Reduced Density Alternative would be less efficient than the affordable housing buildings in the Project.
- 4) The Reduced Density Alternative would not further the City's housing policies to create more housing, particularly affordable housing opportunities as well as the Project does.
- 5) The Reduced Density Preservation Alternative would create a project with fewer housing units in an area well-served by transit, services and shopping, which would then push demand for residential development to other sites in the City or the Bay Area. This would result in the Reduced Density Alternative not meeting, to the same degree as the Project, the City's *Strategies to Address Greenhouse Gas Emissions* or the Bay Area Air Quality Management District's ("BAAQMD") requirements for GHG reductions, by not maximizing housing development in an area with abundant local and region-serving transit options.
- 6) The Reduced Density Alternative would not implement as well as the Project the goals of the City's 2014 Public Land for Housing program and the Surplus Public Lands Initiative by replacing an underused surface parking lot located on surplus public land with a substantial amount of new housing, including a high percentage of affordable housing.
- 7) The Reduced Density Alternative would not implement as well as the Project the objectives and goals of the General Plan Housing Element and of the 2009 Balboa Park Station Area Plan that calls for the development of a mixed-use residential neighborhood on the west reservoir to address the citywide demand for housing.
- 8) The Reduced Density Alternative would not contribute as well as the Project to the City's goal of creating 5,000 housing units each year on a site specifically identified in the General Plan for additional housing in close proximity to local and regional public transportation by maximizing the number of housing units in the project.
- 9) The Reduced Density Alternative is economically infeasible. The Developer retained Economic and Planning Systems, Inc. (EPS), a qualified real estate economics firm, to evaluate the financial feasibility of the Reduced Density Alternative, compared to the Project. In a memorandum dated May 12, 2020, which is included in the record and is incorporated herein by reference, EPS concluded that the Reduced Density Alternative is not financially feasible for the following reasons.

The project sponsor is evaluating the types of outside funding sources that may be appropriate to help fund the horizontal improvements required to support the Project, including the state's Infill Infrastructure Grant (IIG), a state Park Grant, the California Housing and Community Development's Affordable Housing and Sustainable Communities Program (AHSC), as well as the subsidies required from the City to achieve an affordable housing goal of 50 percent. Eligibility criteria and competitiveness for many of these sources is tied to project density, and the Project Sponsor estimates the Proposed Project is optimizing competitiveness in this regard and at the limit of the potential grant and subsidy amounts that may be awarded.

The reduction in the number of units occurs by reducing the density of each pad (through reduced building heights) rather than by concentrating development on fewer pads. With the reduction in the number of residential units, the number of parking spaces is reduced to 400 spaces that would serve the residential uses only. The remainder of the program, including leasable space for commercial and nonprofit uses and parks and open space remains the same.

The expected land cost is estimated at approximately \$11.2 million. SFPUC requires the land payment for the site to reflect fair market value. In this case the fair market value will be determined through an appraisal process; however, it is not expected that SFPUC would accept less than \$11.2 million for the land under a reduced development scenario. The site-wide infrastructure costs (e.g., utility infrastructure, roads/curbs/gutters, earthwork and grading, and parks and open space) are estimated at approximately \$43.6 million in Phases 0 and 1 and \$4.7 million in Phase 2, for a total of \$48.3 million (in uninflated 2019 dollars). Unless development is reduced to the point that not all pads are developed, this investment in horizontal infrastructure is relatively fixed. The “per door” infrastructure cost is \$45,000 per door for the Proposed Project and \$60,000 per door for Reduced Density Alternative, a 33 percent increase. This additional cost burden (on a per door basis) would be in addition to vertical development costs that already cannot be supported by project revenues alone (see next finding).

Since, development fees (including profits) are included as a use of funds, a “Net Surplus/Deficit” of \$0 or greater represents a feasible project, while a negative number represents a project deficit and an infeasible project. The Reduced Density Alternative is \$26.7 million short of feasibility. This deficit is significantly larger than the \$11.2 million land acquisition cost, so, even if the SFPUC were willing to accept a reduced land payment, no amount of reduction in land cost would result in feasibility.

As the development program is reduced, many sources are subject to decreases. Reducing the number of units reduces the amount of outside funding that can be reasonably expected, as it is anticipated that the reduced density project may not compete as well for the grant funding as the Project.

The Office of Economic and Workforce Development engaged Century Urban, a qualified real estate economics firm, to independently review the EPS analysis of the financial feasibility of the Reduced Density Alternatives on behalf of the City. Century Urban produced a memorandum entitled “Financial Feasibility of Balboa Reservoir Project Alternative B,” dated May 12, 2020, which is included in the record and is incorporated herein by reference. Century Urban verified that the methodology and assumptions used by EPS were reasonable and verified the conclusion of the EPS analysis that the Reduced Density Alternative is financially infeasible.

- 10) The Reduced Density Alternative would not avoid or substantially lessen any of the significant and unavoidable impacts of the Project.

For the foregoing reasons, the Planning Commission rejects the Reduced Density Alternative as infeasible.

3. San Ramon Way Passenger Vehicular Access Alternative (Alternative C)

The San Ramon Way Passenger Vehicle Access Alternative would provide access for light vehicles (i.e., passenger cars and vans, but not heavy trucks) to the project site from the west. Alternative C would have the same mix of land uses, site plans, building footprints, building heights, square footages, and construction characteristics as the Project. Vehicle, bicycle, and pedestrian circulation to and from the site from the south and east would not change. However, instead of bicycle and pedestrian-only access at San Ramon Way, Alternative C would also include vehicular (non-truck) access, providing access to and from the west.

San Ramon Way currently terminates just west of the project site; it does not extend all the way to the project site boundary, as the Westwood Park Association (homeowners' association for the Westwood Park neighborhood that is west of the project site) owns an approximately 10-foot-wide parcel between the end of the San Ramon Way and the Project site.

San Ramon Way is approximately 26 feet wide with a 6-foot-wide sidewalk on the north side and a 7- to 10-foot-wide sidewalk on the south side. Parking is currently allowed on both sides of the street. Under Alternative C, the current dimensions of San Ramon Way would be retained and extended through the project site, ending at West Street. Given the San Francisco Fire Department requirement² for a 26-foot-wide clear path of travel, the need to accommodate two-way vehicle traffic and increase in vehicle traffic along San Ramon Way associated with Alternative C, six on-street parking spaces each on the north and south sides of San Ramon Way (a total of 12) would be removed under this alternative. San Ramon Way would have a 13-foot-wide single lane of travel in each direction, a 6-foot-wide sidewalk on the north side, and a 7- to 10-foot-wide sidewalk on the south side. San Ramon Way from West Street to Plymouth Avenue would be a shared roadway that would include class III bicycle facilities (sharrows) within the vehicular lanes.

Alternative C would have the same land uses as the Project. Therefore, this alternative would provide 1,100 residential units, 7,500 square feet of commercial space, and 10,000 square feet of community space, along with between off-street parking spaces in buildings up to 78 feet in height.

The Planning Commission rejects the San Ramon Way Passenger Vehicle Access Alternative as infeasible because it would not eliminate any of the significant unavoidable impacts of the Project and for the following reasons:

- 1) Plymouth Avenue is 24-feet wide. Between Ocean and Greenwood avenues (just north of Archbishop Riordan campus), Plymouth Avenue includes approximately 118 on-street parking spaces along both sides of the street. The FEIR estimated that under this alternative, 31 vehicles (approximately 12 percent of Project-generated vehicle trips) would utilize the San Ramon Way access during the weekday a.m. peak hour and 48 vehicles (15 percent of Project-generated vehicle trips) would utilize the San Ramon Way access during the weekday p.m. peak hour. The FEIR also noted that it's possible that this alternative could encourage some existing drivers to use this new connection to avoid traveling on portions of Ocean Avenue. The addition

of project-generated vehicle traffic and redirected existing traffic to the surrounding streets, including Plymouth Avenue, Southwood Drive, and San Ramon Way west of Plymouth Avenue, would increase instances of oncoming traffic and locations where there is not space for vehicles to pass side-by-side. While Alternative C would not eliminate any of the significant unavoidable impacts of the Project nor cause any significant impacts itself, the additional traffic under this alternative could cause inconvenience to drivers and cyclists using these streets.

- 2) The Planning Department received a comment letter on the DEIR from the Westwood Park Association concerning this alternative. The association stated they object this alternative and will not sell the 10-foot-wide parcel to make this alternative feasible. The Planning Department received other comment letters also opposing this alternative.
- 3) The cost of acquiring the 10-foot-wide parcel between the end of San Ramon Street and the Project site from the Westwood Park Association is not part of the Project budget and Development Agreement components. This additional cost burden and the owner of the parcel's opposition to selling it could make the project infeasible in light of the other Project Sponsor commitments under the Development Agreement.

For the foregoing reasons, the Planning Commission rejects the San Ramon Way Passenger Vehicle Access Alternative as infeasible.

4. Six Year Construction Alternative (Alternative D)

The Six Year Construction Alternative would have the same mix of land uses, site plans, circulation, building footprints, building heights, square footages, and construction characteristics as the Project. This alternative would not allow a compressed construction schedule. Therefore, under Alternative D, construction phasing for the Project would be phased under the six-year construction schedule. The initial phase (Phase 0) would include demolition of the parking lot, west side berm, and north and east embankments, followed by grading, excavation, and construction of site infrastructure over 12 months from 2021 to 2022. After Phase 0 is complete, construction of Phase 1 would occur from 2022 to 2024. Construction of Phase 2 would occur from 2024 to 2027, after Phase 1 is complete. Alternative D could be combined with the Project options, variants, and Alternatives B and C. Thus, under Alternative D, there would be no compressed construction schedule scenario and Phases 1 and 2 would not be constructed concurrently.

The Planning Commission rejects the Six Year Construction Alternative as infeasible because it would reduce the project's flexibility to schedule construction phases in less than six years in response to market conditions and the availability of public subsidies for affordable housing and infrastructure improvements.

For the foregoing reason, the Planning Commission rejects the Six Year Construction Alternative as infeasible.

VI. STATEMENT OF OVERRIDING CONSIDERATIONS

The Planning Commission finds that, notwithstanding the imposition of all feasible mitigation measures, impacts related to transportation and circulation, construction noise and construction air quality will remain significant and unavoidable. Pursuant to CEQA section 21081 and CEQA Guideline Section 15093, the Planning Commission hereby finds, after consideration of the FEIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below independently and collectively outweighs these significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings regarding the rejection of alternatives, which are incorporated by reference into this Section, and in the documents found in the record, as defined in Section I.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Planning Commission specifically finds that there are significant benefits of the Project to support approval of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding Considerations. The Commission further finds that, as part of the process of obtaining Project approvals, significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures in the FEIR and MMRP are adopted as part of the Approval Actions described in Section I, above.

The Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technological, legal, social and other considerations.

The Project will have the following benefits:

1. The Project implements the goals of the City's 2014 Public Land for Housing program and the Surplus Public Lands Initiative (Proposition K), passed by the voters in November 2015, by replacing an underused surface parking lot located on surplus public land with 1,100 new dwelling units, including a high percentage of affordable housing
2. The Project contributes to the City's goal of creating 5,000 housing units each year on a site specifically identified in the General Plan for additional housing in close proximity to local and regional public transportation.
3. The Project implements the City's important policy objective as expressed in Policy 1.1 of the Housing Element of the General Plan to increase the housing stock whenever possible to address a shortage of housing in the City.
4. The Project would increase the stock of permanently affordable housing by creating approximately 550 dwelling units affordable to low-income and moderate-income households, including units targeted to educators employed by City College of San Francisco and the San Francisco Unified School District.

5. The subsidy required to build each affordable dwelling unit is low relative to the average subsidy required for other buildings in the Mayor's Office of Housing and Community Development's affordable housing portfolio because the Project's affordable housing buildings are of a scale that provides greater building efficiency than other smaller affordable housing buildings in the City.
6. The Project provides extensive open space, including the 4-acre Reservoir Park and other active and passive open space amenities, all accessible to the public.
7. The Project provides community facilities, including an on-site childcare facility and an on-site community room.
8. The Project replaces the reservoir's abandoned infrastructure with new infrastructure improvements, including new streets and sidewalks, bicycle and pedestrian amenities, pedestrian paseos and multiuse paths, water, sewer and gas/electric utilities, new fire hydrant infrastructure and an extension of the City's Auxiliary Water Supply System (AWSS).
9. The Project establishes pedestrian and bicycle connections from the project site to adjacent neighborhoods including City College of San Francisco, Ocean Avenue, Sunnyside and Westwood Park, and increases and improves pedestrian access to transit connections in the area including Bay Area Rapid Transit (BART), Municipal Railway (Muni) light-rail and bus lines, and Muni's City College Terminal.
10. The Project is consistent with the City's Transit First Policy by limiting off-street residential parking to .5 space per unit, provides ample bicycle parking spaces, and will implement a Transportation Demand Management Program to reduce single-occupy vehicle trips.
11. The Project will assist City College accommodate the parking use of its faculty, staff and students.
12. The Project meets the City's *Strategies to Address Greenhouse Gas Emissions* and the BAAQMD requirements for a GHG reductions by maximizing development on an infill site that is well-served by transit, services and shopping and is suited for dense residential development, where residents can commute and satisfy convenience needs without frequent use of a private automobile, in an area with abundant local and region-serving transit options. The Project would leverage the site's location and proximity to transit by building a dense mixed-use project that allows people to live and work close to transit sources.
13. The Project is consistent with the implements numerous Balboa Park Station Area Plan Objectives and Policies, including the following: Objective 1.4 to develop the Balboa Reservoir in a manner that will best benefit the neighborhood, the city, and the region as a whole; Objective 2.4 to encourage walking, biking, and public transit as the primary means of transportation; Policy 2.4.2 to improve and expand bicycle connections throughout the plan area; Objective 3.1 to establish parking standards and controls that promote quality of place, affordable housing, and transit-oriented development; Policy 3.1.1 to provide flexibility for new residential development by eliminating minimum off-street parking requirements and establishing reasonable parking caps; Policy 3.1.3 to make parking costs visible to users by requiring parking to be rented, leased or sold separately from residential and commercial space for all new major development; Policy 3.2.3 to promote car-sharing programs as an important way to reduce parking needs while still providing

residents with access to an automobile when needed; Objective 4.1 to maximize opportunities for residential infill throughout the plan area; Policy 4.1.2 to eliminate dwelling unit density maximums; Objective 4.3 to establish an active, mixed-use neighborhood around the Balboa Park transit station that emphasizes the development of housing; Objective 4.4 to consider housing as a primary component to any development on the Balboa Reservoir; Policy 4.4.1 to develop housing on the West basin of the reservoir if it is not needed for water storage; Objective 4.5 to provide increased housing opportunities affordable to a mix of households at varying income levels; Policy 4.5.1 to give first consideration to the development of affordable housing on publicly-owned sites; Objective 5.1 to create a system of public parks, plazas and open spaces in the plan area; Objective 5.2 to create open space within new development that contributes to the open space system; Policy 5.2.1 to require good quality public open space as part of major new developments; Objective 5.3 to promote an urban form and architectural character that supports walking and sustains a diverse, active and safe public realm; Objective 5.4 to create an space system that both beautifies the neighborhood and strengthens the environment; Objective 6.2 to knit together isolated sections of the plan area with new mixed-use infill buildings; Objective 6.4 to respect and build from the successful established patterns and traditions of building massing, articulation, and architectural character of the area and the city; Policy 6.4.1 to create urban design guidelines that ensure that new development contributes to and enhances the best characteristics of the plan area; Policy 6.4.2 that new buildings should epitomize the best in contemporary architecture, but should do so with full awareness of the older buildings that surround them; Policy 6.4.4 that height and bulk controls should maximize opportunities for housing development while ensuring that new development is appropriately scaled for the neighborhood; Objective 6.5 to promote the environmental sustainability, ecological function and the overall quality of the natural environment in the plan area; Policy 6.5.1 that the connection between building form and ecological sustainability should be enhanced by promoting use of renewable energy, energy-efficient building envelopes, passive heating and cooling, and sustainable materials; and Policy 6.5.2 that new buildings should comply with strict environmental efficiency standards.

14. The Project is consistent with and implements numerous objectives and policies of the General Plan, particularly the Housing Element, including the following Housing Element objectives and policies: Objective 1 to identify and make available for development adequate sites to meet the city's housing needs, especially permanently affordable housing; Policy 1.1 to plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing; Policy 1.8 to promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects; Policy 1.10 to support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips; Objective 12 to balance housing growth with adequate infrastructure that serves the city's growing population; Policy 12.1 to encourage new housing that relies on transit use and environmentally sustainable patterns of movement; Policy 12.2 to consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units; Policy 12.3 to ensure new housing is sustainably supported by the City's public infrastructure systems; Objective 13 to prioritize sustainable development in planning for and constructing new housing; and Policy 13.3 to promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

15. The MMRP imposes all feasible mitigation measures that would mitigate the Project's potentially significant impacts to less-than-significant levels, except for a limited number of impacts on transportation and circulation, construction noise and construction air quality.

Having considered the above, the Planning Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects identified in the FEIR, and that those adverse environmental effects are therefore acceptable.

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MITIGATION MONITORING AND REPORTING PROGRAM FOR BALBOA RESERVOIR PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
MITIGATION MEASURES FOR THE BALBOA RESERVOIR PROJECT				
Transportation and Circulation Mitigation Measures				
<p>Mitigation Measure M-C-TR-4: Implement Measures to Reduce Transit Delay. The project sponsor, under either project option, shall implement feasible measures (as developed in consultation with SFMTA) to reduce transit delay for the identified segments of the K/T Third/Ingleside, 29 Sunset, and 43 Masonic.</p> <p>Routes and Study Segments. The following routes and study segments would most likely experience cumulative transit delay impact to which the project would have a considerable cumulative contribution:</p> <ul style="list-style-type: none"> K/T Third/Ingleside (outbound): Jules Avenue/Ocean Avenue to Balboa Park Bay Area Rapid Transit (BART) K/T Third/Ingleside (inbound): San Jose Avenue/Geneva Avenue to Dorado Terrace/Ocean Avenue 29 Sunset (outbound): Plymouth Avenue/Ocean Avenue to Mission St/Persia Avenue 29 Sunset (inbound): Mission St/Persia Avenue to Plymouth Avenue/Ocean Avenue 43 Masonic (outbound): Genessee Street/Monterey Boulevard to Geneva Avenue/Howth Street 43 Masonic (inbound): Geneva Avenue/Howth Street to Foerster Street/Monterey Boulevard <p>Implement Capital Improvement Measures. The project sponsor shall contribute funds for the following capital improvement measures that reduce transit travel times:</p> <ol style="list-style-type: none"> Signal Timing Modifications at Ocean Avenue/Brighton Avenue. The project sponsor shall fund the design and construction of signal timing modifications and restriping, as needed, at the Ocean Avenue/Brighton Avenue intersection. The existing traffic signal shall be modified to prohibit eastbound left turns and provide a protected green arrow signal phase for westbound left turns. Signal Timing Modifications at Ocean Avenue/Plymouth Avenue. The project sponsor shall fund the design and construction of signal timing modifications and restriping, as needed, at the Ocean Avenue/Plymouth Avenue intersection. The existing traffic signal shall be modified to prohibit eastbound left turns and provide a protected green arrow signal phase for westbound left turns. Bus Boarding Island on Southbound Frida Kahlo Way. The project sponsor shall fund the design and construction of a bus boarding island on southbound Frida Kahlo Way, north of the Frida Kahlo Way/Geneva Avenue/Ocean Avenue intersection, and restriping, as needed. <p>The cost of these capital improvement measures is \$200,000 (in 2020 dollars; cost shall be escalated using consumer price index (CPI) to year of payment), and shall be considered the project's fair share toward mitigating this significant cumulative impact. The fair share contribution, as documented by SFMTA¹, shall not exceed this amount (with CPI escalation) across both payment phases. The project sponsor shall pay \$110,000 (plus CPI escalation) to SFMTA prior to issuance of the first construction document for the first project building in phase 1, and \$90,000 (plus CPI escalation) to SFMTA prior to issuance of the first construction document for the first project building in phase 2.</p> <p>If SFMTA adopts a strategy to reduce transit travel times to the K/T Third/Ingleside, 29 Sunset, and 43 Masonic that does not involve signal timing modifications or bus boarding islands, the project's total contribution shall remain the same, and may be used for other transit travel time saving strategies on these routes, as deemed appropriate by the SFMTA.</p> <p>The schedule for implementing capital improvement measures shall be at the discretion of SFMTA, as designated in the SFMTA's capital improvements plan.</p>	Project sponsor	Project sponsor shall submit the \$110,000 (plus CPI escalation) payment prior to issuance of the first construction document for the first project building in Phase 1. The project sponsor shall submit the \$90,000 (plus CPI escalation) payment prior to issuance of the first construction document for the first project building in Phase 2.	SFMTA	<p>Documentation of compliance.</p> <p>Considered complete when the project sponsor has contributed \$200,000 (plus CPI escalation) to fund the SFMTA capital improvement measures.</p>
Noise Mitigation Measures				
<p>Mitigation Measure M-NO-1: Construction Noise Control Measures.</p> <p>The project sponsor shall implement a project-specific noise control plan that has been prepared by a qualified acoustical consultant and approved by the planning department. The noise control plan may include, but not limited to, the following construction noise control measures:</p> <ul style="list-style-type: none"> To the extent that it does not extend the overall schedule, conduct demolition of the parking lot at the northern portion of the project site during periods when Archbishop Riordan High School is not in session. Require the general contractor to ensure that equipment and trucks used for project construction utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds). Require the general contractor to locate stationary noise sources (such as the rock/concrete crusher, or compressors) as far from adjacent or nearby sensitive receptors as possible, to muffle such noise sources, and/or to construct barriers around such sources 	Project sponsor and contractor	<p>Draft noise control plan submittal to Planning Department: prior to issuance of the first demolition or site permit.</p> <p>Draft construction noise monitoring program submittal to Planning Department: prior to start of excavation of all construction phases.</p> <p>Implementation of measures: throughout construction period.</p>	<p>San Francisco Department of Building Inspection (DBI), Planning Department, Department of Public Health (on complaint basis), Police Department (on complaint basis).</p> <p>Planning Department to review and approve noise control plan and construction noise monitoring programs.</p> <p>Project sponsor, qualified consultant, and/or construction contractor(s) to prepare a weekly noise monitoring log which shall be</p>	<p>Considered complete at the completion of construction for each subsequent phase of the project and submittal of final noise monitoring report.</p>

¹ Henderson, Tony, SFMTA, e-mail communication to Elizabeth White, San Francisco Planning Department, and Leigh Lutenski, Office of Economic and Workforce Development on March 30, 2020.

MITIGATION MONITORING AND REPORTING PROGRAM FOR BALBOA RESERVOIR PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>and/or the construction site, which could reduce construction noise by as much as 5 dBA. To further reduce noise, the contractor shall locate stationary equipment in pit areas or excavated areas, to the maximum extent practicable.</p> <ul style="list-style-type: none"> Require the general contractor to use impact tools (e.g., jackhammers and pavement breakers) that are hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used, along with external noise jackets on the tools, which would reduce noise levels by as much as 10 dBA. Include noise control requirements for construction equipment and tools, including specifically concrete saws, in specifications provided to construction contractors. Such requirements could include, but are not limited to, erecting temporary plywood noise barriers around a construction site, particularly where a site adjoins noise-sensitive uses; utilizing noise control blankets on a building structure as the building is erected to reduce noise levels emanating from the construction site; performing all work in a manner that minimizes noise; and using equipment with effective mufflers. Moveable sound barrier curtains can provide up to 15 dBA of sound attenuation. Undertake the noisiest activities (e.g., demolition using hoe rams) during the hours of 9 a.m. to 4 p.m.; and select or construct haul routes that avoid the North Access Road and the adjacent Archbishop Riordan High School and residential uses along Plymouth Avenue and Lee Avenue, such as the temporary or permanent relocation of North Street. Postpone demolition of the west side berm to the end of Phase 0, to the extent that it does not extend the overall schedule, so that it may serve as a noise attenuation barrier for the receptors to the west for earlier Phase 0 demolition and construction activities. Notify the planning department's development performance coordinator at the time that night noise permits are requested or as soon as possible after emergency/unanticipated activity causing noise with the potential to exceed noise standards has occurred. <p>The general contractor or other designated person(s) shall prepare a weekly noise monitoring log report that shall be made available to the planning department upon request. The log shall include any noise complaints received, whether in connection with an exceedance or not, as well as any noise complaints received through calls to 311 or DBI if the contractor is made aware of them (for example, via a DBI notice, inspection, or investigation). Any weekly report that includes an exceedance or for a period during which a complaint is received shall be submitted to the planning department within three business days following the week in which the exceedance or complaint occurred. A report also shall be submitted to the planning department at the completion of each construction phase. The report shall document noise levels, exceedances of threshold levels, if reported, and corrective action(s) taken.</p>			<p>made available to the Planning Department when requested. Any weekly report that includes an exceedance or for a period during which a complaint is received shall be submitted to the development performance coordinator within 3 business days following the week in which the exceedance or complaint occurred.</p> <p>Project sponsor, qualified consultant, and/or construction contractor(s) to submit final noise monitoring report to the Planning Department development performance coordinator at the completion of each construction phase.</p>	
<p>Mitigation Measure M-NO-3: Fixed Mechanical Equipment Noise Controls.</p> <p>Noise attenuation measures shall be incorporated into all fixed mechanical equipment (including HVAC equipment) installed on all buildings that include such equipment as necessary to meet noise limits specified in Police Code section 2909. Interior noise limits shall be met under both existing and future noise conditions.</p> <p>Noise attenuation measures could include provision of sound enclosures/barriers, addition of roof parapets to block noise, increasing setback distances from sensitive receptors, provision of louvered vent openings, location of vent openings away from adjacent residential uses, and restriction of generator testing to the daytime hours.</p> <p>After completing installation of the HVAC equipment but before receipt of the Certificate of Occupancy for each building, the project sponsor shall conduct noise measurements to ensure that the noise generated by fixed mechanical equipment complies with section 2909(a) and (d) of the San Francisco Noise Ordinance. No Final Certificate of Occupancy shall be issued for any building until the standards in the Noise Ordinance are shown to be met for that building.</p>	Project sponsor	Prior to receipt of any certificate of final occupancy for each building.	San Francisco Department of Building Inspection (DBI). Project sponsor to provide copies of project construction plans to the Planning Department that show incorporation of noise attenuation measures.	Considered complete upon DBI review and issuance of final certificate of occupancy.
Air Quality Mitigation Measures				
<p>Mitigation Measure M-AQ-2a: Construction Emissions Minimization.</p> <p>The project sponsor or the project sponsor's contractor shall comply with the following:</p> <p>A. Engine Requirements.</p> <ol style="list-style-type: none"> All off-road equipment greater than 25 horsepower shall have engines that meet Tier 4 Final off-road emission standards. Since grid power will be available, portable diesel engines shall be prohibited. Renewable diesel shall be used to fuel all diesel engines unless it can be demonstrated to the Environmental Review Officer (ERO) that such fuel is not compatible with on-road or off-road engines and that emissions of ROG and NOx from the transport of fuel to the project site will offset its NOx reduction potential. Diesel engines, whether for off-road or on-road equipment, shall not be left idling for more than two minutes, at any location, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment (e.g., traffic conditions, safe operating conditions). The contractor shall post legible and visible signs in English, Spanish, and Chinese, in designated queuing areas and at the construction site to remind operators of the two-minute idling limit. The contractor shall instruct construction workers and equipment operators on the maintenance and tuning of construction equipment, and require that such workers and operators properly maintain and tune equipment in accordance with manufacturer specifications. <p>B. Waivers. The ERO may waive the equipment requirements of subsection (A)(1) if: a particular piece of off-road equipment is technically not feasible; the equipment would not produce desired emissions reduction due to expected operating modes; installation of the</p>	Project sponsor and project sponsor's construction contractor	<p>Submit construction emissions minimization plan to Planning Department prior to issuance of construction site permit.</p> <p>Implement plan throughout construction period.</p> <p>Submit final plan after completion of construction activities and prior to receiving a final certificate of occupancy.</p>	<p>Planning Department (ERO) or their designee must review draft construction emissions minimization plan prior to issuance of first demolition or construction permit and approve final plan prior to the start of demolition or construction.</p> <p>ERO to review quarterly and final monitoring reports.</p>	Considered complete upon Planning Department review and approval of documentation and completion of construction.

MITIGATION MONITORING AND REPORTING PROGRAM FOR BALBOA RESERVOIR PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>equipment would create a safety hazard or impaired visibility for the operator; or, there is a compelling emergency need to use other off-road equipment. If the ERO grants the waiver, the contractor must use the next cleanest piece of off-road equipment, according to the table below.</p> <p>The ERO may waive the equipment requirements of Item A.1 if: a particular piece of off-road equipment with an engine meeting Tier 4 Final emission standards is not regionally available to the satisfaction of the ERO. If seeking a waiver from this requirement, the project sponsor must demonstrate to the satisfaction of the ERO that the health risks from existing sources, project construction and operation, and cumulative sources do not exceed a total of 10 µg/m3 or 100 excess cancer risks for any onsite or offsite receptor.</p> <p>The ERO may waive the equipment requirements of Item A.2 if: an application has been submitted to initiate onsite electrical power, portable diesel engines may be temporarily operated for a period of up to three weeks until onsite electrical power can be initiated or, there is a compelling emergency.</p> <p>C. <i>Construction Emissions Minimization Plan.</i> Before starting onsite ground disturbing, demolition, or construction activities, the contractor shall submit a Construction Emissions Minimization Plan to the ERO for review and approval. The plan shall state, in reasonable detail, how the contractor will meet the requirements of Section A, Engine Requirements.</p> <ol style="list-style-type: none"> The Construction Emissions Minimization Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. The description may include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, engine serial number, and expected fuel usage and hours of operation. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used. The project sponsor shall ensure that all applicable requirements of the Construction Emissions Minimization Plan have been incorporated into the contract specifications. The plan shall include a certification statement that the contractor agrees to comply fully with the plan. The contractor shall make the Construction Emissions Minimization Plan available to the public for review onsite during working hours. The contractor shall post at the construction site a legible and visible sign summarizing the plan. The sign shall also state that the public may ask to inspect the plan for the project at any time during working hours and shall explain how to request to inspect the plan. The contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. <p>D. <i>Monitoring.</i> After start of construction activities, the contractor shall submit quarterly reports to the ERO documenting compliance with the Construction Emissions Minimization Plan. After completion of construction activities and prior to receiving a final certificate of occupancy, the project sponsor shall submit to the ERO a final report summarizing construction activities, including the start and end dates and duration of each construction phase, and the specific information required in the plan.</p>				
<p>Mitigation Measure M-AQ-2b: Low-VOC Architectural Coatings.</p> <p>The project sponsor shall use low- and super-compliant VOC architectural coatings during construction. "Low-VOC" refers to paints that meet the more stringent regulatory limits in South Coast Air Quality Management District rule 1113; however, many manufacturers have reformulated to levels well below these limits. These are referred to as "Super-Compliant" architectural coatings.</p>	Project sponsor	During construction	Planning Department (ERO)	Considered complete upon Planning Department review and approval of documentation of compliance
<p>Mitigation Measure M-AQ-2c: On-Road Truck Emissions Minimization for the Compressed Construction Schedule. Under the compressed three-year construction schedule for either the Developer's Proposed Option or the Additional Housing Option, the project sponsor or the project sponsor's contractor shall comply with the following:</p> <p>A. <i>Engine Requirements.</i> The project sponsor shall ensure that all on-road heavy-duty diesel trucks with a gross vehicle weight rating of 19,500 pounds or greater used at the project site (such as haul trucks, water trucks, dump trucks, concrete trucks, and vendor trucks) be model year 2014 or newer.</p> <p>B. <i>Waivers.</i> The ERO may waive the engine year requirements of Subsection (A)(1) for on-road heavy duty diesel vendor trucks delivering materials to the project site, which could include window, door, cabinet, or elevator equipment if each vendor truck entering the project site is used only once for a single delivery of equipment or material. If the ERO grants the waiver, the contractor must demonstrate that that vendor truck would only be used once for a single delivery to the project site.</p> <p>Waivers to the engine year requirements of Subsection (A)(1) shall not be included for vendor trucks that import or off-haul soil, transport heavy earthmoving equipment, or ready-mix concrete, or deliver lumber.</p> <p>C. <i>Construction Emissions Minimization Plan.</i> The construction minimization requirements of Mitigation Measure M-AQ-2a item (C).</p> <p>D. <i>Monitoring.</i> The monitoring requirements of Mitigation Measure M-AQ-2a item (D).</p>	Project sponsor and contractor	Implement prior to and during construction activities for the compressed construction schedule	Planning Department (ERO). ERO to review draft construction emissions minimization plan prior to issuance of first demolition or construction permit and final plan at the start of demolition or construction. ERO to review quarterly and final monitoring reports.	Considered complete upon Planning Department review and approval of documentation and completion of construction.
<p>Mitigation Measure M-AQ-2d: Offset Construction Emissions for the Compressed Schedule.</p> <p>Under the compressed three-year construction schedule for either the Developer's Proposed Option or the Additional Housing Option, the project sponsor shall implement this measure. Prior to issuance of the final certificate of occupancy for the final building associated with Phase 1, the project sponsor, with the oversight of the Environmental Review Officer (ERO), shall either:</p>	Project sponsor	<i>Offset program:</i> Prior to issuance of final certificate of occupancy for final building constructed, notify the ERO within six months of completion of the offset project(s)	<i>Offset program:</i> Planning Department (ERO)	<i>Offset program:</i> Considered complete upon approval of documentation of offset projects implemented

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Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>1. Directly fund or implement a specific offset project within San Francisco if available to achieve the equivalent to a one-time reduction of 2.0 tons per year of ozone precursors for the Developer's Proposed Option or 3.2 tons per year of ozone precursors for the Additional Housing Option. To qualify under this mitigation measure, the specific emissions offset project must result in emission reductions within the San Francisco Bay Area Air Basin that would not otherwise be achieved through compliance with existing regulatory requirements. A preferred offset project would be one implemented locally within the City and County of San Francisco. Prior to implementing the offset project, it must be approved by the ERO. The project sponsor shall notify the ERO within six months of completion of the offset project for verification; or</p> <p>2. Pay mitigation offset fees to the Bay Area Air Quality Management District Bay Area Clean Air Foundation or other governmental entity or third party. The mitigation offset fee shall fund one or more emissions reduction projects within the San Francisco Bay Area Air Basin. The fee will be determined by the ERO, the project sponsor, and the governmental entity or third party responsible for administering the funds, and be based on the type of projects available at the time of the payment. This fee is intended to fund emissions reduction projects to achieve reductions of 2.0 tons per year of ozone precursors for the Developer's Proposed Option or 3.2 tons per year of ozone precursors for the Additional Housing Option, which is the amount required to reduce emissions below significance levels after implementation of other identified mitigation measures as currently calculated.</p> <p>The agreement that specifies fees and timing of payment shall be signed by the project sponsor, the governmental entity or third party responsible for administering the funds, and the ERO prior to issuance of the first site permit. This offset payment shall total the predicted 2.0 tons per year of ozone precursors for the Developer's Proposed Option or 3.2 tons per year of ozone precursors for the Additional Housing Option above the 10-ton-per-year threshold after implementation of Mitigation Measures M-AQ-2a, M-AQ-2b, and M-AQ-2c.</p> <p>The total emission offset amount presented above was calculated by summing the maximum daily construction of ROG and NOx (pounds/day), multiplying by 260 work days per year, and converting to tons. The amount represents the total estimated operational and construction-related ROG and NOx emissions offsets required. No reductions are needed for operations or overlapping construction and operations.</p>		<p>and/or</p> <p>Mitigation Fee: Sign agreement prior to issuance of first site permit. Pay amount determined at time of impact</p>	<p>Mitigation Fee: BAAQMD or other governmental entity or third party</p>	<p>Mitigation Fee: Considered complete upon BAAQMD/other governmental entity/third party confirmation of receipt of payment</p>
<p>Mitigation Measure M-AQ-4a: Diesel Backup Generator Specifications.</p> <p>To reduce ROG and NOx associated with operation of the proposed project, the project sponsor shall implement the following measures:</p> <p>A. All new diesel backup generators shall:</p> <ol style="list-style-type: none"> Have engines that meet or exceed California Air Resources Board Tier 4 off-road emission standards which have the lowest NOx emissions of commercially available generators; and Be fueled with renewable diesel, if commercially available, which has been demonstrated to reduce NOx emissions by approximately 10 percent. <p>B. All new diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by the Bay Area Air Quality Management District in its permitting process.</p> <p>C. For each new diesel backup generator permit submitted to Bay Area Air Quality Management District for the project, the project sponsor shall submit the anticipated location and engine specifications to the San Francisco Planning Department ERO for review and approval prior to issuance of a permit for the generator from the San Francisco Department of Building Inspection. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall be required to maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and to provide this information for review to the planning department within three months of requesting such information.</p>	Project sponsor and facility operator, Planning Department.	<p>Prior to issuance of a permit for diesel backup generator specifications.</p> <p>Ongoing for maintenance, testing, and records keeping.</p>	Planning Department (ERO) and DBI	<p>Equipment specifications portion considered complete when equipment specifications approved by ERO.</p> <p>Maintenance portion is ongoing and records are subject to Planning Department review upon request.</p>
<p>Mitigation Measure M-AQ 4b: Install MERV 13 Filters at the Daycare Facility.</p> <p>If the daycare facility is constructed as part of Phase 1 and is operational while Phase 2 is under construction, the project sponsor shall install a mechanical ventilation system at the onsite daycare facility located in Block B capable of achieving the protection from particulate matter (PM2.5) equivalent to that associated with a Minimum Efficiency Reporting Value (MERV) 13 filtration (as defined by American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE] standard 52.2). The system must meet the requirements of San Francisco Health Code article 38 and San Francisco Building Code section 1203.5.</p>	Project sponsor	Prior to issuance of final certificate of occupancy for building containing daycare.	Planning Department (ERO) and DBI.	Considered complete upon ERO and DBI acceptance of documentation of compliance prior to issuance of a certificate of occupancy.
Cultural Resources (Archeological Resources) Mitigation Measures				
<p>Mitigation Measure M-CR-2: Accidental Discovery of Archeological Resources (PEIR Mitigation Measure AM-1).</p> <p>The project sponsor shall distribute the planning department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities firm involved in soils-disturbing activities within the project site. Prior to any soils-disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel including, machine operators, field crew, pile drivers, supervisory personnel, etc. The project</p>	Project sponsor, contractor, qualified archaeological consultant, and Planning Department (ERO).	During soil-disturbing activities.	Planning Department (ERO).	Considered complete upon ERO's approval of FARR.

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<p>sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet.</p> <p>Should any indication of an archeological resource be encountered during any soils-disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils-disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.</p> <p>If the ERO determines that an archeological resource may be present within the project area, the project sponsor shall retain the services of an archeological consultant from the pool of qualified archeological consultants maintained by the planning department archeologist. The archeological consultant shall advise the ERO as to whether the discovery is an archeological resource, retains sufficient integrity, and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant shall identify and evaluate the archeological resource. The archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.</p> <p>Measures might include: preservation in situ of the archeological resource; an archeological monitoring program; or an archeological testing program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the Environmental Planning (EP) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.</p> <p>The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.</p> <p>Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archeological Site Survey Northwest Information Center (NWIC) shall receive one copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Environmental Planning division of the Planning Department shall receive one bound copy, one unbound copy and one unlocked, searchable PDF copy on CD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.</p>				
<p>Mitigation Measure M-CR-3: Accidental Discovery of Human Remains.</p> <p>The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity shall comply with all applicable state and federal laws. This shall include immediate notification of the Medical Examiner of the City and County of San Francisco and, in the event of the Medical Examiner's determination that the human remains are Native American remains, notification of the Native American Heritage Commission, which shall appoint a Most Likely Descendant (MLD). The MLD shall complete his or her inspection and make recommendations or preferences for treatment and disposition within 48 hours of being granted access to the site (Public Resources Code section 5097.98). The Environmental Review Officer (ERO) shall also be notified immediately upon discovery of human remains.</p> <p>The project sponsor and the ERO shall make all reasonable efforts to develop a Burial Agreement ("Agreement") with the MLD, as expeditiously as possible for the treatment and disposition, with appropriate dignity, of the human remains and associated or unassociated funerary objects (as detailed in CEQA Guidelines section 15064.5(d)). The Agreement shall take into consideration the appropriate excavation, removal, recordation, scientific analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. If the MLD agrees to scientific analyses of the remains and/or associated or unassociated funerary objects, the archeological consultant shall retain possession of the remains and associated or unassociated funerary objects until completion of any such analyses, after which the remains and associated or unassociated funerary objects shall be reinterred or curated as specified in the Agreement.</p> <p>Nothing in existing state regulations or in this mitigation measure compels the project sponsor and the ERO to accept recommendations of an MLD. However, if the ERO, project sponsor, and MLD are unable to reach an agreement on scientific treatment of the remains and associated or unassociated funerary objects, the ERO, in cooperation with the project sponsor, shall ensure that the remains and associated or unassociated funerary objects are stored securely and respectfully until they can be reinterred on the property, with appropriate dignity, in a location not subject to further or future subsurface disturbance (Public Resources Code section 5097.98).</p> <p>Treatment of historic-period human remains and of associated or unassociated funerary objects discovered during soil-disturbing activity additionally shall follow protocols laid out in the project's archeological treatment documents, and any agreement established between the project sponsor, the Medical Examiner and the ERO.</p>	Project sponsor and contractor, archaeological consultant, ERO in consultation with the Coroner of the City and County of San Francisco, Native American Heritage Commission, and Most Likely Descendant.	In the event human remains and/or funerary objects are encountered, during soil-disturbing activity; immediately, upon each such discovery	Planning Department (ERO)	Considered complete on notification of the San Francisco County Coroner and ERO, and if Native American remains are discovered, then notification to NAHC, and MLD, and completion of treatment agreement and/or analysis and reporting.
Tribal Cultural Resources Mitigation Measures				
<p>Mitigation Measure M-TC-1: Tribal Cultural Resources Interpretive Program.</p> <p>If the Environmental Review Officer (ERO) determines that a significant archeological resource is present, and if in consultation with the affiliated Native American tribal representatives, the ERO determines that the resource constitutes a tribal cultural resource and that the</p>	Planning Department (ERO), Native American tribal representatives, archaeological consultant, project sponsor.	In the event tribal cultural resources are encountered during soil-disturbing activity.	Planning Department (ERO).	Considered complete if no Tribal Cultural Resource is discovered or Tribal Cultural Resource is discovered and either preserved in-

MITIGATION MONITORING AND REPORTING PROGRAM FOR BALBOA RESERVOIR PROJECT

Measures Adopted as Conditions of Approval	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/Schedule and Verification of Compliance
<p>resource could be adversely affected by the proposed project, the proposed project shall be redesigned so as to avoid any adverse effect on the significant tribal cultural resource, if feasible.</p> <p>If the ERO determines that preservation-in-place of the tribal cultural resource is both feasible and effective, then the archeological consultant shall prepare an archeological resource preservation plan (ARPP). Implementation of the approved ARPP by the archeological consultant shall be required when feasible.</p> <p>If the ERO, in consultation with the affiliated Native American tribal representatives and the project sponsor, determines that preservation-in-place of the tribal cultural resources is not a sufficient or feasible option, the project sponsor shall implement an interpretive program of the tribal cultural resource in consultation with affiliated tribal representatives. An interpretive plan produced in consultation with the ERO and affiliated tribal representatives, at a minimum, and approved by the ERO would be required to guide the interpretive program. The plan shall identify, as appropriate, proposed locations for installations or displays, the proposed content and materials of those displays or installation, the producers or artists of the displays or installation, and a long-term maintenance program. The interpretive program may include artist installations, preferably by local Native American artists, oral histories with local Native Americans, artifacts displays and interpretation, and educational panels or other informational displays.</p>				<p>place or project effects to Tribal Cultural Resource are mitigated by implementation of Planning Department approved interpretive program.</p>
Geology and Soils Mitigation Measures				
<p>Mitigation Measure M-GE-6: Inadvertent Discovery of Paleontological Resources.</p> <p>Before the start of excavation activities, the project sponsor shall retain a qualified paleontologist, as defined by the Society of Vertebrate Paleontology, who is experienced in on-site construction worker training. The qualified paleontologist shall complete an institutional record and literature search and train all construction personnel who are involved with earthmoving activities, including the site superintendent, regarding the possibility of encountering fossils, the appearance and types of fossils that are likely to be seen during construction, the proper notification procedures should fossils be encountered, and the laws and regulations protecting paleontological resources. If potential vertebrate fossils are discovered by construction crews, all earthwork or other types of ground disturbance within 25 feet of the find shall stop immediately and the monitor shall notify the Environmental Review Officer. The fossil should be protected by an "exclusion zone" (an area approximately 5 feet around the discovery that is marked with caution tape to prevent damage to the fossil). Work shall not resume until a qualified professional paleontologist can assess the nature and importance of the find. Based on the scientific value or uniqueness of the find, the qualified paleontologist may record the find and allow work to continue, or recommend salvage and recovery of the fossil. The qualified paleontologist may also propose modifications to the stop-work radius and the monitoring level of effort based on the nature of the find, site geology, and the activities occurring on the site, and in consultation with the Environmental Review Officer. If treatment and salvage is required, recommendations shall be consistent with Society of Vertebrate Paleontology's 2010 Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources, and currently accepted scientific practice, and shall be subject to review and approval by the Environmental Review Officer. If required, treatment for fossil remains may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection (e.g., the University of California Museum of Paleontology), and may also include preparation of a report for publication describing the finds. Upon receipt of the fossil collection, a signed repository receipt form shall be obtained and provided to the planning department. The qualified paleontologist shall prepare a paleontological resources report documenting the treatment, salvage, and, if applicable, curation of the paleontological resources. The project sponsor shall be responsible for the costs necessary to prepare and identify collected fossils, and for any curation fees charged by the paleontological repository. The planning department shall ensure that information on the nature, location, and depth of all finds is readily available to the scientific community through university curation or other appropriate means.</p>	<p>Prior to excavation: project sponsor and qualified paleontological consultant</p> <p>During construction: project sponsor and contractor</p>	<p>Institutional record and literature search: before issuance of a demolition permit.</p> <p>Worker training: before the start of excavation activities</p> <p>During construction</p>	<p>Planning Department (ERO)</p> <p>Planning Department (ERO)</p>	<p>Considered complete upon ERO acceptance of documentation of compliance</p> <p>Considered complete upon ERO acceptance of documentation of compliance</p>

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AGREEMENT FOR SALE OF REAL ESTATE

by and between

**the CITY AND COUNTY OF SAN FRANCISCO,
acting by and through
its Public Utilities Commission,
as Seller**

and

**RESERVOIR COMMUNITY PARTNERS, LLC,
as Buyer**

**for the sale and purchase of
Balboa Reservoir
Assessor's Block 3180, Lot 190
San Francisco, California**

_____, 2020

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EXHIBIT A-2	Real Property Depiction
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EXHIBIT N	Memorandum
EXHIBIT O	Preliminary Title Report

AGREEMENT FOR SALE OF REAL ESTATE

(Balboa Reservoir, Assessor's Block 3180, Lot 190, San Francisco)

THIS AGREEMENT FOR SALE OF REAL ESTATE (this "**Agreement**") dated as of _____, 2020 ("**Agreement Date**"), is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Seller**"), acting by and through its Public Utilities Commission ("**SFPUC**"), and RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company ("**Buyer**"). City and Buyer are each a "**Party**" and are sometimes collectively referred to in this Agreement as the "**Parties**."

RECITALS

A. City, under the jurisdiction of the SFPUC, owns the approximately 16-acre Balboa Reservoir site, which is more particularly described in Exhibit A-1, which property is labelled as "Development Parcel" and depicted on Exhibit A-2 (the "Property"). The Property is located immediately west of the Ocean Avenue Campus of the San Francisco Community College District (the "College"), to the south of Archbishop Riordan High School, to the east of the Westwood Park neighborhood, and to the north of the Avalon Ocean Avenue apartments. City will not convey, and the Property does not include, an approximately 80 foot wide strip of land along the southern border of the Property labelled "Retained Parcel" as depicted on Exhibit A-2, which land contains essential SFPUC infrastructure.

B. City conducted an extensive public process to solicit and select a qualified entity to plan and develop a housing oriented mixed-use project on the Property in 2016 and 2017. On August 23, 2017, the developer selection process for the Property concluded with the selection of Buyer as the highest scoring proposal. City and Buyer entered into an Exclusive Negotiation Agreement dated as of December 8, 2017, and have negotiated the terms of a development project to be constructed on the Property (the "**Project**"), including this Agreement, zoning and entitlements for the Property, and a Development Agreement including an Affordable Housing Plan, Open Space Plan, Workforce Agreement, Child Care Program, Transportation Demand Management and Street Improvement Plan, and Master Infrastructure Plan.

C. As proposed, the Property will be developed for mixed uses and will deliver approximately 1,100 units of residential housing, of which approximately 50% will be affordable units. The Project will also include retail, open space, parking, child care and related uses. The SFPUC has recommended sale of the Property to Buyer pursuant to Resolution No. _____.

D. Buyer desires to purchase the Property, and City is willing to sell the Property, subject to approval by City's Board of Supervisors and Mayor on the terms and conditions set forth below.

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

1. **DEFINITIONS.**

1.1. **Additional Encumbrances** is defined in Section 4.1 of this Agreement.

1.2. **Agents** means the elective or appointive boards, commissions, members, officers, employees, contractors, representatives or agents of either Party.

1.3. **Agreement** means this Agreement for Sale of Real Estate.

1.4. **Agreement Date** is defined in the opening paragraph of this Agreement.

1.5. **AVB** means AVB Balboa, LLC, a Delaware limited liability company.

1.6. **Base Price** means Eleven Million Four Hundred Thousand Dollars (\$11,400,000), as increased by the Interest Rate (provided that the Base Price will not accrue interest during any Litigation Delay Extension). For the avoidance of doubt, the Initial Payment and the Deposits will be credited against the Base Price to be paid by Buyer at Closing.

1.7. **BHC** means Bridge Housing Corporation, a California corporation.

1.8. **BHC/AVB PSA Assignment** is defined in Section 11.2(c)(iii) of this Agreement.

1.9. **Business Plan Law** is defined in Section 5.6 of this Agreement.

1.10. **Buyer** means RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company.

1.11. **Buyer's Conditions Precedent** is defined in Section 6.2(a) of this Agreement.

1.12. **Buyer Designee Request Letter** is defined in Section 7.2(b) of this Agreement.

1.13. **City** means the City and County of San Francisco, a municipal corporation.

1.14. **California Superfund** is defined in Section 5.6 of this Agreement.

1.15. **CERCLA** is defined in Section 5.6 of this Agreement.

1.16. **City Costs** is defined in the Development Agreement.

1.17. **City's Conditions Precedent** is defined in Section 6.3(a) of this Agreement.

1.18. **Clean Water Act** is defined in Section 5.6 of this Agreement.

1.19. **Closing** means the consummation of the purchase and sale of the Property contemplated by this Agreement.

1.20. **Closing Date** means Thursday, November 17, 2022 or such earlier or later date as the parties agree upon in their reasonable discretion, but in no event beyond the Outside Closing Date.

1.21. **College** is defined in Recital A.

1.22. **College Easement** means that certain Access Easement Agreement by and between the City and College dated May 17, 2012 and recorded on May 17, 2012 in the Official Records of San Francisco County, California under Serial No. 2012-J414058.

1.23. **College Easement Amendment** means the Amended and Restated Access Easement Agreement, to be entered into by City and College, in substantially the form attached as **Exhibit C** or otherwise as acceptable to the Parties in each of their sole discretion.

1.24. **Community Facilities District** means the plan for the community facilities district that will govern the Project, attached to the Development Agreement as **Exhibit O**.

1.25. **Conditions of Title** is defined in **Section 4.1** of this Agreement.

1.26. **Deed** means the quitclaim deed by which City will quitclaim its interest in and to the Property to Buyer, in the form attached as **Exhibit D**.

1.27. **Deposits** is defined in **Section 3.2(a)** of this Agreement. “Deposits” does not include the Initial Payment.

1.28. **Development Agreement** means that certain Development Agreement for the Project by and between City and Buyer dated as of the Agreement Date and recorded (or to be recorded) in the Official Records of San Francisco County, California.

1.29. **Effective Date** means the first date on which all of the following have been completed: (a) City's Board of Supervisors and Mayor have adopted or enacted a resolution or an ordinance approving and authorizing this Agreement and the transactions contemplated by this Agreement; (b) the Effective Date of the Development Agreement has occurred; and (c) this Agreement is executed and delivered by both Parties, provided that this Agreement is executed within thirty (30) days of the Effective Date of the Development Agreement.

1.30. **Existing Agreements** will mean those certain agreements by and between City, and certain third-parties, for the use and occupancy of all or any portion of the Property, as such agreements and parties are identified on **Exhibit F**.

1.31. **FEMA** is defined in **Section 5.3(c)** of this Agreement.

1.32. **FIRM** is defined in **Section 5.3(c)** of this Agreement.

1.33. **General Conditions** is defined in **Section 6.1(a)** of this Agreement.

1.34. **Initial Approvals** means the City approvals, entitlements, and permits listed in **Exhibit E** attached.

1.35. **Initial Payment** means the non-refundable payment in the amount of \$500,000 paid by Buyer to the SFPUC within five (5) days after the Effective Date, as further described in **Section 3.1**. The Initial Payment will be credited against the Purchase Price at Closing.

1.36. **Intercreditor Agreement** is defined in **Section 3.4** of this Agreement.

1.37. **Interest Rate** means the fixed interest rate of three percent (3%) per annum.

1.38. **Litigation Delay** means the period of time equal to the number of days starting from the commencement of any litigation that is filed by any third-party challenging the Development Agreement or any of the Initial Approvals, if such litigation is subject to the

streamlined litigation period of section 21185 of the California Public Resources Code and directly or indirectly delays the Development Agreement or any such Initial Approval, but not including any period pending the outcome of an electoral vote on a referendum, and continuing until the end of such litigation. During a Litigation Delay, (i) the Interest Rate will not apply to increase the Base Price, and (ii) the Deposits which would otherwise be due during such period under Section 3.2, are extended on a day-for-day basis, and will be due and payable to the SFPUC on the earlier to occur of sixty (60) days after the end of any Litigation Delay or the Closing Date. In addition, the Closing Date shall be extended until the date that is ten (10) days following the conclusion of the Litigation Delay, but in no event beyond the Outside Closing Date. The Parties will document the start and end of a Litigation Delay in writing within thirty (30) days of such start and end.

1.39. **Memorandum** is defined in Section 11.19 of this Agreement.

1.40. **Open Space License** means the license agreement between the SFPUC and Buyer in substantially the form attached as **Exhibit G**, as may be modified by the Parties in each of their sole discretion.

1.41. **Outside Closing Date** means Friday, December 30, 2022.

1.42. **Parties** is defined in the opening paragraph of this Agreement.

1.43. **Permitted Activities** is defined in **Exhibit J** of this Agreement.

1.44. **Permitted Transferee** is defined in Section 11.2(c) of this Agreement.

1.45. **Permitted Transferee PSA Assignment** means the assignment substantially in the form attached as **Exhibit B**.

1.46. **Pre-Approved Transfers** is defined in Section 11.2(c) of this Agreement.

1.47. **Preliminary Title Report** means that certain preliminary title report issued by Title Company under Order No. 5605681-156-TJK-JM, dated October 7, 2019 covering the Property and attached as **Exhibit O**.

1.48. **Project** means a mixed-use development that will include on-site affordable units and that will include residential (both rental and for-sale), retail, open space, parking, child care and related uses and which will be developed on the Property in accordance with the Development Agreement.

1.49. **Property** is defined in Recital A of this Agreement.

1.50. **Property Conditions** is defined in Section 5.2.

1.51. **Proposition 65** is defined in Section 5.6.

1.52. **Purchase Price** means the Base Price, as increased by the Interest Rate.

1.53. **RCP** means RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company, the “**Buyer**” under this Agreement.

- 1.54. **RCP/AVB PSA Assignment** is defined in Section 11.2(c)(ii).
- 1.55. **RCP/BHC PSA Assignment** is defined in Section 11.2(c)(i).
- 1.56. **RCRA** is defined in Section 5.6.
- 1.57. **Recognition Agreement** is defined in Section 11.2(c)(vi) of this Agreement.
- 1.58. **SARA** is defined in Section 5.6.
- 1.59. **Seller** is defined in the opening paragraph of this Agreement.
- 1.60. **Seller Financing Election Notice** is defined in Section 3.4 of this Agreement.
- 1.61. **Seller Financing** is defined in Section 3.4 of this Agreement.
- 1.62. **Seller Financing Note** is defined in Section 3.4 of this Agreement.
- 1.63. **Seller Financing Deed of Trust** is defined in Section 3.4 of this Agreement.
- 1.64. **Seller Financing Loan Documents** is defined in Section 3.4 of this Agreement.
- 1.65. **SFPUC** is defined in the opening paragraph of this Agreement.
- 1.66. **Subdivision Map** means any map that Buyer submits for the Property with respect to the Project under the California Subdivision Map Act, California Government Code Section 66410 *et seq.*, and the San Francisco Subdivision Code, which may include, but not be limited to, tentative or vesting tentative subdivision maps, final or vesting final subdivision maps and any tentative or final parcel map, or transfer map, including phased final maps to the extent authorized under an approved tentative subdivision map.
- 1.67. **Third-Party Financing Source** is defined in Section 3.4 of this Agreement.
- 1.68. **Title Company** means Chicago Title Insurance Company or such other title company agreed upon by City and Buyer.
- 1.69. **Title Policy** is defined in Section 6.2(a)(ii) of this Agreement.
- 1.70. **Transferee Request Letter** is defined in Section 11.2(a) of this Agreement.
- 1.71. **TSCA** is defined in Section 5.6.
- 1.72. **Willful Default** means that a court of competent jurisdiction determines that the Closing did not occur solely due to (i) a material default of an obligation of City under this Agreement, which default was within City's reasonable control to perform or to remedy, and which City failed to perform or to remedy, or (ii) an outside circumstance which City had an obligation to remedy under this Agreement, was within City's reasonable control to remedy, and which City failed to remedy.
- 1.73. **Workforce Declaration** is defined in Section 4.3 of this Agreement.

2. SALE AND PURCHASE.

2.1. Sale and Purchase. Subject to the terms, covenants and conditions of this Agreement, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City's interest in the Property.

2.2. Interim Uses of the Property.

(a) License Agreements. Buyer acknowledges that certain portions of the Property are subject to those agreements described on Exhibit F (collectively, the "**Existing Agreements**"). The Existing Agreements include an agreement entitled "**San Francisco Water Department Revocable Permit No. 1654A**" dated as of June 17, 1996 (the "**Parking License Agreement**"), allowing the Property to be used for parking. City will transfer its title in the Parking License Agreement to Buyer at the Closing pursuant to an Assignment and Assumption of Licenses in the form attached as Exhibit F (the "**Assignment of Licenses**"). Except for the Parking License Agreement, City will terminate the Existing Agreements prior to Closing. Buyer acknowledges and agrees that the area described as licensed to College under the Parking License Agreement is no longer accurate and does not reflect the conveyances between City and College that were evidenced by that certain Certificate of Compliance recorded in the Official Records of San Francisco County on May __, 2012. Seller agrees that during the term of this Agreement, Buyer may pursue, at Buyer's sole option and sole cost: (i) an estoppel certificate from the College with respect to the Parking License Agreement, and/or (ii) an amendment to the Parking License Agreement from the College that will be effective after the Closing Date, where the estoppel may be in form and substance satisfactory to Buyer in Buyer's sole discretion and the amendment must be in form and substance reasonably satisfactory to Seller, provided, however, that neither will constitute a Buyer's Condition Precedent

(b) Additional Agreements. Excepting the College Easement Amendment, and to the extent necessary or advisable in connection with the Initial Approvals, this Agreement, and/or the Open Space License, City will not enter into any amendments to the Existing Agreements, any new agreements, or any encumbrances which allow any third party the right to use or occupy any portion of the Property, or grant any third party any right in and to the Property, without Buyer's consent, unless (i) such agreement is terminable without cause by City upon thirty (30) days prior notice without penalty, and (ii) City delivers such termination notice at least thirty (30) days prior to the Closing Date.

(c) Third-Party Rights. To the actual knowledge of Rosanna Russell, SFPUC Real Estate Director, without duty of inquiry or investigation, City has not granted any third parties any right to use or occupy any portion of the Property which is currently in effect, except for the Existing Agreements.

(d) Service Contracts. City will not enter into, terminate or amend any contract for services with respect to the Property without Buyer's prior written approval, unless (i) such agreement is terminable without cause by City upon thirty (30) days prior notice without penalty, and (ii) City delivers such termination notice at least thirty (30) days prior to the Closing Date.

(e) Personal Property and Improvements. City will neither transfer nor remove any personal property, fixtures or other improvements from the Property without Buyer's prior

written approval. City will not make any alterations to any portion of the Property without Buyer's prior written approval.

(f) Maintenance and Operation. City will cause the Property to be maintained and operated consistent with current operating standards for the Property and in accordance with City's past practices. City will be responsible for, and will promptly pay or cause to be paid, all amounts that relate to the ownership or operation of the Property and that relate to, or arise from, the time period prior to the Closing Date. In the event that the SFPUC is served with any legal action or proceeding related to the Property, City will provide Buyer with prompt notice thereof.

3. PURCHASE PRICE. The Purchase Price for the Property is equal to the Base Price together with the interest that accrues thereon at the Interest Rate. At Closing, Buyer shall receive a credit against the Purchase Price equal to the Initial Payment and any Deposits paid to Seller under this Agreement.

3.1. Initial Payment. Within five (5) business days after the Effective Date, Buyer will pay the Initial Payment to the SFPUC Real Estate Director. The Initial Payment will be considered as separate and independent consideration for City's entering into this Agreement and City's agreement to sell the Property to Buyer on the Closing Date. The Initial Payment will be applied against the Base Price at Closing. The Initial Payment will be non-refundable, and City will retain the Initial Payment in all events, even if City is in Willful Default of this Agreement.

3.2. Deposits.

(a) Amount of Deposits. Buyer will pay directly to the SFPUC an annual deposit equal to Four Hundred Thousand Dollars (\$400,000) (each, a "Deposit" and collectively, the "Deposits") on or before each anniversary of the Effective Date until the Closing occurs. Buyer will notify Title Company of its payments of the Deposits at the time it makes the payments.

(b) Litigation Delays. During a Litigation Delay, the Deposits which would otherwise be due hereunder shall be extended on a day-for-day basis, and will be due and payable to the SFPUC within sixty (60) days of the end of any Litigation Delay.

(c) Non-Refundable Nature. The Deposits are separate and independent consideration for City's agreement to grant Buyer access and use of the Property prior to any Closing. Therefore, the Deposits will be non-refundable, except in the event that this Agreement is terminated by Buyer due to the failure of a Buyer's Condition Precedent, in which case City will refund the Deposits to Buyer without interest.

3.3 Interest Rate. The Base Price will increase by accruing interest at the Interest Rate from the Effective Date until the Closing Date, except that the Interest Rate will not apply to increase the Base Price during any Litigation Delay.

3.4 Seller Financing. At Buyer's sole option, with notice delivered to City no less than forty-five (45) days prior to the Closing Date (the "Seller Financing Election Notice"), Buyer may elect to pay the balance of the Purchase Price (less the Initial Payment and less any Deposits) by the delivery of a purchase money promissory note in favor of the City for the amount of said balance (the "Seller Financing"). The Seller Financing shall: (i) be reflected in the form of the

promissory note attached as **Exhibit H-1** (the “**Seller Financing Note**”), and (ii) be secured by a first-priority deed of trust secured by the Property in the form attached as **Exhibit H-2** (the “**Seller Financing Deed of Trust**,” and collectively with the Seller Financing Note, the “**Seller Financing Loan Documents**”). At the Closing, Buyer and City will execute the Seller Financing Loan Documents, and Buyer will record the Seller Financing Deed of Trust in first lien priority against the Property in the Official Records of San Francisco County, California, at Buyer’s sole cost and expense. In the event that Buyer does not timely deliver the Seller Financing Election Notice to Seller, then Buyer shall automatically be deemed to have elected to close on the purchase of the Property without the Seller Financing. In the event that Buyer elects to obtain the Seller Financing, and Buyer also elects to obtain funds for the purchase and/or development of the Property from any other third-party source (including, without limitation, construction financing, permanent financing, and/or a grant) (the “**Third-Party Financing Source**”), then City agrees to use good-faith, diligent efforts to reach an agreement with the Third-Party Financing Source on a reasonable and customary form of intercreditor agreement (the “**Intercreditor Agreement**”).

4. TITLE.

4.1. Conditions of Title. Buyer acknowledges receipt of the Preliminary Title Report and approves all of the exceptions contained in the Preliminary Title Report. At the Closing, City will quitclaim its interest in and to the Property to Buyer by quitclaim deed in the form attached as **Exhibit D** (the “**Deed**”). Title to the Property will be subject to (a) liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer pursuant to Section 5 of this Agreement, and any other exceptions to title that would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property, (c) all items of which Buyer has actual or constructive notice or knowledge, (d) the Development Agreement and all documents entered into pursuant to the Development Agreement, (e) this Agreement, the Open Space License, and all documents entered into pursuant to this Agreement, and (f) the College Easement Amendment. All of the foregoing exceptions to title will be referred to collectively as the “**Conditions of Title**.” City agrees that (a) from and after the date upon which Developer executes this Agreement and through the date upon which City executes this Agreement, City will not enter into any amendments, agreements, encumbrances, contracts, or transfer or remove any personal property, fixtures, or improvements from the Property that would be prohibited or would require Buyer’s prior consent pursuant to Sections 2.2(b), 2.2(d), 2.2(e), or 2.2(f) (collectively, “**Additional Encumbrances**”), without first obtaining Buyer’s prior consent, not to be unreasonably withheld, and (b) that “**Conditions of Title**” does not include any exceptions to title arising from any such Additional Encumbrances during such time period.

4.2. Buyer’s Responsibility for Title Insurance. Buyer understands and agrees that at and after the Closing, the right, title and interest in the Property will not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with the transactions contemplated by this Agreement. Buyer recognizes that any fences or other physical monuments of the Property’s boundary lines may not correspond to the legal description of the Property. City will not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters that an accurate survey or inspection might reveal. It is Buyer’s sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from the Title Company, if desired.

4.3. Local Hire and Prevailing Wage Requirements. Reference is made to Section 3.2 and Section 4.6 of the Development Agreement respecting certain local hire and prevailing wage requirements, which are hereby incorporated into this Agreement as if set forth in full, and which Buyer will comply with at all times. At the Closing, Buyer and City will record against the Property in the Official Records of San Francisco County, California, a declaration in the form attached as **Exhibit I** (the "**Workforce Declaration**").

5. "AS-IS" PURCHASE; RELEASE OF CITY.

5.1. Due Diligence and Time for Satisfaction of Conditions. Buyer acknowledges that as of the Effective Date and the Closing Date, Buyer has and will have been given a full opportunity to investigate the Property, either independently or through agents of Buyer's own choosing, including the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title, and legal conditions of the Property as Buyer deems fit, as well as the suitability of the Property for Buyer's intended uses. Buyer will have the continued right to access the Property prior to the Closing Date pursuant to Section 5.4 of this Agreement.

5.2. Buyer's Independent Investigation. Buyer represents and warrants to City as of the Effective Date that Buyer has and as of the Closing Date Buyer will have performed a diligent and thorough inspection and investigation of each and every aspect of the Property to the extent deemed necessary by Buyer in Buyer's sole and absolute discretion, either independently or through agents of Buyer's choosing, including the following matters (collectively, the "**Property Conditions**").

(a) All matters relating to title including the existence, quality, nature and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, and building and fire codes.

(c) The quality, nature, adequacy, and physical condition of the Property, including the structural elements, and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" will mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

(e) The suitability of the Property for Buyer's intended uses.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

5.3. Property Disclosures.

(a) California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane, and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Property, which are described in the Phase 1 Environmental Assessment and Soil, Asbestos, and Lead-Based Paint Evaluation dated February 18, 2005, copies of which are in Buyer's possession. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(b) On November 2, 2015, the Federal Emergency Management Agency ("**FEMA**") issued a preliminary Flood Insurance Rate Map ("**FIRM**") that identifies Special Flood Hazard Areas along City's shoreline, with designations of "**Zone A**" (areas subject to coastal flooding) and "**Zone V**" (areas subject to coastal flooding and hazards that accompany wave action). The affected City property includes its waterfront piers, parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. FEMA expects to finalize the FIRM in mid-2020, which may have significant impacts for developing new structures and reconstructing or repairing existing structures in the identified areas.

(c) Under San Francisco Police Code Article 51 ("**Article 51**"), property owners in San Francisco are required to disclose to transferees and prospective transferees if the subject property is a Flood Risk Parcel, meaning that it is subject to Deep and Contiguous Flooding in a 100-Year Storm (each as defined in Article 51), as shown on the San Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map. The Property is a Flood Risk Parcel.

(d) According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>.

5.4. Entry and Indemnity.

(a) Buyer agrees that it has been provided, without representation or warranty of any kind whatsoever, any reports, studies and other related information in City's possession that are known to the SFPUC Real Estate Director that reasonably relate to the Property, and excluding therefrom all of City's internal memoranda or reports, any privileged or confidential information, and any appraisals of the Property. Buyer agrees that it has conducted all due diligence activities, inspections, and studies of the Property as it deems necessary or appropriate and has examined and investigated to its full satisfaction all facts, circumstances, and matters relating to the Property. Although Buyer has completed its due diligence investigations for the Property, Buyer may desire to enter the Property in connection with the planning of the Project (but not for any construction related activities whatsoever). In connection with any entry by Buyer or its Agents onto the Property, Buyer will give City reasonable advance written notice of such

entry and will conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to City. All entries by Buyer or its Agents onto the Property to perform any testing or other investigations that could affect the physical condition of the Property (including soil borings) or the use of the Property will be made only pursuant to the terms and conditions of a permit to enter in form and substance satisfactory to City. Without limiting the foregoing, prior to any entry to perform any on-site testing, Buyer will give City written notice thereof, including the identity of the company or persons who will perform such testing, the precise time and location of the testing, and the proposed scope of the testing. City will have the right to approve, disapprove, or condition and limit the proposed testing, in City's sole discretion, within ten (10) business days after receipt of such notice. If Buyer or its Agents take any sample from the Property in connection with any approved testing, Buyer will provide to City a portion of such sample being tested to allow City, if it so chooses, to perform its own testing. City or its representative may be present to observe any testing or other inspection performed on the Property. Buyer will promptly deliver to City copies of any reports relating to any testing or other inspection of the Property performed by Buyer or its Agents, but will not deliver copies of any such reports to any other person or entity without Buyer's prior written approval. Buyer will keep all test results and information strictly confidential, and will indemnify, reimburse, defend and hold City harmless from and against any loss, cost, expense, or damage resulting from Buyer's failure to keep any information obtained from an inspection or testing of the Property strictly confidential; provided, however, Buyer will not be liable if and to the extent Buyer is required to disclose such information pursuant to a court order. In connection with any entry onto or testing of the Property, Buyer will comply with all laws, ordinances, rules, regulations, orders and the like issued or promulgated by any local, state or federal governmental agency.

(b) Buyer will maintain, and will require that its Agents maintain, public liability and property damage insurance in accordance with the requirements set forth on Exhibit J attached, and Buyer will provide City with evidence of such insurance coverage upon request from City.

(c) To the fullest extent permitted under law, Buyer will indemnify, defend and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims, and expenses (including reasonable fees of attorneys, experts and consultants and related costs) arising out of or relating to any entry on, under or about the Property by Buyer, its Agents, contractors and subcontractors in performing the inspections, testings or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term of this Agreement, including any injuries or deaths to any persons (including Buyer's Agents) and damage to any property, from any cause whatsoever. The foregoing indemnity will survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement.

5.5. "As-Is" Purchase. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY'S INTEREST IN THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. CITY

DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

5.6. Release of City. As part of its agreement to purchase the Property in its "As-Is With All Faults" condition, effective as of the Closing Date, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer's and its Agents and customer's past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including any Hazardous Material in, on, under, above or about the Property, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER:  _____

NOTWITHSTANDING THE FOREGOING, CITY AGREES THAT THE FOREGOING RELEASE IS NOT INTENDED TO, NOR DOES IT, RELEASE CITY FROM ITS OBLIGATIONS UNDER THIS AGREEMENT.

6. CONDITIONS PRECEDENT.

6.1. Conduct of the Parties Prior to Closing. Each Party will make good faith efforts to use due diligence to take all actions reasonably necessary to attempt to satisfy or cause to be satisfied each of the conditions precedent to the obligation of the other Party to proceed with Closing; provided that in the performance of City's obligations under this Agreement, City will not be required to expend City funds, other than for City Costs in accordance with the Development Agreement, and Buyer agrees to reimburse City for such City Costs. If any Buyer's Condition Precedent or City's Condition Precedent is not satisfied because a Party frustrated its satisfaction by some affirmative act or negligent omission, the non-satisfaction of such Buyer's Condition Precedent or City's Condition Precedent will not excuse that Party's obligations under this Agreement.

6.2. Buyer's Conditions Precedent. Buyer's obligation to purchase the Property is subject to the satisfaction (or waiver by Buyer in its sole discretion) of the following conditions precedent on or before the Closing Date ("**Buyer's Conditions Precedent**"):

(a) Initial Approvals. The Initial Approvals are effective.

(b) Absence of Litigation. No action or proceeding before any court or other governmental body is filed or otherwise instituted that restrains or prohibits the transactions contemplated by this Agreement.

(c) Title Policy. At or before the Closing, Title Company will have issued or committed to issue to Buyer its standard form CLTA Owner's Policy of Title Insurance or at Buyer's option an ALTA Owner's Policy of Title Insurance, showing fee title to the Property vested in Buyer subject to the Conditions of Title, with any endorsements reasonably requested by Buyer (the "**Title Policy**"). The Title Policy will be issued with liability in an amount equal to the Purchase Price. Buyer will pay the expense of the Title Policy.

(d) Possession. Exclusive possession of the Property, subject to parties in possession pursuant to or claiming under the Parking License Agreement, will be delivered to Buyer on the Closing Date in accordance with Section 2.2; provided, however, Buyer acknowledges and agrees that if City is unable to deliver such exclusive possession on the Closing Date, then such failure shall not constitute a default by City under this Agreement, but shall constitute a failure of a Buyer's Condition Precedent, in which event Buyer may elect to waive the condition and proceed to Closing, or may terminate this Agreement. In the event that Buyer elects to terminate the Agreement pursuant to this Section 6.2(d), the Initial Payment will be retained by City, the Deposits will be returned to Buyer without interest, and neither Party will have any further rights or obligations under this Agreement except as provided in Sections 6.4 [Entry and Indemnity], 11.2 [Brokers], or 13.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

INITIALS: BUYER: jk

NOTWITHSTANDING THE FOREGOING, CITY AGREES THAT THE FOREGOING RELEASE IS NOT INTENDED TO, NOR DOES IT, RELEASE CITY FROM ITS OBLIGATIONS UNDER THIS AGREEMENT.

6. CONDITIONS PRECEDENT.

6.1. Conduct of the Parties Prior to Closing. Each Party will make good faith efforts to use due diligence to take all actions reasonably necessary to attempt to satisfy or cause to be satisfied each of the conditions precedent to the obligation of the other Party to proceed with Closing; provided that in the performance of City's obligations under this Agreement, City will not be required to expend City funds, other than for City Costs in accordance with the Development Agreement, and Buyer agrees to reimburse City for such City Costs. If any Buyer's Condition Precedent or City's Condition Precedent is not satisfied because a Party frustrated its satisfaction by some affirmative act or negligent omission, the non-satisfaction of such Buyer's Condition Precedent or City's Condition Precedent will not excuse that Party's obligations under this Agreement.

6.2. Buyer's Conditions Precedent. Buyer's obligation to purchase the Property is subject to the satisfaction (or waiver by Buyer in its sole discretion) of the following conditions precedent on or before the Closing Date ("**Buyer's Conditions Precedent**"):

- (a) Initial Approvals. The Initial Approvals are effective.
- (b) Absence of Litigation. No action or proceeding before any court or other governmental body is filed or otherwise instituted that restrains or prohibits the transactions contemplated by this Agreement.
- (c) Title Policy. At or before the Closing, Title Company will have issued or committed to issue to Buyer its standard form CLTA Owner's Policy of Title Insurance or at Buyer's option an ALTA Owner's Policy of Title Insurance, showing fee title to the Property vested in Buyer subject to the Conditions of Title, with any endorsements reasonably requested by Buyer (the "**Title Policy**"). The Title Policy will be issued with liability in an amount equal to the Purchase Price. Buyer will pay the expense of the Title Policy.
- (d) Possession. Exclusive possession of the Property, subject to parties in possession pursuant to or claiming under the Parking License Agreement, will be delivered to Buyer on the Closing Date in accordance with Section 2.2; provided, however, Buyer acknowledges and agrees that if City is unable to deliver such exclusive possession on the Closing Date, then such failure shall not constitute a default by City under this Agreement, but shall constitute a failure of a Buyer's Condition Precedent, in which event Buyer may elect to waive the condition and proceed to Closing, or may terminate this Agreement. In the event that Buyer elects to terminate the Agreement pursuant to this Section 6.2(d), the Initial Payment will be retained by City, the Deposits will be returned to Buyer without interest, and neither Party will have any further rights or obligations under this Agreement except as provided in Sections 6.4 [Entry and Indemnity], 11.2 [Brokers], or 13.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

(e) Subdivision Map. A Subdivision Map is approved by the Parties and recorded at the Closing in the Official Records for San Francisco County.

(f) Performance by City. City performs or causes to occur all actions that it is required to perform or cause to occur under this Agreement at or before the Closing, in each case in all material respects.

(g) Outside Dates. Buyer has until 5:00 p.m. Pacific Standard time on the Closing Date to review and approve or waive Buyer's Conditions Precedent. If the Closing does not occur by the Outside Closing Date due to the failure of a Buyer's Condition Precedent, and Buyer notifies City in writing that it does not wish to proceed with the purchase of the Property, then this Agreement will terminate, the Initial Payment will be retained by City, and any Deposits will be refunded to Buyer without interest. If Buyer elects to proceed with the purchase of the Property, then Buyer will, before the Closing Date, notify City in writing that Buyer has approved or waived all such matters. If before the Closing Date Buyer fails to give City such written notice, fails to object to any of Buyer's Conditions Precedent and fails to proceed to Closing, then Buyer will be deemed to have waived Buyer's right to purchase the Property, and the Deposits will be retained by City. Notwithstanding the foregoing, if Buyer provides written notice that any of Buyer's Conditions Precedent contained within Section 6.2 above have not been satisfied by the Closing Date, then City may, but will have no obligation to remove or remedy any objectionable matter (except to the extent provided in the lead in sentence of Section 6.1(a)). If City agrees to remove or remedy the objectionable matter, it will notify Buyer within ten (10) days following receipt of Buyer's notice of non-satisfaction, and the Closing will be delayed for so long as City diligently pursues such removal or remedy (but in no event will such delay extend beyond the Outside Closing Date). If and when City elects not to remove or remedy the objectionable matter, which City may do at any time including following an initial election to pursue remedial or corrective actions, this Agreement will automatically terminate, the Deposits will be returned to Buyer without interest, and neither Party will have any further rights or obligations under this Agreement except as provided in Section 5.4 [Entry and Indemnity], Section 9.2 [Brokers], or Section 11.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

6.3. City's Conditions Precedent. City's obligation to sell the Property to Buyer is subject to the satisfaction (or waiver by City in its sole discretion) of the following conditions precedent on or before the Closing ("**City's Conditions Precedent**"):

(a) Initial Approvals. The Initial Approvals are effective.

(b) Absence of Litigation. No action or proceeding before any court or other governmental body is filed or otherwise instituted that restrains or prohibits the transactions contemplated by this Agreement.

(c) City Approvals. Resolutions approving and authorizing the transactions contemplated by this Agreement and finding that the public interest or necessity demands or will not be inconvenienced by the sale of the Property in accordance with City's Administrative Code, are adopted by the SFPUC and City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, are obtained. If such City legislative approval of this Agreement is not duly enacted on or before June 30, 2021, City in its sole discretion may terminate this Agreement.

(d) Subdivision Map. A Subdivision Map is approved by the Parties and recorded at the Closing in the Official Records for San Francisco County.

(e) Performance by Buyer. Buyer performs or causes to occur all actions that it is required to perform or cause to occur at or before the Closing, in each case in all material respects and provided that Buyer has notice from City and a reasonable opportunity to cure (other than the obligation to timely Close, for which Buyer will have no notice or opportunity to cure). If such failure cannot reasonably be cured by the Closing Date, then Buyer's cure period will be extended for so long as is reasonably necessary to cure, not to exceed sixty (60) days and in no event beyond the Outside Closing Date.

Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied as provided above, then City may, at its option, terminate this Agreement. Upon any such termination, neither Party will have any further rights or obligations under this Agreement except as provided in Section 5.4 [Entry and Indemnity], Section 9.2 [Brokers], or Section 11.4 [Authority of Buyer] or as otherwise expressly provided in this Agreement.

7. ESCROW AND CLOSING.

7.1. Escrow. Within thirty (30) days after the Effective Date, Buyer and City will deposit an executed counterpart of this Agreement with Title Company, at One Embarcadero Center, Suite 250 San Francisco, California 94111, Attention: MaryPat Noeker, and this instrument will serve as the instructions to the Title Company as the escrow holder for the Closing. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement will control.

7.2. Closing Date and Procedures.

(a) Date and Location of Closing. The Closing will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of the Title Company on (A) the Closing Date, or (B) such earlier or later date and time as Buyer and City agree in each of their reasonable discretion, but in no event beyond the Outside Closing Date. The Closing Date may not be extended without the prior written approval of both City and Buyer.

(b) Buyer's Designees. Buyer may elect to designate multiple entities to receive particular portions of the Property via direct quitclaim deeds from City at Closing, provided that (i) each such entity is concurrently assigned all of the rights and obligations under the Development Agreement through the execution of a Development Agreement assignment substantially in the form attached to the Development Agreement, and applicable to each such portion of the Property, and (ii) if such entity is not a Permitted Transferee, that such entity meets the experience and financial capacity requirements described in the Balboa Reservoir Request for Qualifications dated November 10, 2016, as appropriate to develop the designated portion of the Property and determined by City in its reasonable discretion. In connection with a request for approval of an entity that is not a Permitted Transferee, (i) Buyer will submit a written request to City, together with the name of the proposed designee and such other information as the City may

reasonably require (the “**Buyer Designee Request Letter**”), (ii) City will have thirty (30) days following receipt of the Buyer Designee Request Letter and receipt of all information reasonably requested by City to grant or deny such consent, and (iii) if City denies such request, City must specify the reasons for denial. If Buyer designates other entities to receive particular portions of the Property via direct quitclaim deeds from City at Closing (and if such entities are not Permitted Transferees, they are approved by City), then City will execute and deliver such quitclaim deeds as are appropriate to effectuate the conveyances to such entities, provided that each such portion of the Property constitutes a legal parcel pursuant to the California Subdivision Map Act, where the forms of such quitclaim deeds are materially consistent with that attached as **Exhibit D**.

(c) **Deliverables**. On the Closing Date the parties will deliver the following:

(i) **City Deliverables**. City will deposit into escrow (A) the duly executed and acknowledged Deed conveying the Property to Buyer, (B) the duly executed and acknowledged Assignment of Licenses, (C) a bill of sale in the form of **Exhibit K** attached, with respect to any improvements on the Property, and (D) a general assignment in the form of **Exhibit L** attached, with respect to City’s intangible rights with respect to the Property.

(ii) **Buyer Deliverables**. Buyer will deposit the Base Price (after application of the Initial Payment and the Deposits), together with any other funds required for the Closing in accordance with this Agreement.

(iii) **City and Buyer Deliverables**. City and Buyer will each deposit duly executed and acknowledged (A) Seller Financing Loan Documents (if applicable), (B) Intercreditor Agreement (if applicable), (C) Open Space License, and (D) such other instruments as are reasonably required by the Title Company or otherwise reasonably required to effectuate the Closing.

7.3. **Prorations**. Real estate and personal property taxes (if any) and other expenses normal to the operation and maintenance with respect to the Property will all be prorated as of 12:01 a.m. on Closing Date, on the basis of a three hundred sixty-five (365)-day year. Any delinquent rents collected after the Closing will be paid immediately to City. City and Buyer hereby agree that if any of the above described prorations cannot be calculated accurately on the Closing Date, then the same will be calculated as soon as reasonably practicable after the Closing Date and either Party owing the other Party a sum of money based on such subsequent proration(s) will promptly pay said sum to the other Party.

8. **RISK OF LOSS**.

8.1. **Loss**.

(a) **Condemnation**. City will give Buyer notice of any commencement of condemnation proceedings affecting the Property. In the event that all or any portion of the Property is condemned, then Buyer may, at its option to be exercised within ten (10) days of City's notice of the commencement of condemnation proceedings, either terminate this Agreement or waive any right to terminate on account of such condemnation. If Buyer elects to terminate this Agreement or fails to give City notice within such ten (10)-day period that Buyer will proceed with the purchase, then this Agreement will terminate at the end of such ten (10)-day period, the SFPUC will return the Deposits (excluding the Initial Payment) without interest to Buyer, and

neither Party will have any further rights or obligations under this Agreement except as provided in Section 5.4 [Entry and Indemnity], Section 9.2 [Brokers], or Section 11.4 [Authority of Buyer] or otherwise expressly provided in this Agreement. If Buyer elects to proceed with the purchase of the Property, then upon the Closing, Buyer will receive a credit against the Base Price equal to the amount of any condemnation awards actually collected by City as a result of any such condemnation. If the awards have not been collected as of the Closing, then City will assign such awards to Buyer, and Buyer will not receive any credit against the Purchase Price with respect to such awards.

(b) Damage or Destruction. In the event that all or any portion of the Property is destroyed or damaged by fire or other casualty prior to the Closing Date, then this Agreement will not terminate, and Buyer will consummate the purchase for the full Purchase Price. In such event, then upon the Closing, Buyer will receive a credit against the Purchase Price payable under this Agreement equal to the amount of any insurance proceeds actually collected by City as a result of any such damage or destruction, less any sums expended by City toward the restoration or repair of the Property. If the proceeds have not been collected as of the Closing, then City will assign such proceeds to Buyer, except to the extent needed to reimburse City for sums expended to repair or restore the Property, and Buyer will not receive any credit against the Purchase Price with respect to such proceeds.

8.2. Self-Insurance. Notwithstanding anything to the contrary above, Buyer acknowledges that City self-insures and will not be obligated to purchase any third-party commercial liability insurance or property insurance.

9. EXPENSES.

9.1. Expenses. Buyer will pay any transfer taxes applicable to the sale, personal property taxes, title and escrow fees and recording charges and any other costs and charges incurred in connection with the Closing.

9.2. Brokers. Neither Party has had any contact or dealings regarding the sale of the Property, or any communication in connection with the sale of the Property, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with this Agreement. Accordingly, any such commission or finder's fee, if due, will be paid pursuant to a separate written agreement between such broker or other person and the Party through which such broker or other person contracted. If any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings, or communication, the Party through whom the broker or finder makes a claim will be responsible for such commission or fee and will indemnify and hold harmless the other Party from any and all claims incurred by the indemnified Party in defending against the same. The provisions of this Section will survive Closing and/or any termination of this Agreement.

10. LIQUIDATED DAMAGES.

10.1. **FAILURE OF BUYER'S CONDITION PRECEDENT. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED AFTER THE EFFECTIVE DATE DUE TO THE FAILURE OF A BUYER'S CONDITION PRECEDENT, AND BUYER IS NOT THEN IN DEFAULT, THEN CITY WILL RETAIN THE INITIAL PAYMENT AND WILL RETURN THE DEPOSITS, WITHOUT INTEREST, TO BUYER.**

10.2. DEPOSITS AS LIQUIDATED DAMAGES. CITY WILL RETAIN THE INITIAL PAYMENT IN ANY EVENT IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED AFTER THE EFFECTIVE DATE, EVEN IF CITY IS IN WILLFUL DEFAULT. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED AFTER THE EFFECTIVE DATE DUE TO BUYER'S DEFAULT, THEN CITY WILL ALSO RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES AND AS CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEFAULT OF THIS AGREEMENT. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THIS SECTION 10.2, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSITS IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____

BUYER:  _____

11. GENERAL PROVISIONS.

11.1. Notices. Any notice, consent, or approval required or permitted to be given under this Agreement will be in writing and will be given by (a) hand delivery, against receipt, (b) reliable next-business-day courier service that provides confirmation of delivery, or (c) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

CITY:

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Balboa Reservoir
Telephone: (415) 487-5210
E-mail: RES@sfgwater.org

City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Andrico Penick, Director of Property
Re: Balboa Reservoir
Telephone: (415) 554-9823
E-mail: andrico.penick@sfgov.org

with copy to: Elizabeth Dietrich, Deputy City Attorney
Office of the City Attorney

10.2. DEPOSITS AS LIQUIDATED DAMAGES. CITY WILL RETAIN THE INITIAL PAYMENT IN ANY EVENT IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED AFTER THE EFFECTIVE DATE, EVEN IF CITY IS IN WILLFUL DEFAULT. IF THE SALE OF THE PROPERTY IS NOT CONSUMMATED AFTER THE EFFECTIVE DATE DUE TO BUYER'S DEFAULT, THEN CITY WILL ALSO RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES AND AS CITY'S SOLE AND EXCLUSIVE REMEDY FOR DEFAULT OF THIS AGREEMENT. THE PARTIES HAVE AGREED THAT CITY'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE AS SPECIFIED IN THIS SECTION 10.2, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSITS IS A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____ BUYER: JK

11. GENERAL PROVISIONS.

11.1. Notices. Any notice, consent, or approval required or permitted to be given under this Agreement will be in writing and will be given by (a) hand delivery, against receipt, (b) reliable next-business-day courier service that provides confirmation of delivery, or (c) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

CITY:

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Balboa Reservoir
Telephone: (415) 487-5210
E-mail: RES@sfgwater.org

City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Andrico Penick, Director of Property
Re: Balboa Reservoir
Telephone: (415) 554-9823
E-mail: andrico.penick@sfgov.org

with copy to: Elizabeth Dietrich, Deputy City Attorney
Office of the City Attorney

City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
Re: Balboa Reservoir
Telephone:
E-mail:

BUYER:

Reservoir Community Partners, LLC:

BHC Balboa Builders, LLC
c/o BRIDGE Housing
600 California Street, Suite 900
San Francisco, CA 94108
Attn: Brad Wiblin
Telephone: 415-321-3565
E-mail: bwiblin@bridgehousing.com

with a copy to:

Lubin Olson & Niewiadomski LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Phone: 415-955-5029
E-Mail: Banderson@lubinolson.com

with a copy to:

AVB Balboa LLC
c/o AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203
Attn: Brian R. Lerman, Vice President, Associate General Counsel
Phone: 703-317-4132
E-Mail: brian_lerman@avalonbay.com

with a copy to:

c/o AvalonBay Communities, Inc.
455 Market Street, Suite 1650
San Francisco, CA 94105
Attn: Joe Kirchofer, Vice President, Development
Phone: 415-284-9082
E-Mail: joe_kirchofer@avalonbay.com

with a copy to:

Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, FL 33131
Attn: Danielle Gonzalez, Esq.
Phone: 305-579-0633
E-Mail: gonzalezda@gtlaw.com

or to such other address as either Party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. For convenience of the Parties, copies of notices may also be given by e-mail or tele facsimile to such e-mail addresses or facsimile numbers as may be provided from time to time. Neither Party may give official or binding notice by e-mail or facsimile. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of an e-mailed or tele facsimile copy of the notice.

11.2. Transfer, Successors and Assigns.

(a) Transfers Requiring SFPUC's Consent. Provided that any Transfer is made concurrently with an approved assignment of the corresponding rights and obligations under the Development Agreement through the execution of a Development Agreement assignment substantially in the form attached to the Development Agreement, Buyer may Transfer its rights under this Agreement to Affiliates and to other third-party transferees with the SFPUC General Manager's consent, which it will not withhold unreasonably if the following conditions are met: (i) Buyer provides notice to City at least thirty (30) days before the effective date of the Transfer, together with information about the details of the Transfer, including evidence supporting the creditworthiness, skill, capability, and experience of the transferee Affiliate or other third party transferee; and (ii) the SFPUC General Manager is satisfied that the proposed transferee Affiliate or other third party transferee, including any single-purpose entity specifically established for the Project, meets the same standards of creditworthiness, skill, capability, and experience as Co-Developers. In connection with any request for SFPUC consent, Buyer will submit a written request to City, together with the name of the proposed transferee and such other information as the City may reasonably require (the "**Transferee Request Letter**"). City shall have thirty (30) days following receipt of the Transferee Request Letter and receipt of all information reasonably requested by City to grant or deny such consent. If City denies such request, City must specify the reasons for denial.

(b) Definitions. The following definitions apply to this Section 11.2: (i) "**Affiliate**" means: (i) any person that Controls, is Controlled by, or is under Common Control with either Buyer or a Co-Developer, or (ii) a limited partnership or limited liability company formed for the tax credit syndication of an Affordable Parcel (as defined in the Development Agreement) where BHC or a nonprofit public benefit corporation Affiliated with BHC is the sole general partner or manager of that entity or is the manager or sole member of a limited liability company that is the sole general partner or manager of that entity; (ii) "**Co-Developer**" means each of AvalonBay Communities, Inc., a Maryland corporation and Bridge Housing Corporation, California nonprofit public benefit corporation; (iii) "**Control**" means a person holding or holding the right to acquire direct or indirect ownership of fifty percent (50%) or more of each class of equity interests or fifty percent (50%) or more of each class of interests that has a right to nominate, vote for, or otherwise select the members of the governing body; (iv) "**Common Control**" means two or more persons that are Controlled by another person; (v) "**Transfer**" means: (1) dissolution, merger, consolidation, or other reorganization, unless the Transfer is the result of a public transaction resulting in a new Controlling entity or entity under Common Control; (2) any cumulative or aggregate sale, assignment, encumbrance, or other transfer of fifty percent (50%) or more of legal or beneficial interests; (3) the withdrawal or substitution (whether voluntary, involuntary, or by operation of law and whether occurring at one time or over a period

of time) of any member or shareholder of Buyer owning fifty percent (50%) or more of the interests in Buyer or rights to its capital or profits; or (4) the occurrence of any of the events described in paragraphs (1), (2), or (3) of this clause (v) with respect to any Affiliate.

(c) Pre-Approved Transfers. The assignments to the parties described in this Section 11.2(c) (each, a “**Permitted Transferee**”) are consented to by City and the SFPUC without the requirement that any additional action be taken by or on behalf of City or the SFPUC at any time (the “**Pre-Approved Transfers**”):

(i) Assignment from RCP to BHC. City acknowledges and agrees that RCP intends to assign all (and not only a portion) of its rights and obligations under this Agreement to BHC, and that BHC intends to assume all of RCP’s rights and obligations under this Agreement (the “**RCP/BHC PSA Assignment**”), provided that RCP is not released from any past or prospective liability or obligation under this Agreement and such assignment is made substantially in the form of the Permitted Transferee PSA Assignment and concurrently with an approved assignment and assumption of all of the rights and obligations under the Development Agreement from RCP to BHC in substantially the form required by the Development Agreement. Immediately upon the RCP/BHC PSA Assignment, RCP and BHC will provide City with written notice thereof, which notice will include executed copies of the RCP/BHC PSA Assignment and the assignment of the Development Agreement from RCP to BHC. Upon City’s receipt of such notice and executed copies, City agrees to recognize BHC as the “Buyer” under this Agreement for all purposes.

(ii) Assignment from RCP to AVB. City further acknowledges and agrees that in lieu of the assignments set forth in Section 11.2(c)(i) of this Agreement, RCP may assign all (and not only a portion) of its rights and obligations under this Agreement to AVB, and AVB may assume all of RCP’s rights and obligations under this Agreement (the “**RCP/AVB Assignment**”), provided that RCP is not released from any past or prospective liability or obligation under this Agreement and such assignment is made substantially in the form of the Permitted Transferee PSA Assignment and concurrently with an approved assignment and assumption of all of the rights and obligations under the Development Agreement from RCP to AVB in substantially the form required by the Development Agreement. Immediately upon the RCP/AVB Assignment, RCP and AVB will provide City with written notice thereof, which notice will include executed copies of the RCP/AVB PSA Assignment and the assignment of the Development Agreement from RCP to AVB. Upon City’s receipt of such notice and executed copies, City agrees to recognize AVB as the “Buyer” under this Agreement for all purposes.

(iii) Assignment from BHC to AVB. City further acknowledges and agrees that if RCP assigns its rights and obligations under this Agreement to BHC pursuant to Section 11.2(c)(i) above, then in the event that AVB exercises its Reassignment Rights (as such term is defined in the Recognition Agreement) under the Recognition Agreement, BHC may assign all (and not only a portion) of its rights and obligations under this Agreement to AVB, and AVB may assume all of BHC’s rights and obligations under this Agreement (the “**BHC/AVB PSA Assignment**”), provided that BHC is not released from any past or prospective liability or obligation under this Agreement and such assignment is made substantially in the form of the Permitted Transferee PSA Assignment and concurrently with an approved assignment of all of the rights and obligations under the Development Agreement from BHC to AVB in substantially the form required by the Development Agreement. Immediately upon said the BHC Assignment,

BHC and AVB will provide the City with written notice thereof, which notice will include executed copies of the BHC/AVB PSA Assignment and the assignment of the Development Agreement from BHC to AVB. Upon City's receipt of such notice and executed copies, City agrees to recognize AVB as the "Buyer" under this Agreement.

(iv) Recognition Agreement. In connection with the Pre-Approved Transfers, simultaneously with the execution of this Agreement, the City, RCP, BHC and AVB will enter into and deliver the form of Recognition Agreement attached as Exhibit M (the "Recognition Agreement").

(d) Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Except as expressly provided herein, Buyer's rights and obligations under this Agreement will not be assignable without the prior written consent of City; provided, however, even if City approves any such proposed assignment, in no event will Buyer be released of any of its obligations under this Agreement.

11.3. Amendments. This Agreement may be amended or modified only by a written instrument signed by the Buyer and City. Any waiver of conditions or obligations under this Agreement only if in writing and signed by the Party waiving such conditions or obligations.

11.4. Authority of Buyer. Buyer represents and warrants to City that Buyer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to conduct business in the State of California. Buyer further represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal, valid and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a Party or to which Buyer is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained in this Agreement or in other agreements or documents executed by Buyer in connection herewith, will survive the Closing Date.

11.5. Buyer's Representations and Warranties. Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is a Delaware limited liability company duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed, and qualified to conduct business in the State of California. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms of this Agreement.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or

prohibited from contracting with any governmental agency, it will immediately notify City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) No document or instrument furnished or to be furnished by the Buyer to City in connection with this Agreement contains or will contain 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 will have been made.

11.6. Governing Law. This Agreement will be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

11.7. Merger of Prior Agreements. This Agreement, together with the exhibits and agreements executed in connection therewith, contain any and all representations, warranties and covenants made by Buyer and City and constitutes the entire understanding between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits.

11.8. Parties and Their Agents. The term "**Buyer**" as used in this Agreement will include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer will be joint and several.

11.9. Interpretation of Agreement. The article, Section and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will be deemed to include the other and the neuter. No representation, warranty, covenant, agreement or condition that is not expressed in this Agreement will be binding upon the parties to this Agreement or will affect or be effective to interpret, change or restrict the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement. Except as otherwise specifically provided, wherever in this Agreement one Party is required or requested to give its consent or approval to any matter or action by the other, such consent or approval will not be unreasonably withheld or delayed. Use of the word "**including**" or similar words will not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "**without limitation**" or similar words, are used. Each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Use of the word "**Section**" refers to the particular Section of this Agreement unless indicated otherwise.

11.10. Attorneys' Fees. If either Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not

prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the terms "**court costs and reasonable attorneys' fees**" means 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 "**court costs and attorneys' fees**" also includes all 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 the fees and costs were incurred. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco will 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 services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

11.11. Time of Essence. Time is of the essence with respect to the performance of the parties' respective obligations contained in this Agreement. All rights and remedies set forth in this Agreement will be cumulative, except as otherwise expressly provided.

11.12. No Merger; No Implied Waiver. The obligations contained in this Agreement will not merge with the transfer of title to the Property but will remain in effect until fulfilled. No failure by either Party to insist upon the strict performance of any obligation of the other Party or to exercise any right, power or remedy consequent upon a breach thereof will constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof will affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

11.13. Proprietary Capacity. Buyer acknowledges and agrees that City is acting in its proprietary capacity with respect to the sale contemplated in this Agreement, and agrees that City is in no way constrained from acting in its regulatory capacity in any manner with regard to any approval relating to the Project. Buyer understands and agrees that City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property and not as a regulatory agency of City with certain police powers. Except as specifically stated herein, Buyer further understands and agrees that no approval by City for purposes of this Agreement will be deemed to constitute any approval required by any federal, state, regional or City authority. To the fullest extent permitted by law, Buyer agrees to indemnify and hold City and Agents harmless from and against any loss, expense, cost, damage, attorney's fees, penalties, claims or liabilities which City or its Agents may incur as a result of Buyer's failure to obtain or comply with the terms and conditions of any regulatory approval relating to the Property or the Project.

11.14. Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Agent of City will be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

11.15. Conflicts of Interest. Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer will immediately notify City.

11.16. Notification of Prohibition on Contributions. Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from any department of City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Buyer further acknowledges that (i) the prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Buyer is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Buyer certifies that Buyer has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

11.17. Sunshine Ordinance. Buyer understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City under this Agreement are public records subject to public disclosure. Buyer hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

11.18. Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco 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.

11.19. Recording; Memorandum; Survival. A memorandum of this Agreement in the form of Exhibit N will be executed by City and Buyer, and recorded by Buyer in the Official Records within thirty (30) days of the Effective Date (the "Memorandum"). If this Agreement is

terminated in accordance with its terms, then the Parties will promptly execute and deliver a termination of the Memorandum.

11.20. Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance will be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

11.21. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS IS DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

The Parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission
Date: _____

BUYER:

RESERVOIR COMMUNITY PARTNERS
LLC,
a Delaware limited liability company

BHC BALBOA BUILDERS, LLC,
a California limited liability company,
its Member

By: BRIDGE Housing Corporation
a California non-profit public benefit
corporation,
its Manager

By: BRAD WIELIN
Name: BRAD WIELIN
Title: EVP
Date: 6.9.2020

AVB BALBOA, LLC,
a Delaware limited liability company,
its Member

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

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

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

By: _____
Name: **Joe Kirchofer**
Title: **Vice President – Development**
Date: _____

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Pursuant to Resolution No. _____
Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS

Pursuant to Resolution No. _____
Adopted _____

The Parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Harlan L. Kelly, Jr.

General Manager

San Francisco Public Utilities Commission

Date: _____

BUYER:

RESERVOIR COMMUNITY PARTNERS
LLC,
a Delaware limited liability company

BHC BALBOA BUILDERS, LLC,
a California limited liability company,
its Member

By: BRIDGE Housing Corporation
a California non-profit public benefit
corporation,
its Manager

By: _____

Name: _____

Title: _____

Date: _____

AVB BALBOA, LLC,
a Delaware limited liability company,
its Member

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Elizabeth A. Dietrich

Deputy City Attorney

By: _____

Name:  Joe Kirchofer

Title: Vice President – Development

Date: 6/9/20

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Pursuant to Resolution No. _____

Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS

Pursuant to Resolution No. _____

Adopted _____

EXHIBIT A-1

REAL PROPERTY DESCRIPTION

EXHIBIT A-1

S-9668
4-10-20

LEGAL DESCRIPTION

"DEVELOPMENT PARCEL"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL ONE {CITY AND COUNTY OF SAN FRANCISCO}, AS SAID PARCEL IS
DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL ONE; THENCE ALONG THE
NORTHERLY LINE OF SAID PARCEL ONE S89°36'00"W 656.18 FEET TO THE WESTERLY
LINE OF SAID PARCEL ONE; THENCE ALONG SAID WESTERLY LINE S00°24'00"E 995.92
FEET TO A POINT DISTANT THEREON N00°24'00"W 82.83 FEET FROM THE SOUTHWEST
CORNER OF SAID PARCEL ONE, SAID POINT BEING ON A LINE THAT IS PERPENDICULARLY
DISTANT 80.00 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY LINE OF SAID PARCEL
ONE; THENCE ALONG SAID LINE THAT IS PARALLEL WITH SAID SOUTHWESTERLY LINE OF
PARCEL ONE S75°22'33"E 685.33 FEET TO THE EASTERLY LINE OF SAID PARCEL ONE;
THENCE ALONG SAID EASTERLY LINE N00°40'45"W 1173.59 FEET TO THE POINT OF
BEGINNING.

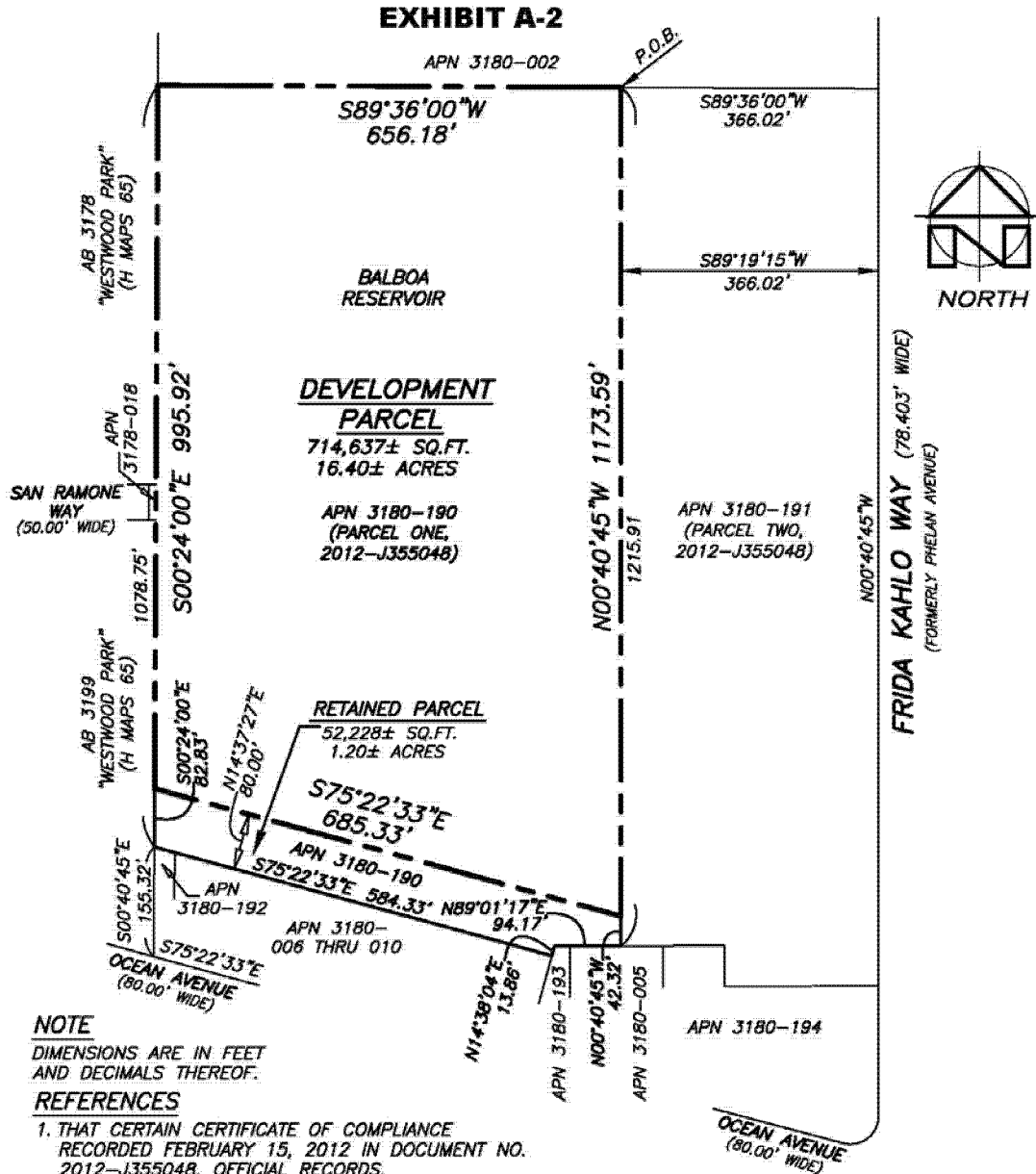
CONTAINING 714,637 SQ.FT. OR 16.40 ACRES, MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN
AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF
SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN
FRANCISCO.



EXHIBIT A-2

REAL PROPERTY DEPICTION



BY JP CHKD. BR DATE 4-10-29 SCALE 1"=200' SHEET 1 OF 1 JOB NO. S-9668

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500
S-9668_BNDY PLAT.dwg

EXHIBIT B

Form of Assignment and Assumption Agreement

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

AND WHEN RECORDED MAIL TO:

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

WITH A COPY TO:

San Francisco Public Utilities Commission
Attention: Real Estate Director
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

ASSIGNMENT AND ASSUMPTION AGREEMENT

RELATIVE TO AGREEMENT FOR SALE OF REAL ESTATE

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT RELATIVE TO AGREEMENT FOR SALE OF REAL ESTATE (hereinafter, the “**Assignment**”) is entered into this ____ day of _____, 20__, by and between RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company (“**Assignor**”) and _____, a _____ (“**Assignee**”).

RECITALS

A. Assignor and the City and County of San Francisco, a municipal corporation acting by and through its Public Utilities Commission, as seller (“**City**”), entered into that certain Agreement for Sale of Real Estate, (the “**Agreement**”) dated as of _____, 20__ for reference purposes, with respect to certain real property owned by City, as such property is more particularly described in the Agreement (the “**Property**”). A memorandum of the Agreement was recorded in the Official Records of the City and County of San Francisco on _____ as Document No. _____.

B. The Agreement provides that Assignor has the right to assign all of its rights, title, interest and obligations under the Agreement to a Pre-Approved Transferee with respect to all (but not to only a portion) of the Property, provided that Assignor is not released from any past or prospective liability or obligation under the Agreement.

C. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens and obligations under the Agreement with respect to and as related to the Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

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

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

2. Assignment of Agreement. Assignor hereby assigns to Assignee each and all of the rights, title, interest, burdens and obligations of Assignor under the Agreement with respect to the Property, provided, however, that Assignor shall not be released from any obligations or liabilities under the Agreement as a result of this Assignment.

3. Assumption of Agreement. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Assignor under the Agreement with respect to the Property, and agrees to observe and fully perform all the duties and obligations of Assignor under the Agreement, and to be subject to all the terms and conditions thereof. The parties intend that, upon the execution of this Assignment and conveyance of the Property to Assignee, Assignee shall become the "Buyer" under the Agreement with respect to the Property.

4. Reaffirmation of Indemnifications, Waivers and Releases. Assignee hereby consents to and expressly reaffirms any and all indemnifications, waivers and releases of City set forth in the Agreement as if Assignee were an original party to the Agreement, including without limitation the release of City set forth in Section 5.6 of the Agreement. Assignee has reviewed and is familiar with the terms and conditions of the Agreement. Assignee recognizes and acknowledges that, except as may be expressly set forth in the Agreement, City has not made any representation or warranty hereby, express or implied, regarding the amount, nature, or extent of any obligation, liability, or duty with respect to the Property or under the Agreement.

5. Assignee's Covenants. Assignee covenants and agrees that: (a) Assignee shall not challenge the enforceability of any provision or requirement of the Agreement; (b) Assignee shall not sue City in connection with any and all disputes between Assignor and Assignee arising from this Assignment or the Agreement; (c) Assignee shall indemnify City and its officers, agents and employees from, and if requested, shall defend them against any and all liabilities, costs, damages, losses, liens, claims, and expenses (including reasonable fees of attorneys, experts and consultants and related costs) resulting directly or indirectly from any dispute between Assignor and Assignee arising from this Assignment or the Agreement; (d) Assignee has obtained all consents to this Assignment that are required under any agreement to which it is a party or by which it is bound; and (e) the execution, delivery, and performance by Assignee of this Assignment (i) will not

contravene any legal requirements applicable to Assignee and (ii) will not conflict with, breach or contravene any agreement binding upon Assignee.

6. Representations and Warranties of Assignor. Assignor makes the following representations and warranties to City as of the Effective Date: (a) the Agreement is in full force and effect, and Assignor has not agreed to any amendment of any provision thereof; (b) to the actual knowledge of Assignor, no circumstance exists that with the giving of notice or passage of time, or both, would constitute an event of default by Assignor or City under the Agreement; (c) to the actual knowledge of Assignor, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of City or Assignor under the Agreement; (d) Assignor has obtained all consents to this Assignment that are required under any agreement to which it is a party or by which it is bound; and (e) the execution, delivery, and performance by Assignor of this Assignment (i) will not contravene any legal requirements applicable to Assignor and (ii) will not conflict with, breach or contravene any agreement binding upon Assignor.

7. Binding on Successors. 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. This Assignment may be relied upon by Seller and Title Company as defined in the Agreement.

8. Notices. The notice address for Assignee under Section 11.1 of the Agreement shall be:

Attn: _____

With copy to:

Attn: _____

9. Counterparts. 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.

10. Governing Law. This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

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

ASSIGNOR:

[insert signature block]

ASSIGNEE:

[insert signature block]

EXHIBIT C

COLLEGE EASEMENT AMENDMENT

[See Attached]

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
San Francisco Public Utilities Commission
Real Estate Director
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

with a copy to:

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

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

AMENDED AND RESTATED ACCESS EASEMENT AGREEMENT AND DEED
(Portion of Assessor's Parcel No. 1, Block 3180)

This Amended and Restated Access Easement Agreement and Deed (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and the SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, an institution of higher education organized under the State of California Education Code ("**College**"), is executed as of _____, 2020 (the "**Effective Date**"). City and College are sometimes collectively referred to in this Agreement as the "**Parties**" or singularly as a "**Party**."

RECITALS

A. City and College are parties to that certain Access Easement Agreement dated as of May 17, 2012, and recorded in the official records of the City and County of San Francisco ("**Official Records**") on May 17, 2012 as Document No. 2012-J414058-00 (the "**Original Agreement**").

B. City owns that certain real property under the jurisdiction of the San Francisco Public Utilities Commission ("**SFPUC**") described on the attached Exhibit A (the "**City Property**") and College owns that certain adjacent real property described on the attached Exhibit B (the "**College Property**").

C. The Original Agreement contemplated that College would construct and provided for the construction, use, operation, maintenance, and repair of an Accessway (defined in Section

3 below). As of the date of this Agreement, College has not constructed the Accessway as required by the Original Agreement.

D. City is contemplating a development project (the “**Project**”) on the City Property, which Project is anticipated to deliver 1,100 units of much needed housing including 550 affordable housing units. Approximately 150 of the affordable housing units are planned to be occupied by educators, and College employees are planned to have first priority for those affordable educator units.

E. College installed certain utilities, consisting of an eight inch (8”) diameter fire water line, an eight inch (8”) diameter sanitary sewer line, a sixty inch (60”) diameter storm drain line, an eighteen inch (18”) diameter storm drain, and other related equipment or appurtenances (“**Unpermitted Utility Facilities**”) and geothermal wells and related equipment (“**Geothermal Wells**”) that are in the approximate locations more particularly described in the attached Schedule 1. The Unpermitted Utility Facilities and Geothermal Wells were not contemplated or permitted by the Original Agreement (or any other agreement with the City), occupy property both within the Access Easement Area as defined in the Original Agreement (the “**Original Access Easement Area**”) as well as City Property adjacent to the Original Access Easement Area, and will be relocated by City or Constructing Party (defined in Section 3 below) in accordance with the terms and conditions of this Agreement.

F. The Original Access Easement Area is comprised of two distinct areas: a north-south oriented segment which is anticipated to connect with the existing Lee Avenue and is more particularly described on the attached Exhibit C (the “**North-South Portion**”), and an east-west oriented segment which is currently anticipated to run along the northern boundary of the College Property, between the College and Archbishop Riordon High School, and is more particularly described on the attached Exhibit D (the “**East-West Portion**”). The North-South Portion and the East-West Portion are depicted on the attached Exhibit D-1. The Original Access Easement Area comprising the North-South Portion is located on property owned by City, and the East-West Portion is located on property owned by the College. In order to develop the Project, the Original Access Easement Area comprising the North-South Portion must be widened by approximately eleven feet (11’) along the eastern boundary of the City Property and by approximately eleven feet (11’) along the western boundary of the College Property, and a street must be constructed to City standards on the widened area. In addition, the Original Access Easement Area comprising the East-West Portion must be widened by approximately two feet (2’) and a street must be constructed to City standards on the widened area. Therefore, the “College Property Easement Area” as defined in the Original Agreement will be modified by this Agreement to include **(1)** additional land included within the North-South Portion comprising approximately eleven feet (11’) in width along the eastern boundary of the College Property, and **(2)** additional land included within the East-West Portion comprising approximately two feet (2’) in width, all as depicted on the attached Exhibit E and more particularly described on the attached Exhibit E-1 (the “**College Property Easement Area**”). The “City Property Easement Area” as defined in the Original Agreement will be modified by this Agreement to include additional land included within the North-South Portion comprising approximately eleven feet (11’) in width along the western boundary of the City Property, as depicted on the attached Exhibit F and more particularly described on Exhibit F-1 (the “**City Property Easement Area**”). The City Property Easement Area and the College Property

Easement Area are referred to collectively in this Agreement as the “**Access Easement Area**” as depicted on the attached Exhibit G and more particularly described on Exhibit G-1.

G. The proposed developer of the Project has agreed that, in exchange for conveyance in fee of the revised College Property Easement Area to City, it will remove and relocate the Unpermitted Utility Facilities and may close out and cap the Geothermal Wells at the developer’s sole cost if the Project proceeds. In addition, City will relieve College of its obligation to construct the Accessway to current City standards as required by the Original Agreement, and if the Project is developed then City or its designee will assume the obligation to construct the Accessway in accordance with the Development Agreement and Master Infrastructure Plan relating to the Project. The Parties anticipate that City will designate the developer of the Project or its contractor to construct the Accessway if the Project proceeds.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, City and College agree that, as of the Effective Date, the Original Agreement is amended and restated in its entirety and replaced by this Agreement.

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Grants of Property Interests. Pursuant to the terms and conditions specified in this Agreement:

(a) Grants of Easement and Fee.

(i) City grants to College a temporary, non-exclusive access easement for pedestrian and vehicular access, for sidewalk, street, and roadway purposes (the “**Permitted Uses**”) on and over the City Property Easement Area (the “**City Property Access Easement**”), and

(ii) Subject to a reserved, temporary, non-exclusive access easement for the benefit of College for the Permitted Uses (the “**College Property Access Easement**”), College grants to City the fee interest in the real property comprising the College Property Easement Area as depicted on the attached Exhibit E and more particularly described in Exhibit E-1 attached hereto (the “**Land**”), including all improvements and fixtures located on or under the Land, including, without limitation, all structures located on or under the Land, all apparatus, equipment and appliances located on or under the Land used in connection with the operation or occupancy of the Land, its improvements, and in used connection with the operation or occupancy of College’s adjacent property (collectively, the “**Improvements**”), and any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements (collectively, the “**Appurtenances**”), and

(iii) College grants to City a Temporary Construction Easement in the Temporary Construction Easement Area for the Temporary Construction Easement Term. As used in this Agreement, “**Temporary Construction Easement Area**” means the area of land owned by College that is five (5) feet in width and located along the eastern boundary of the North-South Portion, and the area of land owned by College that is five (5) feet in width and located along the southern boundary of the East-West Portion, as depicted on the attached Exhibit H and more particularly described on Exhibit H-1. “**Temporary Construction Easement Term**” means the period of time commencing as of the Effective Date and expiring on the date when City completes the construction of the Accessway, together with such reasonable period of time following such completion as necessary for City to remove the construction-related items placed in the Temporary Construction Easement Area. “**Temporary Construction Easement**” means a temporary, exclusive easement in, on, over, upon and across the Temporary Construction Easement Area for purposes of staging for the construction of the Accessway (including, without limitation, the storage of construction and building materials, the location of any temporary construction sheds or trailers, and the parking of construction vehicles and equipment (including, without limitation, bulldozers, compactors, graders, and trucks)), and pedestrian and vehicular access to and from the Accessway.

The City Property Access Easement and the College Property Access Easement are referred to collectively in this Agreement as the “**Access Easement**.” The Access Easement will automatically terminate and be of no further force or effect upon acceptance by the City and County of San Francisco, at its sole discretion, of the Accessway as a road that is part of its street system (a “**Public Road**”).

(b) **Potential Relocation of East-West Portion of College Property Easement Area.** The Parties agree that, after the date of this Agreement, it may be beneficial for each of them to relocate the East-West Portion of the College Property Easement Area approximately two hundred (200) feet to the south, as depicted on the attached Exhibit I and more particularly described on Exhibit I-1 (the “**Alternative College Property Easement Area**”) in order to align North Street with Cloud Circle and thus provide better circulation for the benefit of both the College and the Project. If, at their sole discretion, City’s Director of Property and Director of Public Works, and College’s Chancellor and Vice Chancellor each approve the Alternative College Property Easement Area, then this Agreement may be amended and then recorded in Official Records to adjust the College Property Easement Area and the Access Easement Area to reflect the Alternative College Property Easement Area, without further approval or action required by City’s Public Utilities Commission or Board of Supervisors and without further approval or action required by College’s Board of Trustees. If the Parties approve the Alternative College Property Easement Area, then (i) the Access Easement Area will also be modified as depicted on the attached Exhibit J and more particularly described on Exhibit J-1 (the “**Alternative Access Easement Area**”), and the Temporary Construction Easement Area will be modified as depicted on the attached Exhibit K and more particularly described on Exhibit K-1 (the “**Alternative Temporary Construction Easement Area**”). If, by June 30, 2021, City and College have not approved amendment and recordation of this Agreement to reflect the relocation of the East-West Portion of the College Property Easement Area to the Alternative College Property Easement Area, modification of the Access Easement Area to the Alternative Access Easement Area, and modification of the Temporary Construction Easement Area to the

Alternative Temporary Construction Easement Area, then the East-West Portion of the College Property Easement Area will not be relocated.

(c) **Minor Boundary Adjustments.** Because the actual boundaries of rights of way and street improvements often vary in minor ways after actual conditions on the site are discovered and accommodated during the course of construction and other minor changes are made to construction plans, the Parties will work together in good faith to amend and restate the property descriptions set forth in Exhibit E and Exhibit E-1, Exhibit F and Exhibit F-1, Exhibit G and Exhibit G-1, Exhibit I and Exhibit I-1, and Exhibit J and Exhibit J-1, as needed to reflect the actual area required for the improvements and utilities installed for the Public Road. The legal descriptions and this Agreement may be amended accordingly without further approval or action required by City's Public Utilities Commission or Board of Supervisors and without further approval or action required by College's Board of Trustees, so long as (i) City's Director of Property and Director of Public Works, and College's Chancellor and Vice Chancellor approve the revised legal descriptions, and (ii) the adjustments to the legal descriptions are minor in nature and do not increase the overall square footage of the City Property Easement Area or the College Property Easement Area.

3. Construction of Accessway.

(a) City may (i) construct the Accessway at any time, or (ii) delegate at any time or times the right to construct the Accessway to a party (the "**Constructing Party**") designated by City in writing to College (the "**Designation Notice**"). The Constructing Party may be City or any other third-party. City may replace the Constructing Party at any time by delivering a subsequent Designation Notice to College. City anticipates that it will designate the developer of the Project or its contractor as the Constructing Party. Constructing Party will have the right to construct within the Access Easement Area a roadway, including bicycle lanes, sidewalks, and above ground as well as underground utility facilities, including water, sanitary sewer, drainage, greywater, electrical, gas, telecommunications, and other utility lines and facilities and related public improvements, in conformity with the requirements and standards included in the Development Agreement and Master Infrastructure Plan relating to the Project, and pursuant to plans and specifications approved by City acting in its regulatory capacity, or in the event that the Development Agreement and Master Infrastructure Plan relating to the Project are no longer applicable, in compliance with then-applicable City and County of San Francisco standards for construction of public improvements and in material conformance with plans and specifications approved in advance by City acting in its regulatory capacity (collectively, as the same may be hereafter modified by City, the "**Accessway**").

(b) After approval of final plans and specifications for the Accessway by City, acting in its regulatory capacity, and during the period of construction of the Accessway, the Constructing Party may take such measures to limit the access of other parties, including College, to the Access Easement Area but only to the extent reasonably necessary to facilitate construction of the Accessway. Constructing Party will make commercially reasonable efforts to allow the Permitted Uses on the Access Easement Area to continue throughout construction to the extent feasible.

4. Use of the Access Easement Area. Except as necessary in connection with construction of the Accessway, neither Party will do anything at any time in, on, under, or about the Access Easement Area that could damage, endanger, or interfere with the Permitted Uses, or enter into any license, lease, or other contract or agreement that would conflict with or adversely affect the Permitted Uses. Without limiting the foregoing, College will not undertake or permit any of the following activities within the Access Easement Area without first obtaining the City's prior written consent, which may be given or withheld at its sole discretion: **(a)** plant trees or shrubs; **(b)** construct or place any structures, fences, walls, or improvements of any kind or character, including any pavement, asphalt, or similar impermeable ground cover; or **(c)** perform any excavation or construction activities.

5. Construction and Maintenance Activities. In addition to complying with all requirements specified elsewhere in this Agreement, all construction or maintenance activities performed in the Access Easement Area and the Temporary Construction Easement Area by City or Constructing Party will comply with the following conditions:

(a) All construction and maintenance activities will comply with all applicable all applicable federal, state, City, and local laws, statutes, ordinances, regulations, and other legal requirements ("**Laws**") and be performed using sound construction practices and in a manner that minimizes interference with the operation and use of the Accessway, the Access Easement Area, the College Property, or the City Property. Constructing Party will diligently pursue to completion all construction commenced by it in the Access Easement Area.

(b) Constructing Party will give at least thirty (30) days' prior written notice of construction of the Accessway to College, and to City if City is not Constructing Party, together with a copy of any plans and specifications or other materials reasonably sufficient to describe such planned activities. Such notice will specify if such activities will interfere with the use and operation of the Access Easement Area and, if so, the extent of the expected interference and Constructing Party's proposed actions to minimize such interference. Constructing Party may restrict access to the Access Easement Area while conducting any construction or maintenance activities therein if such restricted access is reasonably necessary to protect public health and safety.

(c) Constructing Party will not be obligated to provide prior written notice of its construction or maintenance activities in the Access Easement Area in the event of any immediate danger to health or property, in which case Constructing Party will verbally notify College and City, if City is not Constructing Party, as soon as reasonably possible.

(d) Constructing Party will secure and pay for any building and other permits and approvals, government fees, licenses, and inspections necessary for the proper performance and completion of its activities.

(e) Except as otherwise provided in connection with the removal and relocation of the Unpermitted Utility Facilities, Constructing Party will have the sole responsibility of locating any utilities that may be on, in, or under the Access Easement Area and the Temporary Construction Easement Area, protect them from damage while conducting any construction or maintenance activities, and arrange and pay for any necessary temporary relocation of College,

City, and public utility company facilities, subject to the prior written approval by operator of such affected facilities.

6. Removal and Relocation of Unpermitted Utility Facilities and Right to Close Out Geothermal Wells.

(a) **Unpermitted Utility Facilities.** Concurrently with the construction of the Accessway and prior to acceptance of the Accessway as a Public Road, Constructing Party will cause the Unpermitted Utility Facilities together with such other utility facilities that are discovered in the Access Easement Area and those in City Property to be removed at Constructing Party's sole cost and will cause such Unpermitted Utility Facilities and other utility facilities that exist at the common border shared by the College Property and City Property to instead be connected to the corresponding utility facilities within Lee Avenue or Frida Kahlo Way via the Accessway, as needed or required, such that College Property will continue to receive the benefit of the services provided by the Unpermitted Utility Facilities on an uninterrupted basis (except for a commercially reasonable period of interruption of service not to exceed one (1) day for those Unpermitted Utility Facilities other than the storm drain, and after at least ten (10) business days prior notice by Constructing Party to College specifying the dates, nature and anticipated duration of such service interruptions, in order to accomplish the connection of the Unpermitted Utility Facilities that exist at the common border shared by the College Property and City Property to instead be connected to the corresponding utility facilities within the Accessway). The removal of the Unpermitted Utility Facilities and the relocation of such facilities will be performed in compliance with all Laws (including securing, prior to commencement of such work, all required consents, permits, and approvals from City acting in its regulatory capacity, and from any other governmental authority having jurisdiction over such work and any utility companies operating or connecting to the Unpermitted Utility Facilities whose consent is required in connection therewith).

(b) **Geothermal Wells.** Constructing Party will have the right, but not the obligation (unless required by City), to close out and cap the Geothermal Wells, at Constructing Party's sole cost and expense, in compliance with all applicable Laws (including securing, prior to commencement of such work, all required consents, permits, and approvals from City acting in its regulatory capacity and/or any other governmental authority having jurisdiction over such work and/or any utility company(ies) whose consent is required in connection therewith). College acknowledges and agrees that once capped or closed out, the Geothermal Wells will not be operable.

(c) **Consent.** College acknowledges and agrees that has consented to the work described in this Section 6 and that no additional consents or approvals whatsoever will be required from College if such work is conducted in accordance with this Section 6, and that College will have no claims against City or Constructing Party as a result thereof (including claims resulting from the loss of the use of the Unpermitted Utility Facilities and/or Geothermal Wells), it being acknowledged and agreed by College that College did not previously install the Unpermitted Utility Facilities and/or Geothermal Wells in accordance with any right granted by the City.

7. Maintenance and Repair. During the period after completion of the Accessway and prior to acceptance of the Accessway as a Public Road, City will require the developer of the

Project or its approved assignee, at its sole cost, to maintain the Accessway in good working order and in a clean, safe, and sanitary condition at all times, even if damaged by casualty.

8. Hazardous Materials.

(a) Neither Party will use, store, locate, handle, or cause or permit the dumping or other disposal or release on or about the Access Easement Area or the Temporary Construction Easement Area of any Hazardous Material (or permit its Agents (defined in Section 10(a) below) to do the same). Nothing in this Section 8 is intended, however, to prohibit the use, storage, and disposal of ordinary and customary amounts of Hazardous Materials by Constructing Party to the extent the same are necessary for construction of the Accessway in compliance with this Agreement and provided that Constructing Party first obtains all permits, licenses, and approvals that are required by any applicable Laws for such use, storage, or disposal prior to commencement of such activities, and such use, storage, and disposal is performed by Constructing Party in full compliance with all required permits, licenses, and approvals and all applicable Laws related to such use, storage, or disposal.

(b) “**Hazardous Material**” means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. “Hazardous Material” includes any material or substance defined as a “hazardous substance, pollutant, or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials, whether or not such materials are part of the Access Easement Area or the Temporary Construction Easement Area or are naturally occurring substances in the Access Easement Area or the Temporary Construction Easement Area, and any petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids. The term “**release**” or “**threatened release**” when used with respect to Hazardous Material will include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the Access Easement Area or the Temporary Construction Easement Area.

(c) If either Party (or the Agents of such Party) defaults in its obligations under this Section, then such defaulting Party will indemnify, defend, and hold harmless the other Party against any and all Claims (defined below) arising at any time as a result of such default, except to the extent the other Party or its Agents are responsible for such Claims. “**Claims**” will mean all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties, and expenses, including direct and vicarious liability of every kind. Each Party’s foregoing indemnity obligation will survive the termination or extinguishment of this Agreement or the easements granted hereunder.

9. Insurance.

(a) Except during the period that a Party maintains the insurance required pursuant to Section 9(b), each Party will procure at its expense and keep in effect at all times, in form and from an insurer reasonably acceptable to the other Party, as follows:

(i) Commercial general liability insurance with limits not less than \$2,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products, and completed operations. Any deductible under such policy will not exceed \$25,000 for each occurrence.

(ii) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles, as applicable. Any deductible under such policy will not exceed \$10,000 for each occurrence.

(iii) Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Access Easement Area to provide statutory benefits as required by the laws of the State of California.

(b) During the period of any Construction Activity on or about the Accessway, in lieu of the insurance required by Section 9(a), the Party undertaking the Construction Activity will procure and keep in effect insurance required by this Section 9(b). As used in this Agreement, "**Construction Activity**" commences upon such Party's first site permit, first demolition permit, or first building permit relating to the Accessway, and continues until the Accessway has had its final inspection and is ready for public use and occupancy.

(i) Commercial general liability insurance with limits not less than \$10,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products, and completed operations. Any deductible under such policy will not exceed \$100,000 for each occurrence.

(ii) Business automobile liability insurance with limits not less than \$3,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles, as applicable. Any deductible under such policy will not exceed \$10,000 for each occurrence.

(iii) Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Access Easement Area and the Temporary Construction Easement Area to provide statutory benefits as required by the laws of the State of California.

(iv) Pollution legal liability and environmental remediation liability, including coverage for bodily injury, sickness, or disease, sustained by any person, including death; Environmental Damages; property damage including physical injury to or

destruction of tangible property including the resulting loss of use thereof, clean-up costs, defense costs, charges, and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release, or escape of Hazardous Materials into or upon City's property, the atmosphere, or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by such Party or its Agents, from the City's real property to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the City's real property required to comply with all applicable Laws. Such insurance must be endorsed to provide third-party disposal site coverage that covers third-party bodily injury, property damage, and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the Party or its Agents. Such Party will maintain limits no less than: Two Million Dollars (\$2,000,000) per accident and Four Million Dollars (\$4,000,000) policy aggregate for bodily injury and property damage. City and its Agents must be included as additional insureds under the Pollution Legal Liability Insurance Policy.

(v) During the period of any Construction Activity within fifty (50) feet of any railway, Railroad Protective Liability insurance with limits not less than \$2,000,000 each occurrence combined single limit (true occurrence form), and \$6,000,000 in the aggregate for bodily injury, property damage, and physical damage, including loss of use applicable to all operations of contractor and its subcontractors within 50 feet of trackway. The applicable Railway shall be the first named insured on the policy.

(c) All insurance policies required hereunder will **(i)** be written on an occurrence basis (except for Pollution Legal Liability), **(ii)** name the other Party, together with its officers, agents, and employees, as additional insureds, **(iii)** specify that such policies are primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, **(iv)** be issued by one or more companies of recognized responsibility approved to do business in the State of California with financial rating of at least a Class A- VII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports," **(v)** provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage will not reduce or void the coverage as to any insured, **(vi)** afford coverage for all claims based on acts, omissions, injury, or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and **(vii)** each Party shall provide the thirty (30) day's prior written notice of cancellation, intended non-renewal, or reduction in coverage to the other Party.

(d) This Agreement may be amended unilaterally ten (10) years after the Effective Date and from time to time thereafter by City upon notice to College, to impose such insurance, bond, guaranty, and indemnification requirements as City determines are necessary and appropriate to protect its interests, consistent with City's or the SFPUC's custom and practice and in a manner that will not unnecessarily interfere with or materially increase the cost or risk of College's ability to perform under this Agreement, or if such amendment would unnecessarily interfere with or materially increase College's cost or risk, such amendment must be consistent with commercial industry practice.

(e) If requested, a Party will deliver to the other Party certificates of insurance in form and with insurers satisfactory to the requesting Party, evidencing the coverages required hereunder, together with complete copies of the policies at such requesting Party's request. If a Party fails to procure such insurance, or to deliver such policies or certificates, the other Party may procure, at its option, such insurance on such defaulting Party's behalf, and the defaulting Party will pay the acting Party for the cost thereof within five (5) days of the acting Party's delivery of bills therefor.

(f) Should any of the required insurance (except for Pollution Legal Liability) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit will double the occurrence or claims limits specified above.

(g) A Party's compliance with the provisions of this Section will in no way relieve or decrease such Party's indemnification obligations or other obligations under this Agreement. Each Party will be responsible, at its own expense, for separately insuring its personal property.

(h) Notwithstanding anything to the contrary contained herein, each Party hereby waives any right of recovery against the other Party for any loss or damage sustained by such damaged Party with respect to the Access Easement Area and the Temporary Construction Easement Area, whether or not such loss is caused by the fault or negligence of the other Party, to the extent such loss or damage is covered by insurance that the damaged Party is required to purchase under this Agreement or is otherwise actually recovered from valid and collectible insurance covering such damaged Party. Each Party agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Access Easement Area and the Temporary Construction Easement Area; provided, however, that failure to do so will not affect the above waiver.

(i) College acknowledges that City maintains a program of self-insurance and agrees that City will not be required to carry any insurance with respect to this Agreement; provided, however, that if any of City's successors or assigns under this Agreement is not a public entity, or City designates a Constructing Party other than City, such non-public successor or assign or Constructing Party, as the case may be will carry the insurance specified in this Section.

10. Indemnity.

(a) City will indemnify, defend, reimburse, and hold harmless College from and against any and all Claims arising out of or relating to the activities of City or any City Agent in the Access Easement Area and the Temporary Construction Easement Area, except to the extent caused by the intentional acts or negligence of College or any College Agents or the failure of College to perform or comply with its obligations under this Agreement; provided, however, that City will not be liable to College under any circumstances for any consequential, incidental, or punitive damages. "**Agents**" will mean a Party's officers, agents, employees, representatives, trustees, or contractors

(b) College will indemnify, defend, reimburse, and hold harmless City and City's Agents and each of them, from and against any and all Claims arising out of or relating to the use of the Access Easement Area and the Temporary Construction Easement Area by College or any College Agents, except to the extent caused by the intentional acts or negligence of City or any City Agents, or the failure of City to perform or comply with its obligations under this Agreement; provided, however, that College will not be liable to City under any circumstances for any consequential, incidental, or punitive damages.

(c) The foregoing indemnities will include reasonable attorneys', experts', and consultants' fees and costs, and will survive any termination or extinguishment of this Agreement or the easements granted hereunder.

11. Notices. All notices, demand, consents, or approvals given hereunder will be in writing and will be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a Party designates by written notice delivered to the other Party pursuant to the provisions of this Section):

If to City: Real Estate Director
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

With a copy to: City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

If College: _____
[Vice Chancellor of Finance and Administration]
San Francisco Community College District

San Francisco, CA _____

with a copy to: _____

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one Party to the other shall be for convenience of communication only; neither Party may give official or binding notice orally or by e mail or facsimile. The effective time of a notice shall not be affected

by the receipt, prior to receipt of the original, of an oral notice or an e mail or telefacsimile copy of the notice.

12. Waiver of Claims. Notwithstanding anything to the contrary set forth in this Agreement, each Party covenants and agrees that the other Party will not be responsible for or liable for, and hereby waives all rights against the other Party and its Agents and releases the other Party and its Agents from, any and all Claims relating to any injury, accident, or death of any person or loss or damage to any property, in or about the Access Easement Area or the Temporary Construction Easement Area, from any cause whatsoever, including the Unpermitted Utility Facilities, Geothermal Wells, the removal and relocation of the Unpermitted Utility Facilities and closing of the Geothermal Wells, and any other utility facilities discovered in the Access Easement Area or City Property. Nothing herein will relieve a Party from liability to the extent caused by the negligence or willful misconduct of such Party or its Agents or its failure to perform its obligations pursuant to this Agreement, but neither Party will be liable under any circumstances for any consequential, incidental, or punitive damages. City and College would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City, the College, or either of their Agents, and City and College each expressly assume the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, each Party fully RELEASES, WAIVES, AND DISCHARGES forever any and all Claims, and covenants not to sue, the other Party or its Agents for any matters arising out of this Agreement, the Access Easement Area, or the Temporary Construction Easement Area, except to the extent such Claims result from the negligence and willful misconduct of the other Party or their Agents or the failure of a Party to perform or comply with its obligations under this Agreement. In connection with the foregoing release, each Party acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Each Party acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Each Party realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein will survive any termination or extinguishment of this Agreement or the easements granted hereunder.

13. City Acceptance of Accessway as a Public Road. If, at its sole discretion, the City accepts the Accessway as a Public Road, then the Access Easement will automatically terminate and be of no further force or effect. At City's request, College shall **(a)** deliver any documents reasonably required by City to document termination of the easement interests granted and reserved to College pursuant to this Agreement, and **(b)** duly execute and acknowledge and deliver to City a quitclaim deed in substantially the form attached as Exhibit F to transfer any real property interest of College in the Access Easement Area.

14. Run with the Land; Exclusive Benefit of Parties. The rights and obligations in this Agreement will run with the land and will bind and inure to the benefit of the successors and assigns of the Parties. This Agreement is for the exclusive benefit of College and City and their respective successors and assigns (including any Constructing Party) and is not for the benefit of, nor will it give rise to any claim or cause of action by, any other person or entity.

15. Proprietary Capacity. College understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no agreement by City set forth in this Agreement nor any other approvals by City in this Agreement will be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Access Easement Area or the Temporary Construction Easement Area.

16. As Is Condition. COLLEGE ACCEPTS THE ACCESS EASEMENT AREA IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS AGENTS HAVE MADE, AND CITY HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE ACCESS EASEMENT AREA. CITY ACCEPTS THE ACCESS EASEMENT AREA AND THE TEMPORARY CONSTRUCTION EASEMENT AREA IN ITS "AS IS" CONDITION, AND ACKNOWLEDGES AND AGREES THAT NEITHER COLLEGE NOR ANY OF ITS AGENTS HAVE MADE, AND COLLEGE HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE ACCESS EASEMENT AREA OR THE TEMPORARY CONSTRUCTION EASEMENT AREA. Without limiting the foregoing, this Agreement is made subject to all applicable Laws governing the use of the Access Easement Area and the Temporary Construction Easement Area, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title, and other title matters affecting the Access Easement Area or the Temporary Construction Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is each Party's and their Agents' sole obligation to conduct an independent investigation of the Access Easement Area, the Temporary Construction Easement Area, and all matters relating to its use hereunder, including the suitability of the Access Easement Area and the Temporary Construction Easement Area for such uses. At its own expense, each Party will obtain such permission or other approvals from any third parties with existing rights as may be necessary for such Party or its Agents to make use of the Access Easement Area and the Temporary Construction Easement Area in the manner contemplated hereby.

17. No Liens, Encumbrances. Each Party will keep the Access Easement Area and the Temporary Construction Easement Area free from liens arising out of any work performed, material furnished, or obligations incurred by such Party or its Agents.

18. Possessory Interest Taxes. College recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that College may be subject to the payment of property taxes levied on such interest under applicable law. College shall pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on College's interest under this Agreement or use of the Access Easement Area and the Temporary Construction Easement Area pursuant to this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on College's usage of the Access Easement

Area that may be imposed upon College by applicable law. College will pay all of such charges when they become due and payable and before delinquency.

19. Prevailing Wages. The provisions of Section 6.22(E) of the San Francisco Administrative Code, as such provisions may be amended from time to time, are incorporated by this reference in this Agreement to the extent applicable. Any person performing labor for the Easement Work (as defined below) will be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, will be subject to the same hours and working conditions, and will receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Each Party will include, in any contract for any Easement Work, a requirement that all persons performing labor under such contract will be paid not less than the highest prevailing rate of wages for the labor so performed. Each Party will further require that any contractor performing any of the Easement Work will provide, and will deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Easement Work. “**Easement Work**” means the construction of the Accessway or any other improvements to the Access Easement Area pursuant to this Agreement or in the maintenance, repair, or replacement of the Accessway or such other improvements.

20. Covenant Not to Discriminate. Neither Party will discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or, any employee working with, or applicant for employment with, such Party in any of such Party’s operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by either Party.

21. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and College and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any Party of any of the provisions of this Agreement will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and all prior negotiations, discussions, understandings, and agreements are merged herein. (d) This Agreement will be governed by California law and City’s Charter. (e) If either Party commences an action against the other or a dispute arises under this Agreement, the prevailing Party will be entitled to recover from the other reasonable attorneys’ fees and costs. For purposes hereof, reasonable attorneys’ fees will be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City’s or College’s use of its own attorneys. (f) This Agreement does not create a partnership or joint venture between City and College as to any activity conducted by College or City on, in or relating to the Access Easement Area or the Temporary Construction Easement Area. (g) City’s obligations hereunder are contingent upon approval of this instrument by City’s Public Utilities Commission and the City’s Board of Supervisors and Mayor, each at its sole discretion, and the easements granted by City hereunder and this Agreement will be null and void if such approval is not obtained, and College’s obligations hereunder are contingent upon approval of this instrument by the College’s Board of Trustees, at its sole discretion, and the easements granted by

City hereunder and this Agreement will be null and void if such approval is not obtained. **(h)** Time is of the essence of this Agreement and each Party's performance of its obligations hereunder. **(i)** All representations, warranties, waivers, releases, and indemnities given or made in this Agreement will survive the termination of this Agreement or the extinguishment of the easements granted by City hereunder. **(j)** If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision will not affect any other provision of this Agreement, and the remaining portions of this Agreement will continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. **(k)** All section and subsection titles are included only for convenience of reference and will be disregarded in the construction and interpretation of the Agreement. **(l)** College represents and warrants to City that the execution and delivery of this Agreement by College and the person signing on behalf of College below has been duly authorized, and City represents and warrants to College that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized. **(m)** Each attached exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Use of the word "**Section**" refers to the particular Section of this Agreement unless indicated otherwise. **(n)** Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COLLEGE:

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT,
an institution of higher education organized under the
State of California Education Code

By: _____
[Name]
[Vice Chancellor of Finance and Administration]

Date: _____

APPROVED AS TO FORM:

By: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

Exhibit A

Legal Description of City Property

All that real property situate in the City and County of San Francisco, State of California, described as follows:

A portion of that certain tract described as Parcel 22 in that certain deed from the Spring Valley Water Company, a Corporation, to the City and County of San Francisco, a Municipal Corporation, recorded March 3, 1930, in Book 2002 at page 1, Official Records of the City and County of San Francisco, also being a portion of that certain parcel described in that certain deed from the City and County of San Francisco to the San Francisco Community College District, recorded October 15, 1992 in Book F-734, page 746, Official Records, more particularly described as follows:

BEGINNING at a point on the southerly line of that certain parcel described in that certain deed from the City and County of San Francisco, to the Roman Catholic Archbishop of San Francisco, recorded July 28, 1947, in Book 4661 at page 278, Official Records, from which the southeasterly corner of said Parcel bears North 89°36'00" East, 366.02 feet distant; said corner also being on the westerly line of Phelan Avenue, (78.403 feet wide), as now established and shown on that certain map entitled "Map Showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" filed February 15, 1954 in Book R of Maps at page 56, Official Records; thence westerly along said southerly line of said parcel

1. South 89° 36' 00" West 656.18 feet, to the southwest corner of said parcel, said corner also being the northwest corner of said Parcel 22; thence southerly along the westerly line of last said Parcel
2. South 00°24' 00" East, 1078.75 feet to a point, from which the southwest corner of said Parcel 22, said point also being on the northerly line of Ocean Avenue (80.00 feet wide), bears South 00°24'00" East, 155.32 feet distant; thence leaving the line of said Parcel 22 and along the southerly line of said parcel described in said deed from the City and County of San Francisco to the San Francisco Community College District
3. South 75°22'33" East 584.33 feet; thence
4. North 14°38'04" East 13.86 feet; thence
5. North 89°01'17" East 94.17 feet to a point westerly 366.02 feet perpendicularly distant from the westerly line of said Phelan Avenue; thence leaving said southerly line along a line parallel with and westerly 366.02 feet perpendicularly distant from said westerly line of Phelan Avenue
6. North 00°40'45" West 1215.91 feet to the **POINT OF BEGINNING.**

Being a portion of Assessor's Block 3180, lot 1

Containing an area of 17.60 acres, more or less.

EXHIBIT B

LEGAL DESCRIPTION OF COLLEGE PROPERTY

Exhibit B

Legal Description of College Property

All that real property situate in the City and County of San Francisco, State of California, described as follows:

A portion of that certain tract described as Parcel 22 in that certain deed from the Spring Valley Water Company, a Corporation, to the City and County of San Francisco, a Municipal Corporation, recorded March 3, 1930, in Book 2002 at page 1, Official Records of the City and County of San Francisco, also being a portion of that certain parcel described in that certain deed from the City and County of San Francisco to the San Francisco Community College District, recorded October 15, 1992 in Book F-734, page 746, Official Records, more particularly described as follows:

BEGINNING at the southeast corner of that certain parcel described in that certain deed from the City and County of San Francisco, to the Roman Catholic Archbishop of San Francisco, recorded July 28, 1947, in Book 4661 at page 278, Official Records, said corner also being on the westerly line of Phelan Avenue, (78.403 feet wide), as now established and shown on that certain map entitled "Map Showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" filed February 15, 1954 in Book R of Maps at page 56, Official Records; thence westerly along the southerly line of said parcel South $89^{\circ}36'00''$ West 366.02 feet, more or less, to a point westerly 366.02 feet perpendicularly distant from said westerly line of Phelan Avenue; thence leaving said southerly line along a line parallel with and westerly 366.02 feet perpendicularly distant from the westerly line of Phelan Avenue

1. South $00^{\circ}40'45''$ East 1215.91 feet to the southerly line of that parcel described in that certain deed from the City and County of San Francisco to the San Francisco Community College District, recorded October 15, 1992 in Book F-734, page 746, Official Records; thence along said southerly line
2. North $89^{\circ}01'17''$ East 148.03 feet; thence leaving said southerly line,
3. South $00^{\circ}58'43''$ East, 58.00 feet; thence
4. North $89^{\circ}01'17''$ East 217.67 feet to said westerly line of Phelan Avenue; thence northerly along said westerly line
5. North $00^{\circ}40'45''$ West 1270.21 feet to the **POINT OF BEGINNING.**

Being a portion of Assessor's Block 3180, lot 1

Containing an area of 10.49 acres, more or less

EXHIBIT C

NORTH – SOUTH PORTION

EXHIBIT C – NORTH-SOUTH PORTION

LEGAL DESCRIPTION FOR ROAD EASEMENT

All that real property situated in the City and County of San Francisco, State of California,

A portion of that certain tract described as Parcel 22 in that certain deed from the Spring Valley Water Company, a Corporation, to the City and County of San Francisco, a Municipal Corporation, recorded March 3, 1930, in Book 2002 at page 1, Official Records of the City and County of San Francisco, more particularly described as follows:

An **EASEMENT** for road access purposes over a strip of land, fifty (50) feet wide, the easterly line of which is described as follows:

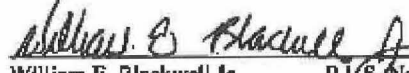
COMMENCING at the southeast corner of that certain parcel described in that certain deed from the City and County of San Francisco, to the Roman Catholic Archbishop of San Francisco, recorded July 28, 1947, in Book 4661 at page 278, Official Records, said corner also being on the westerly of Phelan Avenue, (78.403 feet wide), as now established and shown on that certain map entitled "Map Showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" filed February 15, 1954 in Book R of Maps at page 56, Official Records; thence westerly along the southerly line of said parcel South 89° 36' 00" West 366.02 feet, more or less, to a point westerly 366.02 feet perpendicularly distant from said westerly line of Phelan Avenue, said point being the **TRUE POINT OF BEGINNING**; thence leaving said southerly line along a line parallel with and westerly 366.02 feet perpendicularly distant from the westerly line of Phelan Avenue South 00°40'45" East 1215.91 feet to the southern line of that parcel quitclaimed to the San Francisco Community College District, from the City and County of San Francisco, described in that exchange deed recorded October 15, 1992 in Reel F734 at Image 746, Official Records of the City and County of San Francisco.

Being a portion of Assessor's Block 3180, Lot 190

Containing an area of 1.40 acres (60,808 square feet), more or less

The Basis of Bearing for this parcel is the westerly line of the Spring Valley Water Company Parcel as said parcel is shown on that certain map entitled "Map of Westwood Park" filed in Book H of Maps, at pages 65-71, inclusive, Official records of the City and County of San Francisco, taken as South 00°24'00" East,

This real property description was prepared by me, or under my direction in conformance with the Land Surveyors Act.


William E. Blackwell Jr. P.L.S. No. 8251
Survey Associate
City and County of San Francisco, Ca.

4/24/2012
Dated



EXHIBIT D

EAST-WEST PORTION

EXHIBIT D - EAST-WEST PORTION

LEGAL DESCRIPTION FOR ROAD EASEMENT

All that real property situated in the City and County of San Francisco, State of California.

A portion of that certain tract described as Parcel 22 in that certain deed from the Spring Valley Water Company, a Corporation, to the City and County of San Francisco, a Municipal Corporation, recorded March 3, 1930, in Book 2002 at page 1, Official Records of the City and County of San Francisco, described as follows:


An **EASEMENT** for road access purposes over a strip of land, sixty (60) feet wide, the northerly line of which is described as follows:

BEGINNING at the southeast corner of that certain parcel described in that certain deed from the City and County of San Francisco, to the Roman Catholic Archbishop of San Francisco, recorded July 28, 1947, in Book 4661 at page 278, Official Records, said corner also being on the westerly of Phelan Avenue, (78.403 feet wide), as now established and shown on that certain map entitled "Map Showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" filed February 15, 1954 in Book R of Maps at page 56, Official Records; thence westerly along the southerly line of said parcel South 89° 36' 00" West 366.02 feet, more or less, to a point westerly 366.02 feet perpendicularly distant from said westerly line of Phelan Avenue.

Being a portion of Assessor's Block 3130, Lot 191.

Containing an area of 0.50 acres (21,953 square feet), more or less. The Basis of Bearing for this parcel is the westerly line of the Spring Valley Water Company Parcel as said parcel is shown on that certain map entitled "Map of Westwood Park" filed in Book H of Maps, at pages 65-71, inclusive, Official records of the City and County of San Francisco, taken as South 00°24'00" East.

This real property description was prepared by me, or under my direction in conformance with the Land Surveyors Act.


William E. Blackwell Jr. P.L.S. No. 8251
Survey Associate
City and County of San Francisco, Ca.

4-24-2012
Dated



WILLOW WAY

PLYMOUTH AVE

ASSESSOR'S BLOCK 3189

LOT 12

LOT 1

LOT 2

LOT 3

LOT 4

LOT 5

LOT 6

LOT 7

LOT 8

LOT 9

LOT 10

LOT 11

LOT 12

LOT 13

LOT 14

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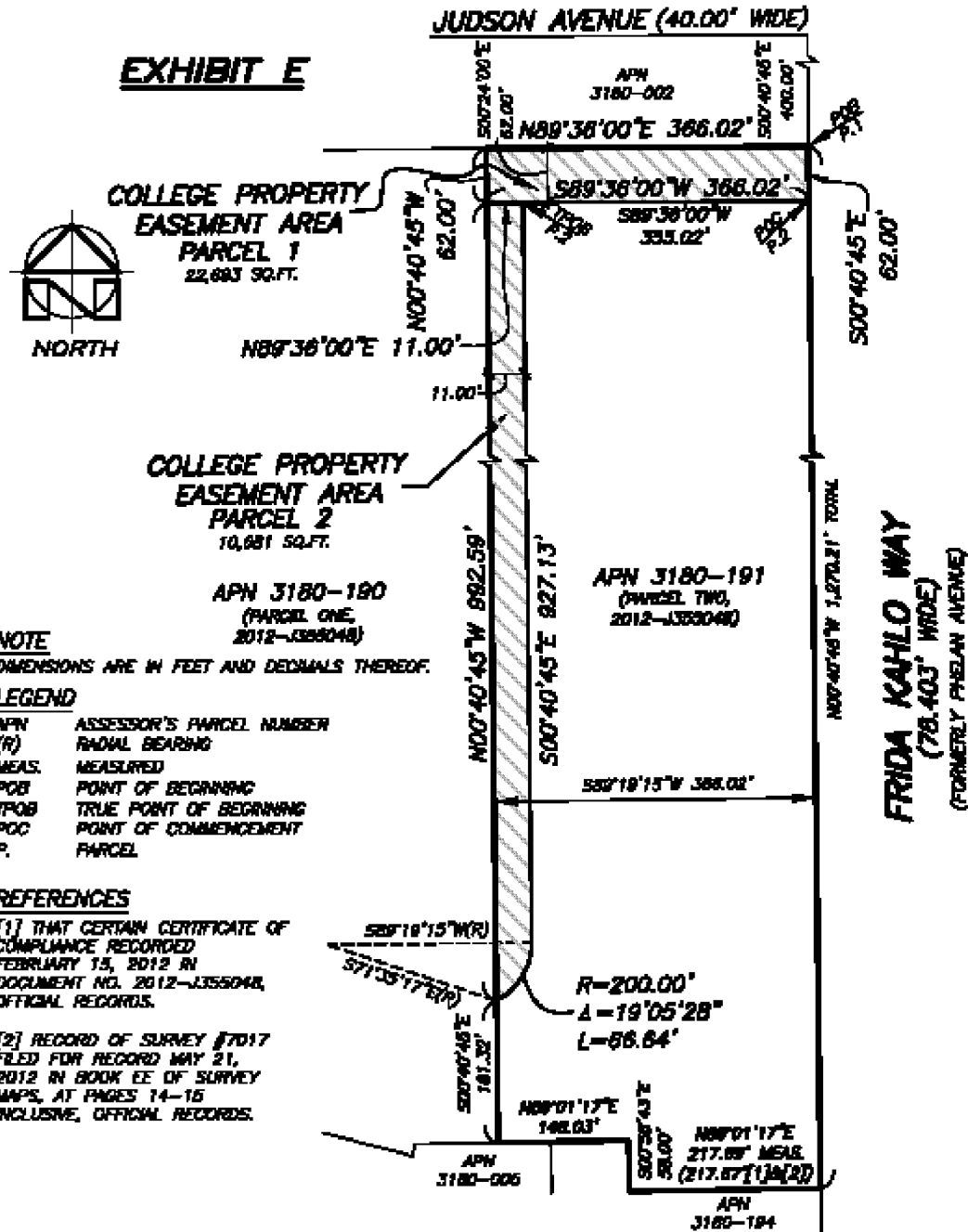
BY: wbjr CHKD: DATE 01/18/2012 SCALE 1" = 200' SHEET 6 of 8 JOB NO. 2012-03

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS
BUREAU OF STREET USE AND MAPPING

873 STEVENSON STREET Rm 410
SAN FRANCISCO, CA 94103
(415) 554-5813

EXHIBIT E

COLLEGE PROPERTY EASEMENT AREA



SUBJECT: **COLLEGE PROPERTY EASEMENT AREA**

BY DR CHND BR DATE 5-18-20 NOT TO SCALE SHEET 1 OF 1 JOB NO. S-8888

MARTIN M. RON ASSOCIATES, INC.
 LAND SURVEYORS

S-8888 CITY COLLEGE EASEMENT.DWG

558 HARRISON STREET
 SAN FRANCISCO, CA 94107
 (415) 543-4500

EXHIBIT E-1

S-9668
5-19-20
PAGE 1 OF 2

LEGAL DESCRIPTION

"COLLEGE PROPERTY EASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID
PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED
FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL TWO, SAID CORNER BEING ON
THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET
WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF
PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED
FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS; THENCE
ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY S00°40'45"E 62.00 FEET TO A POINT
THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM THE NORTHERLY LINE
OF SAID PARCEL TWO; THENCE S89°36'00"W, PARALLEL WITH SAID NORTHERLY LINE OF
PARCEL TWO, 366.02 FEET TO THE WESTERLY LINE OF SAID PARCEL TWO; THENCE ALONG
SAID WESTERLY LINE N00°40'45"W 62.00 FEET TO SAID NORTHERLY LINE OF PARCEL
TWO; THENCE ALONG SAID NORTHERLY LINE N89°36'00"E 366.02 FEET TO THE POINT OF
BEGINNING.

CONTAINING AN AREA OF 22,693 SQ.FT., MORE OR LESS



EXHIBIT E-1

S-9668
5-19-20
PAGE 2 OF 2

"COLLEGE PROPERTY EASEMENT AREA"

PARCEL 2:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 62.00 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO TO A POINT THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM THE NORTHERLY LINE OF SAID PARCEL TWO; THENCE S89°36'00"W, PARALLEL WITH SAID NORTHERLY LINE OF PARCEL TWO, 355.02 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID PARCEL TWO, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE OF PARCEL TWO, 927.13 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°05'28", AN ARC LENGTH OF 66.64 FEET TO SAID WESTERLY LINE OF PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF PARCEL TWO N00°40'45"W 992.59 FEET TO A LINE THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM SAID NORTHERLY LINE OF PARCEL TWO; THENCE ALONG SAID LINE N89°36'00"E 11.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 10,681 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



EXHIBIT F

CITY PROPERTY EASEMENT AREA

NOTE

DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND

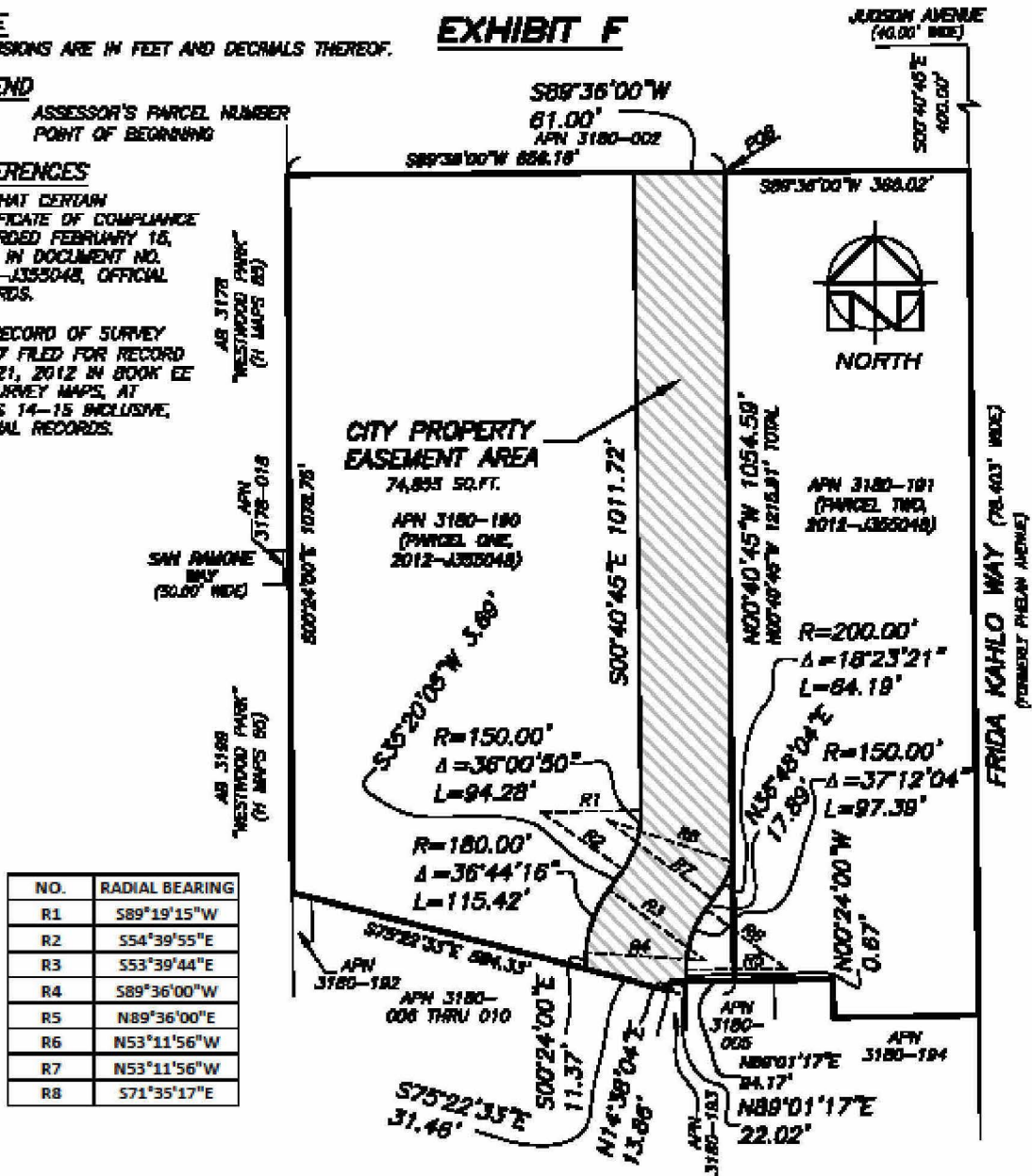
APH ASSESSOR'S PARCEL NUMBER
POB POINT OF BEGINNING

REFERENCES

[1] THAT CERTAIN
CERTIFICATE OF COMPLIANCE
RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO.
2012-J355048, OFFICIAL
RECORDS.

[2] RECORD OF SURVEY
#7017 FILED FOR RECORD
MAY 21, 2012 IN BOOK EE
OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE,
OFFICIAL RECORDS.

EXHIBIT F



SUBJECT: **CITY PROPERTY EASEMENT AREA**

BY DR CHRD BR DATE 5-19-20 NOT TO SCALE SHEET 1 OF 1 JOB NO. 5-8888

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

857 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-4530

S-8888 CITY COLLEGE EASEMENT.DWG

EXHIBIT F-1

S-9668
5-19-20

LEGAL DESCRIPTION

"CITY PROPERTY BASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL ONE (CITY AND COUNTY OF SAN FRANCISCO), AS SAID PARCEL IS
DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL ONE; THENCE ALONG THE
NORTHERLY LINE OF SAID PARCEL ONE S89°36'00"W 61.00 FEET; THENCE S00°40'45"E
1011.72 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST
HAVING A RADIUS OF 150.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE
RIGHT THROUGH A CENTRAL ANGLE OF 36°00'50", AN ARC LENGTH OF 94.28 FEET;
THENCE S35°20'05"W 3.69 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE
TO THE SOUTHEAST WHOSE RADIUS POINT BEARS S53°39'44"E 180.00 FEET; THENCE
SOUTHWESTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF
36°44'16", AN ARC LENGTH OF 115.42 FEET; THENCE S00°24'00"E 11.37 FEET TO THE
SOUTHERLY LINE OF SAID PARCEL ONE; THENCE ALONG SAID SOUTHERLY LINE
S75°22'33"E 31.46 FEET TO AN ANGLE POINT THEREIN; THENCE CONTINUING ALONG
SAID SOUTHERLY LINE N14°38'04"E 13.86 FEET TO AN ANGLE POINT THEREIN; THENCE
CONTINUING ALONG SAID SOUTHERLY LINE N89°01'17"E 22.02 FEET; THENCE
N00°24'00"W 0.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE
SOUTHEAST HAVING A RADIUS OF 150.00 FEET; THENCE NORTHEASTERLY ALONG SAID
CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 37°12'04", AN ARC LENGTH OF
97.39 FEET; THENCE N36°48'04"E 17.89 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 200.00 FEET; THENCE NORTHEASTERLY
ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 18°23'21", AN ARC
LENGTH OF 64.19 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL ONE;
THENCE ALONG SAID EASTERLY LINE N00°40'45"W 1054.59 FEET TO THE POINT OF
BEGINNING.

CONTAINING AN AREA OF 74,855 SQ.-FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN
AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF
SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK 88 OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN
FRANCISCO.



EXHIBIT G

ACCESS EASEMENT AREA

NOTE

DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND

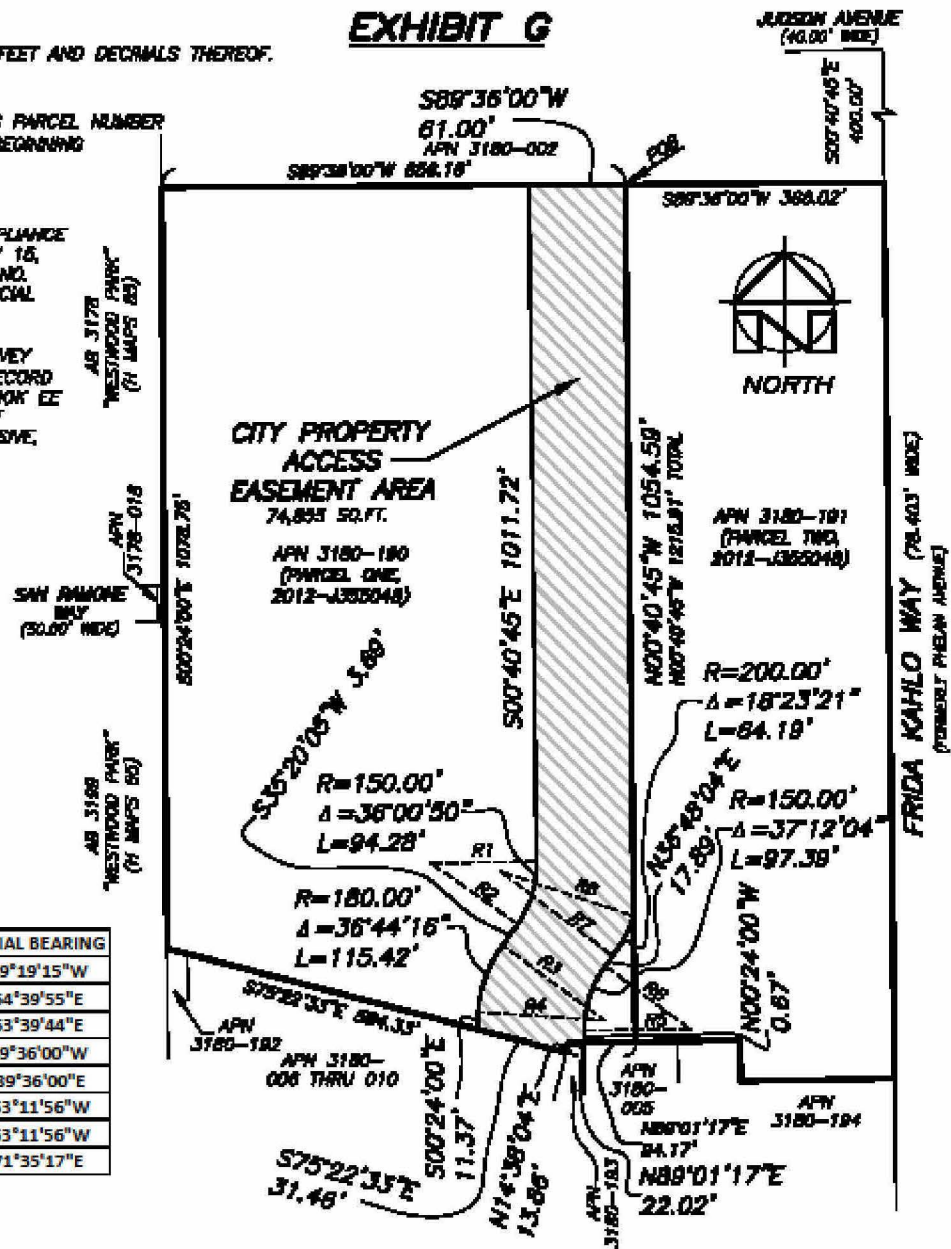
APH ASSESSOR'S PARCEL NUMBER
POB POINT OF BEGINNING

REFERENCES

[1] THAT CERTAIN
CERTIFICATE OF COMPLIANCE
RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO.
2012-J355048, OFFICIAL
RECORDS.

[2] RECORD OF SURVEY
#77017 FILED FOR RECORD
MAY 21, 2012 IN BOOK EE
OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE,
OFFICIAL RECORDS.

NO.	RADIAL BEARING
R1	S89°19'15"W
R2	S54°39'55"E
R3	S53°39'44"E
R4	S89°36'00"W
R5	N89°36'00"E
R6	N53°11'56"W
R7	N53°11'56"W
R8	S71°35'17"E



SUBJECT: **ACCESS EASEMENT AREA**

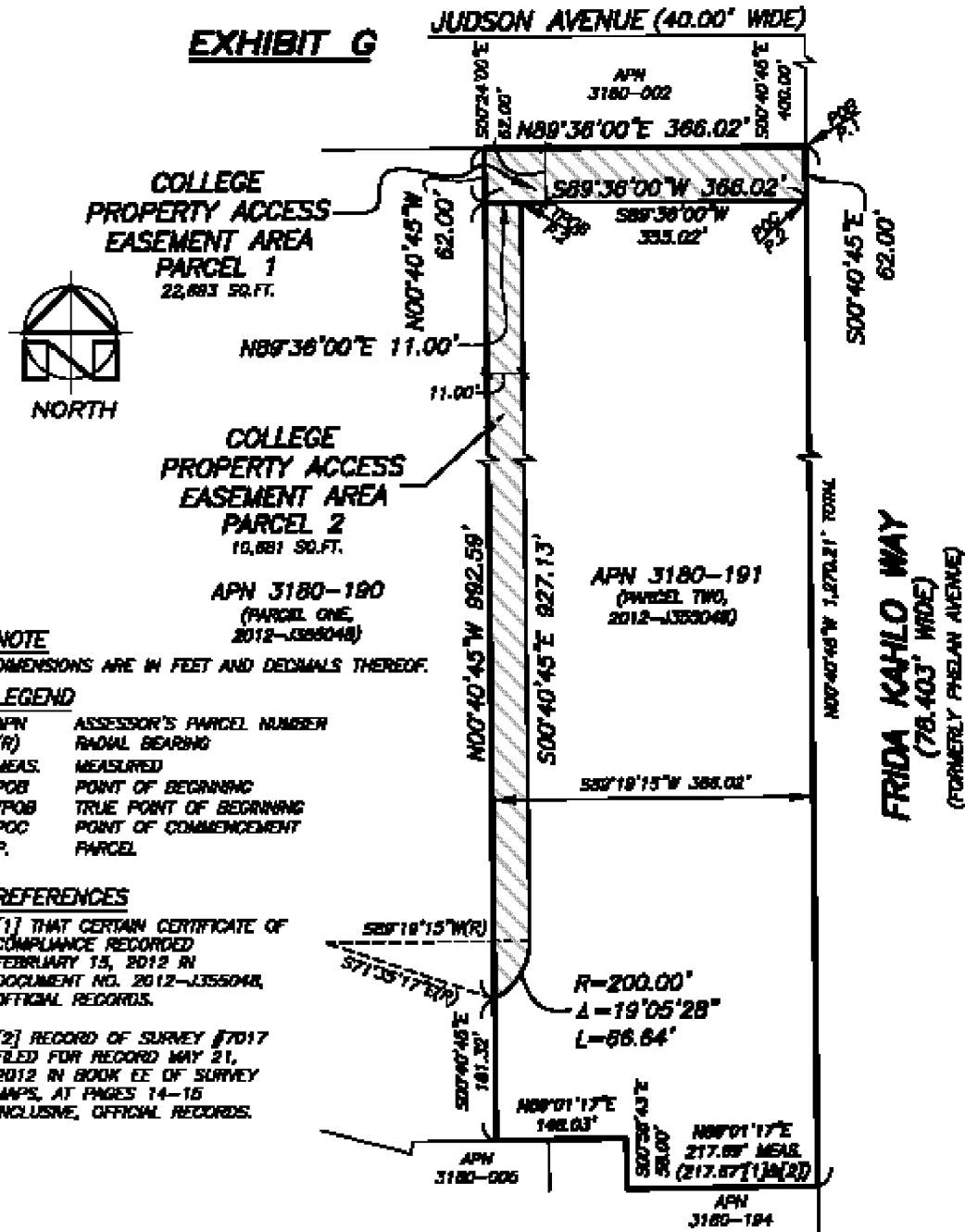
BY DR CHRD BR DATE 5-19-20 NOT TO SCALE SHEET 1 OF 2 JOB NO. 5-8888

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

857 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-4530

S-8888 CITY COLLEGE EASEMENT.DWG

EXHIBIT G



SUBJECT: **ACCESS EASEMENT AREA**

BY DR CHKD. BR DATE 5-18-20 NOT TO SCALE SHEET 2 OF 2 JOB NO. S-8888

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

S-8888 CITY COLLEGE EASEMENT.DWG

858 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-4500

EXHIBIT G-1

S-9668
5-19-20
PAGE 1 OF 3

LEGAL DESCRIPTION

"ACCESS EASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

"CITY PROPERTY ACCESS EASEMENT AREA"

A PORTION OF PARCEL ONE (CITY AND COUNTY OF SAN FRANCISCO), AS SAID PARCEL IS
DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL ONE; THENCE ALONG THE
NORTHERLY LINE OF SAID PARCEL ONE S89°36'00"W 61.00 FEET; THENCE S00°40'45"E
1011.72 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST
HAVING A RADIUS OF 150.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE
RIGHT THROUGH A CENTRAL ANGLE OF 36°00'50", AN ARC LENGTH OF 94.28 FEET;
THENCE S35°20'05"W 3.69 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE
TO THE SOUTHEAST WHOSE RADIUS POINT BEARS S53°39'44"E 180.00 FEET; THENCE
SOUTHWESTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF
36°44'16", AN ARC LENGTH OF 115.42 FEET; THENCE S00°24'00"E 11.37 FEET TO THE
SOUTHERLY LINE OF SAID PARCEL ONE; THENCE ALONG SAID SOUTHERLY LINE
S75°22'33"E 31.46 FEET TO AN ANGLE POINT THEREIN; THENCE CONTINUING ALONG
SAID SOUTHERLY LINE N14°38'04"E 13.86 FEET TO AN ANGLE POINT THEREIN; THENCE
CONTINUING ALONG SAID SOUTHERLY LINE N89°01'17"E 22.02 FEET; THENCE
N00°24'00"W 0.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE
SOUTHEAST HAVING A RADIUS OF 150.00 FEET; THENCE NORTHEASTERLY ALONG SAID
CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 37°12'04", AN ARC LENGTH OF
97.39 FEET; THENCE N36°48'04"E 17.89 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 200.00 FEET; THENCE NORTHEASTERLY
ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 18°23'21", AN ARC
LENGTH OF 64.19 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL ONE;
THENCE ALONG SAID EASTERLY LINE N00°40'45"W 1054.59 FEET TO THE POINT OF
BEGINNING.

CONTAINING AN AREA OF 74,855 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN
AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF
SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK 88 OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN
FRANCISCO.



EXHIBIT G-1

S-9668
5-19-20
PAGE 2 OF 3

LEGAL DESCRIPTION

"ACCESS EASEMENT AREA"

"COLLEGE PROPERTY ACCESS EASEMENT AREA"

PARCEL 1:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL TWO, SAID CORNER BEING ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHILAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHILAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY S00°40'45"E 62.00 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM THE NORTHERLY LINE OF SAID PARCEL TWO; THENCE S89°36'00"W, PARALLEL WITH SAID NORTHERLY LINE OF PARCEL TWO, 366.02 FEET TO THE WESTERLY LINE OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE N00°40'45"W 62.00 FEET TO SAID NORTHERLY LINE OF PARCEL TWO; THENCE ALONG SAID NORTHERLY LINE N89°36'00"E 366.02 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 22,693 SQ.FT., MORE OR LESS



EXHIBIT G-1

S-9668
5-19-20
PAGE 3 OF 3

LEGAL DESCRIPTION

"ACCESS BASEMENT AREA"

"COLLEGE PROPERTY ACCESS BASEMENT AREA"

PARCEL 2:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 62.00 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO TO A POINT THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM THE NORTHERLY LINE OF SAID PARCEL TWO; THENCE S89°36'00"W, PARALLEL WITH SAID NORTHERLY LINE OF PARCEL TWO, 355.02 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID PARCEL TWO, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE OF PARCEL TWO, 927.13 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°05'28", AN ARC LENGTH OF 66.64 FEET TO SAID WESTERLY LINE OF PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF PARCEL TWO N00°40'45"W 992.59 FEET TO A LINE THAT IS PERPENDICULARLY DISTANT 62.00 FEET SOUTHERLY FROM SAID NORTHERLY LINE OF PARCEL TWO; THENCE ALONG SAID LINE N89°36'00"E 11.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 10,681 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



EXHIBIT H



855 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-1500

EXHIBIT H-1

S-9668
5-19-20

LEGAL DESCRIPTION

"TEMPORARY CONSTRUCTION BASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID
PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED
FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN
AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP
SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO
JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56,
OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 62.00 FEET FROM THE NORTHEAST
CORNER OF SAID PARCEL TWO TO A POINT THAT IS PERPENDICULARLY DISTANT 62.00
FEET SOUTHERLY FROM THE NORTHERLY LINE OF SAID PARCEL TWO; THENCE
S89°36'00"W, PARALLEL WITH SAID NORTHERLY LINE OF PARCEL TWO, 355.02 FEET TO
A POINT THAT IS PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY
LINE OF SAID PARCEL TWO; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE
OF PARCEL TWO, 927.13 FEET; THENCE N89°19'15"E 5.00 FEET; THENCE N00°40'45"W
922.10 FEET; THENCE N89°36'00"E 350.02 FEET TO SAID WESTERLY LINE OF FRIDA
KAHLO WAY; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY N00°40'45"W
5.00 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 6,386 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN
AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF
SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN
FRANCISCO.



EXHIBIT I

ALTERNATE COLLEGE PROPERTY EASEMENT AREA

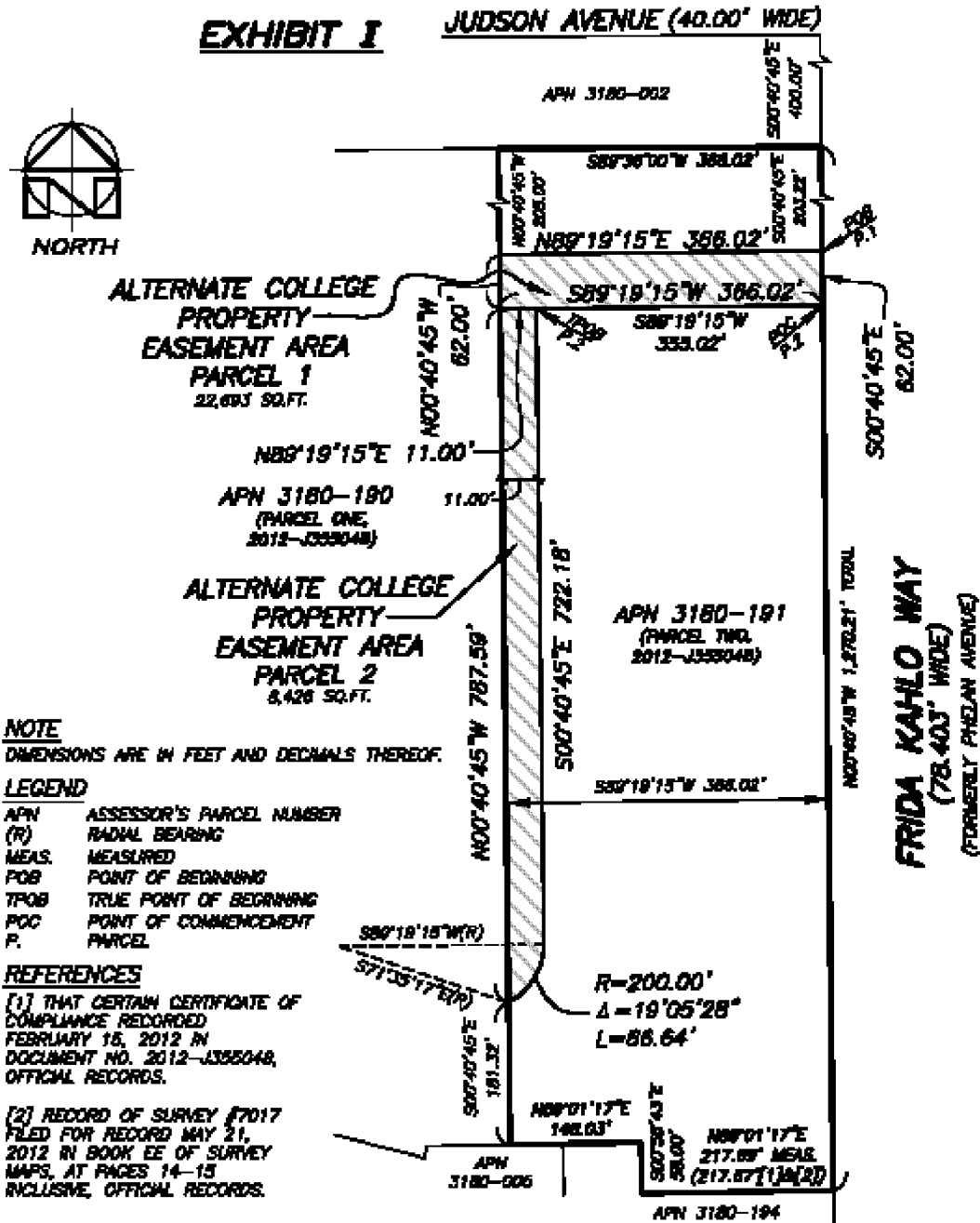


EXHIBIT I-1

S-9668
5-19-20
PAGE 1 OF 2

LEGAL DESCRIPTION

"ALTERNATE COLLEGE PROPERTY BASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID
PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED
FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN
AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP
SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO
JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56,
OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 203.22 FEET FROM THE NORTHEAST
CORNER OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY
S00°40'45"E 62.00 FEET; THENCE S89°19'15"W 366.02 FEET TO THE WESTERLY LINE
OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE N00°40'45"W 62.00 FEET;
THENCE N89°19'15"E 366.02 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 22,693 SQ.FT., MORE OR LESS



EXHIBIT I-1

S-9668
5-19-20
PAGE 2 OF 2

"ALTERNATE COLLEGE PROPERTY BASEMENT AREA"

PARCEL 2:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 265.22 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO; THENCE S89°19'15"W 355.02 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID PARCEL TWO, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE OF PARCEL TWO, 722.18 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°05'28", AN ARC LENGTH OF 66.64 FEET TO SAID WESTERLY LINE OF PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF PARCEL TWO N00°40'45"W 787.59 FEET TO A LINE THAT IS PERPENDICULAR TO SAID WESTERLY LINE OF FRIDA KAHLO WAY AND RUNS THROUGH THE TRUE POINT OF BEGINNING; THENCE ALONG SAID PERPENDICULAR LINE N89°19'15"E 11.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 8,426 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



EXHIBIT J

JUDSON AVENUE (40.00' WIDE)



ALTERNATE COLLEGE
PROPERTY ACCESS
EASEMENT AREA
PARCEL 1
22,863 SQ.FT.

APN 3180-180
(PARCEL ONE,
2012-J335048)

ALTERNATE COLLEGE
PROPERTY ACCESS
EASEMENT AREA
PARCEL 2
8,428 SQ.FT.

APN 3180-181
(PARCEL TWO,
2012-J335048)

FRIDA KAHLO WAY
(78.403' WIDE)
(FORMERLY PHILAN AVENUE)

NOTE

DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND

APN ASSESSOR'S PARCEL NUMBER
(R) RADIAL BEARING
MEAS. MEASURED
POB POINT OF BEGINNING
TPOB TRUE POINT OF BEGINNING
POC POINT OF COMMENCEMENT
P. PARCEL

REFERENCES

[1] THAT CERTAIN CERTIFICATE OF
COMPLIANCE RECORDED
FEBRUARY 15, 2012 IN
DOCUMENT NO. 2012-J335048,
OFFICIAL RECORDS.

[2] RECORD OF SURVEY 17017
FILED FOR RECORD MAY 21,
2012 IN BOOK EE OF SURVEY
MAPS, AT PAGES 14-15
INCLUSIVE, OFFICIAL RECORDS.

SUBJECT: **ALTERNATE ACCESS EASEMENT AREA**

BY DR. CHKD. BR. DATE 5-18-20 NOT TO SCALE SHEET 2 OF 2 JOB NO. S-8888

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

S-8888 CITY COLLEGE EASEMENT.DWG

858 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-1500

EXHIBIT J-1

S-9668
5-19-20
PAGE 1 OF 3

LEGAL DESCRIPTION

"ALTERNATE ACCESS EASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

"CITY PROPERTY ACCESS EASEMENT AREA"

A PORTION OF PARCEL ONE (CITY AND COUNTY OF SAN FRANCISCO), AS SAID PARCEL IS
DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15,
2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL ONE; THENCE ALONG THE
NORTHERLY LINE OF SAID PARCEL ONE S89°36'00"W 61.00 FEET; THENCE S00°40'45"E
1011.72 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHWEST
HAVING A RADIUS OF 150.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE
RIGHT THROUGH A CENTRAL ANGLE OF 36°00'50", AN ARC LENGTH OF 94.28 FEET;
THENCE S35°20'05"W 3.69 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE
TO THE SOUTHEAST WHOSE RADIUS POINT BEARS S53°39'44"E 180.00 FEET; THENCE
SOUTHWESTERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF
36°44'16", AN ARC LENGTH OF 115.42 FEET; THENCE S00°24'00"E 11.37 FEET TO THE
SOUTHERLY LINE OF SAID PARCEL ONE; THENCE ALONG SAID SOUTHERLY LINE
S75°22'33"E 31.46 FEET TO AN ANGLE POINT THEREIN; THENCE CONTINUING ALONG
SAID SOUTHERLY LINE N14°38'04"E 13.86 FEET TO AN ANGLE POINT THEREIN; THENCE
CONTINUING ALONG SAID SOUTHERLY LINE N89°01'17"E 22.02 FEET; THENCE
N00°24'00"W 0.67 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE
SOUTHEAST HAVING A RADIUS OF 150.00 FEET; THENCE NORTHEASTERLY ALONG SAID
CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 37°12'04", AN ARC LENGTH OF
97.39 FEET; THENCE N36°48'04"E 17.89 FEET TO THE BEGINNING OF A TANGENT CURVE
CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 200.00 FEET; THENCE NORTHEASTERLY
ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 18°23'21", AN ARC
LENGTH OF 64.19 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL ONE;
THENCE ALONG SAID EASTERLY LINE N00°40'45"W 1054.59 FEET TO THE POINT OF
BEGINNING.

CONTAINING AN AREA OF 74,855 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN
AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF
SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK 88 OF SURVEY MAPS, AT
PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN
FRANCISCO.



EXHIBIT J-1

S-9668
5-19-20
PAGE 2 OF 3

LEGAL DESCRIPTION

"ALTERNATE ACCESS EASEMENT AREA"

"ALTERNATE COLLEGE PROPERTY ACCESS EASEMENT AREA"

PARCEL 1:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 203.22 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY S00°40'45"E 62.00 FEET; THENCE S89°19'15"W 366.02 FEET TO THE WESTERLY LINE OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE N00°40'45"W 62.00 FEET; THENCE N89°19'15"E 366.02 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 22,693 SQ.FT., MORE OR LESS



EXHIBIT J-1

S-9668
5-19-20
PAGE 3 OF 3

LEGAL DESCRIPTION

"ALTERNATE ACCESS EASEMENT AREA"

"ALTERNATE COLLEGE PROPERTY ACCESS EASEMENT AREA"

PARCEL 2:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 265.22 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO; THENCE S89°19'15"W 355.02 FEET TO A POINT THAT IS PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID PARCEL TWO, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE OF PARCEL TWO, 722.18 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 200.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°05'28", AN ARC LENGTH OF 66.64 FEET TO SAID WESTERLY LINE OF PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF PARCEL TWO N00°40'45"W 787.59 FEET TO A LINE THAT IS PERPENDICULAR TO SAID WESTERLY LINE OF FRIDA KAHLO WAY AND RUNS THROUGH THE TRUE POINT OF BEGINNING; THENCE ALONG SAID PERPENDICULAR LINE N89°19'15"E 11.00 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING AN AREA OF 8,426 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



ALTERNATE TEMPORARY CONSTRUCTION EASEMENT AREA



SUBJECT:

BY DR CHKD. BR DATE 5-19-20 NOT TO SCALE SHEET 1 OF 1 JOB NO. S-9558

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

5-0000 CITY COLLEGE ELSEWHERE

868 HARRISON STREET
SAN FRANCISCO, CA 94107
(415) 543-1500

EXHIBIT K-1

S-9668
5-19-20
PAGE 1 OF 2

LEGAL DESCRIPTION

"ALTERNATE TEMPORARY CONSTRUCTION BASEMENT AREA"

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID
PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED
FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN
AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP
SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO
JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56,
OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 265.22 FEET FROM THE NORTHEAST
CORNER OF SAID PARCEL TWO; THENCE S89°19'15"W 355.02 FEET TO A POINT THAT IS
PERPENDICULARLY DISTANT 11.00 FEET EASTERLY FROM THE WESTERLY LINE OF SAID
PARCEL TWO; THENCE S00°40'45"E, PARALLEL WITH SAID WESTERLY LINE OF PARCEL
TWO, 722.18 FEET; THENCE N89°19'15"E 5.00 FEET; THENCE N00°40'45"W 717.18
FEET; THENCE N89°19'15"E 350.02 FEET TO SAID WESTERLY LINE OF FRIDA KAHLO
WAY; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY N00°40'45"W 5.00 FEET
TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 5,361 SQ.FT., MORE OR LESS

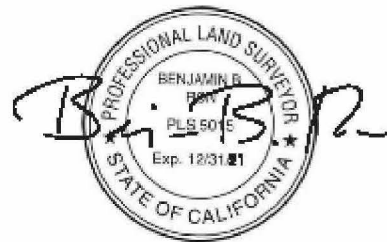


EXHIBIT K-1

S-9668
5-19-20
PAGE 2 OF 2

"ALTERNATE TEMPORARY CONSTRUCTION EASEMENT AREA"

PARCEL 2:

A PORTION OF PARCEL TWO (SAN FRANCISCO COMMUNITY COLLEGE DISTRICT), AS SAID PARCEL IS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED FEBRUARY 15, 2012 IN DOCUMENT NO. 2012-J355048, OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF FRIDA KAHLO WAY, FORMERLY PHELAN AVENUE, (78.403 FEET WIDE), AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" RECORDED FEBRUARY 15, 1954 IN BOOK R OF MAPS AT PAGE 56, OFFICIAL RECORDS, DISTANT THEREON S00°40'45"E 198.22 FEET FROM THE NORTHEAST CORNER OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE OF FRIDA KAHLO WAY S00°40'45"E 5.00 FEET; THENCE S89°19'15"W 366.02 FEET TO THE WESTERLY LINE OF SAID PARCEL TWO; THENCE ALONG SAID WESTERLY LINE N00°40'45"W 5.00 FEET; THENCE N89°19'15"E 366.02 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1,830 SQ.FT., MORE OR LESS

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTION IS THE MONUMENT LINE ON OCEAN AVENUE FROM MIRAMAR AVENUE TO LEE AVENUE SHOWN AS S75°22'33"E ON "RECORD OF SURVEY #7017" FILED FOR RECORD ON MAY 21, 2012 IN BOOK EE OF SURVEY MAPS, AT PAGES 14-15 INCLUSIVE, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



EXHIBIT D

QUITCLAIM DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

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

With a copy to:

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director

MAIL TAX STATEMENTS TO:

Attn: _____

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
Documentary Transfer Tax of \$_____ based upon full
market value of the property without deduction for any lien or
encumbrance.

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

Portion of Assessor's Block 3180, Lot 190, City and
County of San Francisco

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged,
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), pursuant to
Ordinance No. _____, adopted by the Board of Supervisors on _____,
20__ and approved by the Mayor on _____, 20__, hereby RELEASES, REMISES
AND QUITCLAIMS to _____, any and all right, title and interest City may
have in and to the real property located in the City and County of San Francisco, State of
California, described on the attached Exhibit A and made a part of this quitclaim deed.

Executed as of this _____ day of _____, 2020.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
ANDRICO PENICK
Director of Property
APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney
DESCRIPTION CHECKED/APPROVED:

By: _____
Tony Durkee
City Surveyor

Exhibit A to Quitclaim Deed

Legal Description

[insert new legal description]

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

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, 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 _____ (Seal)

EXHIBIT E

INITIAL APPROVALS

A. Final approval actions of the San Francisco Board of Supervisors:

1. Ordinance No. _____ (File No. _____): (1) Approving a Development Agreement between the City and County of San Francisco and Reservoir Community Partners, LLC; (2) waiving or modifying certain provisions of the Administrative Code, Planning Code, Public Works Code, Subdivision Code, and Health Code; (3) adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
2. Ordinance No. _____ (File No. _____): Amending the General Plan and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
3. Ordinance No. _____ (File No. _____): Amending the Planning Code, the Zoning Map, and the Height Map to add the Balboa Reservoir Special Use District and adopting findings under the California Environmental Quality Act and findings of consistency with the General Plan and Planning Code priority policies.
4. Resolution No. _____ (File No. _____): Approval of Agreement for Sale of Real Estate, SFPUC Open Space License Agreement, Promissory Note, Deed of Trust, Recognition Agreement, and Access Easement Agreement and Deed; CEQA Findings, General Plan Consistency Findings.

B. Final and related approval actions of the San Francisco Planning Commission:

1. Motion Nos. 20730 and 20731: certifying the Final Subsequent Environmental Impact Report for the Balboa Reservoir Project and Adopted California Environmental Quality Act Findings and Statement of Overriding Considerations.
2. Resolution No. 20732: recommending to the Board of Supervisors approval of General Plan amendments and adopting General Plan Consistency Findings.
3. Resolution No. 20733: recommending to the Board of Supervisors approval of amendments to the Planning Code, the Zoning Map, and the Height Map to add the Balboa Reservoir Special Use District.
4. Motion No. 20734: approving Balboa Reservoir Project Design Standards and Guidelines.

5. Resolution No. 20735: recommending to the Board of Supervisors approval of a Development Agreement between the City and County of San Francisco and Reservoir Community Partners, LLC.

C. Final and related approval actions of San Francisco Public Utilities Commission.

1. Resolution No. _____: Approval of Agreement for Sale of Real Estate, SFPUC Open Space License Agreement, Promissory Note, Deed of Trust, Recognition Agreement, and Access Easement Agreement and Deed; consenting to Development Agreement; CEQA Findings, General Plan Consistency Findings.

D. Final and related approval actions of San Francisco Municipal Transportation Agency Board of Directors.

1. Resolution No. _____: consenting to a Development Agreement between the City and County of San Francisco and Reservoir Community Partners, LLC, including the Transportation Exhibit.

EXHIBIT F

EXISTING AGREEMENTS

1. Agreement entitled “**San Francisco Water Department Revocable Permit No. 1654A**” dated as of June 17, 1996.
2. Memorandum of Understanding between the San Francisco Public Utilities Commission (“**SFPUC**”) and the San Francisco Municipal Transportation Agency (“**SFMTA**”), both departments of the City and County of San Francisco, dated as of September 23, 2019.

EXHIBIT G

**OPEN SPACE LICENSE
[To be attached]**

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
LICENSE**

(License #_____)

THIS LICENSE (this “**License**”) dated for reference purposes only as of _____, 2020, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission (“**SFPUC**”), and RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company, or its permitted assignee (“**Licensee**”). City and Licensee are sometimes collectively referred to in this License as the “**Parties**” or singularly as a “**Party**.”

RECITALS

A. City, under the jurisdiction of the SFPUC, owns the approximately 17-acre Balboa Reservoir site, located immediately west of City College of San Francisco’s Ocean Avenue Campus, to the south of Archbishop Riordan High School, to the east of the Westwood Park neighborhood, and to the north of the Avalon Ocean Avenue apartments (“**Balboa Reservoir Site**”).

B. Pursuant to Resolution No. 12-0042 dated March 12, 2012, the SFPUC adopted a Land Use Framework (“**Land Use Framework**”) that states, in pertinent part: “[t]he primary use of SFPUC land is for the delivery, operation, maintenance and protection of its water, power, and sewer systems. Secondary uses of lands devoted to these purposes may be permitted if those uses do not in any way interfere with, endanger or damage existing or future operations or the security of those systems, and there is a benefit to the SFPUC in permitting that use.”

C. City, through the SFPUC, owns the fee interest in an eighty-foot (80’) wide parcel of land located along the southern boundary of the Balboa Reservoir Site and north of Ocean Avenue (the “**Retained Fee**”) as shown on the attached **Exhibit A**. The Retained Fee is improved with surface appurtenances and subsurface water transmission facilities that provide water service to a wide section of San Francisco residents. Pursuant to the Land Use Framework and SFPUC engineering and other asset management policies, the primary purpose of the Retained Fee is for utility purposes, and accordingly, the Retained Fee must be available at all times, for access, maintenance, construction, repair, and replacement of City’s existing and future utility facilities (collectively, “**SFPUC Facilities**”) by the SFPUC staff, vehicles, and equipment.

D. Licensee proposes, and City is considering, a Development Agreement between City and Developer (“**Development Agreement**”) pursuant to which Licensee would develop and construct a mixed-use development on the Balboa Reservoir Site that will include mixed-income multi-family rental residential units, for-sale residential units, ground floor retail and/or community organization space, privately owned and publicly accessible open space, below-grade parking garages, and child care and related uses (“**Project**”). Following Licensee’s receipt of all required approvals and entitlements for or related to the Project, the Project will be built in two phases: Phase 1 and Phase 2.

E. To facilitate the Project, the Parties anticipate that Licensee will purchase from City (the “**Purchase Transaction**”) a fee interest in the Balboa Reservoir Site exclusive of the Retained Fee (the “**Project Site**”), pursuant to a negotiated purchase and sale agreement between City and Licensee (the “**PSA**”). Thereafter, Licensee proposes to improve and use approximately 44,431

square feet of the SFPUC's Retained Fee (the "**License Area**") for open space purposes, and to construct the Facilities (defined in Section 6(a) [Permitted Uses; Improvements] below) on the License Area in accordance with the Approved Plans (defined in Section 7(a) [Approval of Plans and Specifications] below). The License Area will be open to the public and used by the general public once the Facilities are constructed.

F. Licensee has developed initial conceptual-level plans for the location and details of the proposed recreational uses on the License Area. Pursuant to this License, Licensee will submit detailed plans and specifications to the SFPUC's In-City Project Review Committee, and Licensee and SFPUC staff will review such submittals in an iterative process. Upon the SFPUC staff's approval of the final plans and specifications, Licensee will construct and thereafter maintain the approved improvements.

G. Prior to the Commencement Date (defined in Section 4(b) [Term] below), Licensee shall assign this License to a non-profit entity in accordance with the terms and provisions of this License.

H. This License is subject to all necessary approvals and environmental review required by the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*) ("**CEQA**"), and other applicable laws, including the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco Administrative Code ("**Environmental Review**").

I. The Parties acknowledge that under CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, City cannot enter into final agreements until City has completed Environmental Review of all material aspects of the Purchase Transaction in accordance with CEQA and such laws with respect to the proposed Purchase Transaction. Section 15004(b)(2) of the CEQA Guidelines directs that "public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance."

J. Licensee seeks, and City is willing to grant, a license to Licensee to use the License Area upon, and subject to, the terms and conditions of this License.

K. The SFPUC's Commission authorized its General Manager to execute and deliver this License pursuant to SFPUC Resolution No. ____ ("**SFPUC Resolution**").

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and in reliance on the foregoing recitals, which are incorporated by this reference, City and Licensee hereby agree as follows:

1. License; Adjustment to License Area.

(a) License. In accordance with the terms and conditions stated below in this License, City confers to Licensee a conditional, personal, non-exclusive, and, except as permitted by this License, non-possessionary privilege to enter upon and use the License Area, which is owned by City, situated in the City and County of San Francisco, State of California, and more particularly described

and shown on the attached **Exhibit B-1** and **Exhibit B-2** respectively, for the limited purpose and subject to the terms, conditions, and restrictions set forth below. This License gives Licensee a license only, is revocable to the extent stated in this License, and notwithstanding anything to the contrary in this License, does not constitute a grant by City of any ownership, leasehold, easement, or other property interest or estate whatsoever in any portion of the License Area. Nothing in this License will be construed as granting or creating any franchise rights pursuant to any federal, state, or local Laws (defined in **Section 11** [Compliance with Laws] below).

(b) **Adjustment to License Area.** The Parties acknowledge that, as of the Effective Date (defined in **Section 4(a)** [Effective Date] below), the depiction of the License Area attached as **Exhibit B-2** may be inaccurate and may require slight adjustment or revision based on adjustments to the boundaries of the License Area required or identified during the course of the development and construction of the Project. Accordingly, in the event that either Party determines that the description of the License Area boundaries attached to this License require such adjustment or revision, on or before the Commencement Date, the Parties shall cooperate and mutually execute and deliver such instruments as reasonably required to accomplish the revision and/or replacement of **Exhibit B-2** as necessary to ensure that such exhibit accurately reflects the boundaries of the License Area. The Parties acknowledge that, if after such adjustment or revision, the size of the License Area (the “**Adjusted Size**”) varies by more than five percent (5%) from the agreed square footage of the License Area stated in Recital E above, the amount of the Use Fee (defined in **Section 3(a)**[Use Fee] below) paid or payable by Licensee pursuant to **Section 3** [License Fee(s)] below will be adjusted by increasing or decreasing the amounts paid or payable by Licensee pursuant to this License by recalculating the Use Fee based on the Adjusted Size but otherwise using the same per square foot rate and other assumptions used to determine the Use Fee prior to such adjustment. In the event the Parties are unable to agree on the Adjusted Size or the amount of Use Fee adjustment required, City and Licensee shall use their best efforts to promptly meet and confer with one another in an attempt to agree upon the proper measurement of the License Area. Once any adjusted Use Fee is so determined, either (i) Licensee shall pay City any increased amount of Use Fee payable on the date that is the later of thirty (30) days after such determination or the date (or dates) that the Use Fee would otherwise be payable by Licensee or (ii) if such determination results in a Use Fee that is less than provided in this License on the Effective Date and Licensee has already paid City any Use Fee payment(s) prior to such determination, City shall promptly refund any overpaid amounts to Licensee.

THE PRIVILEGE GIVEN TO LICENSEE UNDER THIS LICENSE IS EFFECTIVE ONLY INsofar AS THE RIGHTS OF CITY IN THE LICENSE AREA ARE CONCERNED, AND LICENSEE WILL OBTAIN ANY FURTHER PERMISSION NECESSARY BECAUSE OF ANY OTHER EXISTING RIGHTS AFFECTING THE LICENSE AREA. WITHOUT LIMITING THE FOREGOING, THIS LICENSE IS BEING ISSUED SUBJECT AND SUBORDINATE TO ALL OF THE TERMS AND CONDITIONS OF THAT CERTAIN DEED RECORDED MARCH 3, 1930 IN BOOK 2002, AT PAGE 1, OF OFFICIAL RECORDS OF SAN FRANCISCO COUNTY, PURSUANT TO WHICH CITY ACQUIRED ITS INTEREST IN THE LICENSE AREA, A COPY OF WHICH HAS BEEN DELIVERED TO LICENSEE AND LICENSEE ACKNOWLEDGES RECEIPT THEREOF (“**DEED**”), AND ALL OTHER EXISTING DOCUMENTS AND INSTRUMENTS OF RECORD AFFECTING THE LICENSE AREA (COLLECTIVELY, WITH THE DEED, THE “**RECORDED DOCUMENTS**”). LICENSEE MUST SECURE ALL ADDITIONAL NECESSARY APPROVALS, PERMITS, LICENSES, AND CONSENTS, AND DELIVER ALL NECESSARY NOTICES, BEFORE COMMENCING

WORK IN THE LICENSE AREA, INCLUDING ANY APPROVALS, PERMITS, LICENSES, CONSENTS, OR NOTICES REQUIRED FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS. FOR CITY'S BENEFIT, LICENSEE COVENANTS AND AGREES THAT LICENSEE WILL FULLY COMPLY WITH THE TERMS AND CONDITIONS OF THE RECORDED DOCUMENTS AND ANY OTHER RULES AND REGULATIONS PROMULGATED BY CITY AS THEY APPLY TO ANY WORK TO BE PERFORMED OR FACILITIES TO BE INSTALLED BY LICENSEE ON THE LICENSE AREA PURSUANT TO THIS INITIAL LICENSE, AND CITY WILL HAVE NO RESPONSIBILITY OR LIABILITY OF ANY KIND WITH RESPECT THERETO. LICENSEE ACKNOWLEDGES AND AGREES THAT NEITHER CITY NOR ANY OF ITS DEPARTMENTS, COMMISSIONS, OFFICERS, DIRECTORS, AND EMPLOYEES, AND ALL PERSONS ACTING BY, THROUGH, OR UNDER EACH OF THEM HAVE MADE, AND CITY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF THE LICENSE AREA FOR LICENSEE'S INTENDED WORK OR FACILITIES, THE IMPACT OF ANY TERM OR CONDITION OF THE RECORDED DOCUMENTS ON LICENSEE'S RIGHTS UNDER THIS INITIAL LICENSE, OR THE ABILITY TO OBTAIN OR DELIVER, OR THE PROCEDURE FOR OBTAINING OR DELIVERING, ANY NECESSARY APPROVALS, LICENSES, PERMITS, CONSENTS OR NOTICES FROM OR TO THE GRANTOR UNDER THE RECORDED DOCUMENTS OR ANY OTHER PARTY WITH RESPECT TO ANY MATTERS CONTAINED IN THIS LICENSE.

2. SFPUC's Retained Exclusive Jurisdiction. The License Area is, and at all times during the term of this License will remain, City's fee-owned property under the direct jurisdiction, management, and control of the SFPUC pursuant to San Francisco Charter Article VIII.B. No part of the License Area is or will constitute "parkland" as that term is defined in provisions of the California Government Code and the San Francisco Charter. City, acting through the SFPUC, has the ultimate authority over all matters regarding the entire License Area. Nothing in this License Area constitutes a permanent transfer of property of the License Area to Licensee.

3. License Fee(s).

(a) Use Fee. Because on or before the Commencement Date, pursuant to the provisions of Section 5 [Assignment; Proposed Transfer] below, Licensee shall assign all of its rights and obligations to a non-profit organization, from and after the Commencement Date, Licensee shall pay to City a use fee (the "**Use Fee**") in consideration of Licensee's use of the License Area equal to: **(i)** \$112,000 if Licensee pays such amount to the City in full on or before of the Commencement Date or **(ii)** if Licensee elects to pay such amount to the City on an annual basis over the course of the Term, in annual installments commencing on the eleventh anniversary of the Commencement Date and thereafter on each remaining annual anniversary of the Commencement Date during the Term in the annual installment amounts set forth on the schedule attached as **Exhibit D**.

(b) Notice of Election. On or before the Commencement Date, Licensee shall give notice to City of Licensee's election, at its sole and absolute discretion, to pay the Use Fee pursuant to either clause (i) or clause (ii) of Section 3(a) [Use Fee] above.

(c) Payment. The Use Fee shall be paid to City in advance, without prior demand, and without any deduction, setoff, or counterclaim whatsoever, on or before the applicable due date set forth above. All sums payable by Licensee to City pursuant to this License shall be paid in cash or by good check, or wire transfer to the City and County of San Francisco and delivered to City in

care of the SFPUC's Customer Service Bureau, or such other place as City may designate in writing. Such Use Fee shall be prorated for any fractional month.

(d) **Annual Increases.** The Parties acknowledge, and **Exhibit D** provides, that, if Licensee elects not to pay the entirety of the Use Fee on or before the Commencement Date pursuant to clause (i) of **Section 3(a)** [Use Fee] above, then commencing on the twelfth anniversary of the Commencement Date and thereafter on each remaining annual anniversary of the Commencement Date during the Term (each an "**Adjustment Date**"), the annual Use Fee installment stated in **Exhibit D** applicable to the twelve (12)-month period commencing, and payable by Licensee, on such Adjustment Date reflects a four percent (4%) increase over the annual fee for the year twelve (12)-month period immediately preceding such Adjustment Date.

(e) **Late Fees.** Licensee acknowledges that late payment by Licensee to City of the Use Fees or other sums due under this License will cause City to incur costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include processing and accounting charges. Accordingly, if the Use Fee or any other sum due from Licensee shall not be received by City within fifteen (15) days after such amount shall be due, Licensee shall pay to City a late charge of One Hundred Fifty Dollars (\$150). The Parties agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of any late payment by Licensee. City's acceptance of such late charge neither constitutes a waiver of Licensee's default with respect to such overdue amount, nor prevents City from exercising any of its other available rights and remedies.

(f) **Default Interest.** Any Use Fee, if not paid within five (5) days after the due date, will bear interest from the due date until paid at the legal rate ("**Interest Rate**"). Interest will not be payable on late charges or on any amounts on which Licensee paid late charges to the extent this interest would cause the total interest to be more than lawfully permitted. Payment of interest will not excuse or cure any default by Licensee.

(g) **Costs of Collection.** In addition to any interest or late charges under **Section 3(e)** [Late Fees] and **Section 3(f)** [Default Interest] above, if Licensee fails to pay the Use Fee in immediately available funds or by good check (if Licensee is permitted to pay by personal or business check), to the extent that the costs incurred by City because of Licensee's failure exceed the late charges applicable to that failure, then Licensee will pay to City immediately upon demand the amount of any fees, charges, or other costs incurred by City, including dishonored check fees, increased staff time, and any costs of collection.

4. Term of License.

(a) **Effective Date.** This License will become effective upon the first business day ("**Effective Date**") on which all of the following events have occurred: (a) the Parties have duly executed and delivered this License; (b) the SFPUC's Commission and City's Board of Supervisors and Mayor have adopted resolutions approving this License; and (c) the PSA is mutually executed and delivered by City and Licensee. Neither Licensee's rights under this License to use and occupy the License Area, nor its obligations under this License with respect to the License Area will commence until the Commencement Date (defined below).

(b) **Term.** Licensee shall give City written notice (the "**Commencement Date Notice**") of the date Licensee estimates in good faith that it will commence construction of the Facilities

(which date shall be on or before December 31, 2024 (the “**Sunset Date**”). The term of this License (the “**Term**”) will commence on the date (“**Commencement Date**”) that is thirty (30) days after date the Commencement Date Notice is given, provided that, on or before such date, this License has been assigned to a Permitted Nonprofit Assignee (defined in Section 5(a) [Restriction on Assignment] below) as required and in accordance with the provisions of Section 5 [Assignment; Proposed Transfer] below. The Term shall expire no later than 5:00 p.m. on the last day of the twentieth (20th) anniversary of the Commencement Date (“**Expiration Date**”), unless the Term is earlier terminated in accordance with its terms. In the event that, on or before the Sunset Date, this License has not been assigned to a Permitted Nonprofit Assignee as required and in accordance with the provisions of Section 5 [Assignment; Proposed Transfer] below, this License shall immediately terminate and be of no further force or effect. The Parties will confirm in writing the Commencement Date of this License once such date is established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing will not have any effect on the validity of this License. For the avoidance of doubt, Licensee shall not have any obligations under this License unless and until the Commencement Date has occurred, notwithstanding the fact that the Effective Date of this License may precede the date of the Commencement Date.

(c) **Suspension during Emergency or SFPUC Project.** In the event that an emergency requires City repairs or construction on or about the License Area (“**Emergency Work**”) or City determines to undertake a capital improvement, upgrade, replacement, or repair project (“**SFPUC Project**”) within the License Area, City may declare that the Parties’ respective rights and obligations pursuant to this License with respect to all or any portion of the License Area will be suspended during the course of any such Emergency Work or SFPUC Project, as the case may be. Accordingly, upon no less than sixty (60) days’ prior written notice from City to Licensee, except in the case of an emergency, where City may suspend this License by giving such notice as reasonably practicable under the circumstances, this License will be suspended for the duration of the SFPUC Project or Emergency Work with respect to the License Area, or the portion of the License Area designated by City, until City notifies Licensee that such SFPUC Project or Emergency Work is complete. Upon any receipt of any such City suspension notice, Licensee shall surrender all or the portion of the License Area subject to suspension when and as required by City and promptly coordinate with City to accomplish the removal of any of Licensee’s personal property from the License Area subject to such suspension. At its discretion, City may fence the portion of the License Area required for the SFPUC Project or Emergency Work. Upon completion of the SFPUC Project or Emergency Work, City will remove any such fencing and restore the surface of the License Area level with adjacent ground, with grass or gravel at the surface, and not to its previous condition, and this License will apply again to the entire License Area. The duration of any License suspension pursuant to this Section shall not extend, toll, or otherwise affect the duration of the Term and City’s rights under this Section are in addition to and cumulative with those described in Section 6(b) [Subject to City Uses] below.

(d) **Early Termination.**

(i) **Default.** If Licensee fails to comply with the terms and conditions of this License and such failure is not cured by Licensee within five (5) business days of City’s notice to Licensee specifying such failure, or in the case of a non-compliance that cannot be cured within five (5) business days, Licensee both fails to cure such non-compliance within such five (5)- day period and fails to diligently pursue such cure to completion on or before the date that is thirty (30) days after such notice, then Licensee shall be in default of this License and this License shall terminate

thirty (30) days after City's notice of termination to Licensee, and if City directs Licensee (at City's sole discretion) to remove all equipment and installations from the License Area, then Licensee shall forthwith remove such equipment and installations at Licensee's cost and shall restore the License Area to its former condition.

(ii) **Failure of Project Development.** City may immediately terminate this License by notice to Licensee at any time after the following events: (A) the termination or expiration of the PSA without the conveyance of the Property (as defined in the PSA) to Licensee on or before the Closing Date (as defined in the PSA); or (B) if the Development Agreement terminates or expires without Licensee either having completed, or being then obligated to complete, the development and construction of the License Area as contemplated by the Development Agreement and this License.

5. Assignment; Proposed Transfer.

(a) **Restriction on Assignment.** Licensee may not directly or indirectly (including by merger, acquisition, or other transfer of any controlling interest in Licensee), voluntarily or by operation of law, sell, assign, encumber, pledge, or otherwise transfer any part of its interest in or rights with respect to this License (collectively, an "**Assignment**"), without City's prior written consent in each instance, as provided below. Prior to the Commencement Date, subject to City's consent and Licensee's compliance with the procedures set forth in Section 5(b) [Notice of Proposed Transfer] below, Licensee must assign this License to one of the following non-profit organizations (each, a "**Permitted Nonprofit Assignee**"): (i) any Affiliate (defined below) of Licensee that is a non-profit organization, (ii) any Permitted Transferee that is a non-profit organization, (iii) the nonprofit, homeowner's association or nonprofit master association with respect to the residential housing to be constructed pursuant to the Project (the "**Association**"); or (iv) any other nonprofit organization approved by City pursuant to Section 5(b) [Notice of Proposed Transfer] below. As a condition to the effectiveness of any such Assignment, the Permitted Nonprofit Assignee must agree in writing, at the time of the proposed Assignment, to use and operate the License Area throughout the Term as open space for the benefit of the public generally as contemplated by this License, without payment by any member of the public for such use. As used in this Section, with respect to an entity, the term "**Affiliate**" of such entity means any of the following: (A) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of the subject entity (an "**Owning Person**"); (B) any entity in which fifty percent (50%) or more of the ownership interests are owned, directly or indirectly, by an Owning Person; or (C) any entity in which the subject entity owns, directly or indirectly, fifty percent (50%) or more of the ownership interests. Any such proposed assignment shall be subject to City's consent as stated in Section 5(b) [Notice of Proposed Transfer] below

(b) **Notice of Proposed Transfer.** To effect an Assignment, Licensee will give written notice (a "**Notice of Proposed Transfer**") to City that will identify the proposed transferee and state the terms and conditions of the proposed Assignment. Licensee will deliver to City with its Notice of Proposed Transfer (i) a copy of the proposed Assignment; (ii) a copy of the proposed transferee's written agreement in a form acceptable to City that the License Area will be used and operated throughout the Term as open space for the benefit of the public generally as contemplated by this License, without payment by any member of the public for such use; (iii) current financial statements of the proposed transferee, prepared by an independent certified public accountant; and (iv) promptly on City's request, any additional documents or information reasonably related to the proposed transaction or proposed transferee. City's consent (A) shall be a necessary precondition to the effectiveness of a proposed Assignment and (B) shall not be unreasonably withheld, conditioned, or

delayed. Notwithstanding the foregoing, if any event of default by Licensee has occurred and is continuing beyond applicable notice and cure periods at the time of Licensee's Notice of Proposed Transfer (or if any event occurs that, with the giving of notice or the passage of time or both, would constitute an event of default), then City may elect by notice to Licensee to refuse to consent to Licensee's proposed Transfer and pursue any of its right or remedies or at law or in equity.

(c) **Effect of Assignment.** No Assignment by Licensee or any consent by City will relieve Licensee or any guarantor (if applicable), of any and obligation to be performed by Licensee under this License. Any Assignment not in compliance with this Section will be void and, at City's option, will constitute a material default by Licensee under this License. City's acceptance of Use Fees or other payments from a proposed Transferee will not constitute City's consent to any Assignment or a recognition of any Transferee, or City's waiver of any failure of Licensee or other transferor to comply with this Section. If there is an Assignment, whether in violation of or in compliance with this Section, and a Transferee or any successor of Licensee defaults in the performance or observance of any of the terms of this License or Assignment agreement, City may proceed directly against Licensee without the necessity of exhausting remedies against the Transferee or successor.

(d) **Assumption by Transferee.** Each Transferee (other than City) will assume all obligations of Licensee under this License and will be liable jointly and severally with Licensee for the performance of all of Licensee's obligations under this License. No Assignment will be binding on City unless Licensee or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the Transferee satisfactory in form and substance to City. Transferee's failure or refusal under an Assignment to execute the instrument of assumption, however, will not release the Transferee from its liability under this License, as set forth above. Licensee will reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Assignment, including the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

6. Use of License Area.

(a) **Permitted Uses; Improvements.** Subject to Licensee's compliance with the terms and conditions of this License (including Section 7 [Improvements to License Area, Conditions to Permitted Facilities] below), Licensee may enter and use the License Area for the sole purpose of constructing, installing, and maintaining (i) a public pedestrian path at least 20-feet in width to accommodate City vehicles traversing the License Area in an unobstructed manner; (ii) vegetation consisting of low-growing shrubs, grass, trees in movable planter pots, and other plants approved by City at its sole discretion; (iii) a passive public open-space play area limited to activity paths, child play area (without structures), and landscaping; (iv) movable benches, movable trash receptacles, movable picnic tables, and signage in the locations approved by City and (v) related irrigation facilities (collectively, the "**Facilities**"), as further described in the Approved Plans, all in strict accordance with the terms of this License, and for no other purpose whatsoever. The License Area will be open to and used by the general public. Except as specifically permitted by this License, no other structures (including recreational or playground structures), paths, equipment, trees, or large shrubs will be permitted in the License Area without City's prior written approval, which may be given, withheld, or conditioned at City's sole discretion. No third-party uses or third-party vehicular traffic will be permitted to access onto or through the License Area, except as permitted by the SFPUC pursuant to permits with such third parties that may be issued at the SFPUC's sole

discretion.

(b) Subject to City Uses. Licensee is aware that the License Area constitutes a portion of City's regional water pipeline delivery system. Licensee's rights with respect to the License Area are non-exclusive, and the License Area will be kept free of any obstruction and accessible for the operational activities of SFPUC staff, vehicles, and equipment, and the pedestrian path of at least 20-feet in width will be accessible and clear to accommodate SFPUC vehicles at all times. Licensee will not allow any third-party vehicular traffic to access or cross through the License Area. Notwithstanding anything to the contrary in this License, any and all of Licensee's activities pursuant to this License will be subject and subordinate at all times to City's existing and future use of the License Area for municipal and other purposes. City will in no way be liable for any damage to or destruction of Licensee's property and/or improvements resulting from the condition of the License Area or the SFPUC Facilities, including from any pipeline break, or from any pipeline repair or maintenance activities. At City's request, Licensee will immediately remove any of Licensee's property or improvements from the License Area to allow City access to the SFPUC Facilities. If City deems it necessary, at City's sole discretion, City may remove any such property or improvements. City's responsibility for restoring or returning the License Area and any such property or improvements is limited to restoring the surface of the License Area level with adjacent ground, with grass or gravel at the surface, and not to its previous condition.

(c) City's Exclusive Right to Issue Separate Agreements. Only City may issue licenses and other agreements to third parties related to use of the License Area during the Term. Except for licenses or other agreements entered into with third parties pursuant to Section 6(b) [Subject to City Uses] above, any such licenses or other agreements between City and third parties relating to use of the License Area after the Commencement Date shall only allow proposed uses of the License Area that are **(i)** compatible with the use, operation, and maintenance of the Facilities on the License Area (e.g., licenses to facilitate a SFPUC project on the License Area, temporary permits for constructing staging to Licensee's contractors, and temporary permits for Licensee's programming), and **(ii)** do not materially interfere with Licensee's rights granted by this License. Neither Licensee nor any person or entity acting on Licensee's behalf may issue any permits, occupancy agreements, licenses, or leases for third-party use of the License Area. Licensee's violation of this provision will constitute a material default under this License.

7. Improvements to License Area, Conditions to Permitted Facilities. Licensee may construct the Facilities on the License Area only upon satisfaction of all of the following conditions, which are for City's sole benefit:

(a) Approval of Plans and Specifications. For purposes of illustration only, attached to this License as Exhibit C are preliminary, conceptual plans that describe generally the Parties' basic contemplation of the scope and types of improvements to be constructed or installed on the License Area by or on behalf of Licensee. Notwithstanding the contents of Exhibit C, the Licensee will not make any improvements to, or alteration of, the License Area without City's prior written consent, and Licensee acknowledges that the conceptual plans are subject to further review and approval as described below in this Section 7(a). Licensee will install the Facilities only in accordance with final plans and specifications (including drawings) that have undergone SFPUC's In Project Review Committee and are approved in advance and in writing by City, which plans, and specifications will be attached and signed by the Parties once approved ("**Approved Plans**") and will wholly supersede and replace the preliminary, conceptual plans attached as Exhibit C. During the project review process, Licensee will be required to submit design and construction drawings at

30%, 60%, 90%, and 100% completion levels. The Approved Plans may be revised or amended only with City's prior written approval after the SFPUC's Bureau of Environmental Management has determined that no further environmental review is required by the California Environmental Quality Act ("CEQA") as a result of any such revision or amendment. City's approval of any modifications to the Approved Plans for the Facilities may include modifications to impose such insurance, bond, guaranty, and indemnification requirements as City determines are necessary or appropriate to protect its interests, consistent with City's or the SFPUC's custom and practice and consistent with commercial industry practice.

(b) Energy Service and Related Facilities. If Licensee seeks electrical service for use in the License Area, Licensee will contact the Interconnection Services Department in the Power Enterprise of the SFPUC to arrange for service. Licensee will purchase all electricity necessary for its operations at the License Area from the SFPUC, at the SFPUC's standard rates charged to third parties, unless the SFPUC determines, in its sole judgment, that it is not feasible to provide such service to the License Area. The SFPUC is the provider of electric services to City property, and the SFPUC's Interconnection Services Department coordinates with Pacific Gas and Electric Company and others to implement this Section. Except as provided above with respect to any electricity services provided by the SFPUC, Licensee will make arrangements and pay for all utilities and services furnished to the License Area, including gas, electricity, water, sewage, telephone, and trash collection services, and for all deposits, connection, and installation charges.

Except for the SFPUC Facilities or as otherwise expressly provided in this License, the SFPUC has no responsibility or liability of any kind with respect to any utilities that may be on or about the License Area. Licensee has the sole responsibility to locate any utility facilities within the License Area and protect them from damage resulting from Licensee's use of the License Area.

(c) Permits, Licenses, and Approvals. Before installing any Facilities on the License Area, Licensee will obtain any and all permits, licenses, and approvals (collectively, "**Approvals**") of all regulatory agencies (including, as may be required by applicable Laws, City agencies such as its Department of Building Inspection) and other third parties that are required to commence, complete, and maintain the Facilities. Licensee will deliver copies of such Approvals to the SFPUC promptly upon receipt. No City approval for purposes of Licensee's improvement work under this License will be deemed to constitute the approval of any federal, state, City, or other local regulatory authority with jurisdiction, and nothing in this License will limit Licensee's obligation to obtain all such regulatory Approvals, at Licensee's sole cost.

(d) Limits of City's or SFPUC's Consent. City's or the SFPUC's consent to or approval of any Facilities or other improvements made or proposed by Licensee will not relieve Licensee or its engineers, architects, or contractors from any liability for negligence, errors, or omissions associated with the design and/or construction of any such Facilities or other improvements. In no event will City's or the SFPUC's approval of plans or specifications be deemed to constitute a representation or warranty by City concerning the suitability of the proposed Facilities or other improvements for Licensee's purposes or that the work called for in the plans and specifications complies with applicable Laws, or industry standards, nor will such approval release Licensee from its obligation to supply plans and specifications that conform to all applicable Laws, and industry standards.

(e) Exercise of Due Care. Licensee will use and will cause its Agents (defined in Section 21 [Indemnity] below) to use, due care at all times to avoid any damage or harm to the

SFPUC Facilities or other property and to native vegetation and natural attributes of the License Area and to minimize slope erosion. Licensee will not disturb the surface of the License Area or perform any excavation work without City's prior written approval, which City may grant, condition, or withhold at its sole discretion. At its requests, City may condition and/or oversee any permitted excavation work. At its own expense, Licensee will mark the location of City's water pipelines and other SFPUC Facilities within the License Area and will not use any pick, plow, or other sharp tool to remove the two feet of soil around the pipelines or other facilities, provided that Licensee may use hand shovels or pneumatic shovels in compliance with all other terms and conditions of this License. Licensee will immediately inform City of any actual or potential damage to the coating of the pipeline, and any such damage will be promptly repaired by Licensee, at its own expense, to City's satisfaction prior to backfilling; provided, at its sole discretion, City may elect to make any necessary repairs itself, at Licensee's sole cost, by notifying Licensee of such fact. Upon completion of the repairs, City will send to Licensee a bill therefor, which Licensee will pay within thirty (30) days following receipt. Under no circumstances will Licensee damage, harm, or take any rare, threatened, or endangered species present on or about the License Area.

(f) **Cooperation with the San Francisco Public Utilities Commission.** Licensee and its Agents will work closely with City personnel to minimize any potential disturbance (even if temporary) of the natural features of the License Area and to avoid disruption (even if temporary) of the SFPUC Facilities and City uses of such facilities.

(g) **Heavy Equipment.** Licensee will not use any heavy construction equipment over or about City's pipelines, except as otherwise expressly allowed in Section 8(i) [Heavy Equipment and Vehicles] below.

(h) **Work Schedule.** If Licensee seeks and obtains City's consent to any proposed improvement to, or alterations of, the License Area, City may condition its consent on the performance of such improvement or alteration work during a specified time frame. At least ten (10) business days prior to the commencement of any improvement or alteration work on the License Area, Licensee will notify City's Construction Inspector ("**Construction Inspector**"), at (415) 550-4900, of the date such work will commence and the intended schedule. Notification must also be given to Underground Service Alert at least two (2) days prior to start of work. Notwithstanding the approval of such schedule by the SFPUC, the Construction Inspector will have the right to require Licensee to adjust such schedule from time to time. All work must be performed during regular working hours (Monday through Sunday) between 7:00 a.m. and 7:00 p.m. Any work performed during any other time or day must be preapproved by the SFPUC at least ten (10) business days prior to commencing such work. In connection with such approval, City may charge Licensee additional inspection fees payable prior to the SFPUC's approval of the request. Notwithstanding the work hours set forth above, Licensee will comply with any applicable local ordinance that imposes later start times and/or earlier cessation times for construction activities. Licensee will complete all work associated with the construction and installation of the Facilities no later than December 31, 2032.

(i) **Restoration of License Area.** Immediately following completion of any work permitted under this License, Licensee will remove all debris and any excess dirt and will restore the License Area to its condition immediately prior to such work, to City's satisfaction. Licensee will restore any damage caused to existing roads and, if applicable, restore excavated areas with new vegetation (including irrigation and maintenance until established) and erosion control netting, all as requested by City, and will comply with all applicable regulations of the regulatory agency with jurisdiction.

(j) **Pipeline Depth/Installation of Above-Ground Markers.** The Parties acknowledge that, prior to the Commencement Date, the depth of City's pipelines located in the License Area was measured by potholing conducted by or on behalf of Licensee and the results of such potholing have been delivered to, and accepted by, City. Notwithstanding such previous testing, (i) if City performs, or anticipates performing, any construction, maintenance, repair, or installation work in connection with any anticipated or actual SFPUC Project or Emergency Work with respect to the License Area before the date on which Licensee installs the Facilities in accordance with the Approved Plans or (ii) subsequent to the approval by City of the Approved Plans, Licensee proposes any additional construction or excavation work on or about the License Area not then reflected in the Approved Plans, then, as a condition of its approval of any excavation work in the License Area, City may again require Licensee to measure the depth of City's pipelines located in the License Area by potholing and forward such information to City. Upon completion of work, Licensee will promptly notify City in writing of the depth of City's pipeline and related facilities in the License Area. Licensee will install above-ground markers identifying the location of any underground facilities installed pursuant to this License. The location, type, and installation of markers and identifying information on the markers will be subject to City's prior written approval.

(k) **As-Built Drawings/Reports.** Promptly upon completion of the installation of the Facilities or any other permitted improvements to the License Area, Licensee will furnish the SFPUC with two (2) complete copies of final drawings for such Facilities or improvements, which drawings will include sufficient detail so as to allow City to precisely locate the Facilities or other improvements. If Licensee or any of its Agents or consultants prepares any environmental, seismic, geophysical, or other written report relating to the License Area and/or any work performed on the License Area, Licensee will furnish to City a complete copy of such report, including any schedules, exhibits, and maps, promptly upon completion of the same.

(l) **Responsibility for Maintenance of Facilities.** Licensee will be solely responsible for repairing and maintaining the Facilities and any other improvements placed in or on the License Area pursuant to this License in good and safe condition, and City will have no duty whatsoever for any repair or maintenance of the License Area or any such Facilities. Licensee will notify City in writing not less than five (5) days before performing any repair or maintenance work in the License Area, except in the case of an emergency when Licensee will notify City telephonically and in writing as soon as reasonably possible.

(m) **Revocability.** The installation of the Facilities or any other improvements to the License Area, regardless of cost, will not in any way whatsoever limit City's right to suspend or terminate this License pursuant to its terms or any of City's other rights under this License.

(n) **Contractors.** Licensee will not accept and release its contractor(s) for work authorized or required by this License before securing City's written approval.

(o) **Cathodic and Other Protection.** City may adopt from time to time such rules and regulations with regard to Licensee's Facilities or other improvements to the License Area and Licensee's operations under this License as City may determine are necessary or appropriate, at City's sole discretion, to safeguard against corrosion of, or other damage to, the SFPUC Facilities. Upon receipt of a copy of such rules and regulations, Licensee will immediately comply with them.

8. **Restrictions on Use.** The following uses (by way of example only) of the License Area by Licensee, or any other person claiming by or through Licensee, are inconsistent with the limited

purpose of this License and are strictly prohibited as provided below:

(a) **Improvements**. Except as otherwise expressly provided in this License, Licensee will not construct or place any temporary or permanent structures or improvements in, on, under, or about the License Area, nor will Licensee make any alterations or additions to any of existing structures or improvements on the License Area, unless Licensee first obtains the SFPUC's prior written consent, which the SFPUC may grant, condition, or withhold at its reasonable discretion. For purposes of this License, the term "improvements" includes asphalt, concrete, and cementitious driveways, sidewalks, and parking areas, shacks, storage facilities, and fences.

(b) **Trees and Other Plantings**. Licensee will not plant any trees in the License Area at any time. Licensee may plant other vegetation in the License Area only as expressly provided in Section 6 [Permitted Uses; Improvements] above. Any trees planted in pots and placed on the License Area, or on property adjoining the License Area, will not be located within twenty feet (20') of the SFPUC pipelines.

(c) **Dumping**. Licensee will not cause or permit the dumping or other disposal in, on, under, or about the License Area of landfill, refuse, Hazardous Material (defined in Section 8(d) [Hazardous Material] below), or any other materials, including materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment.

(d) **Hazardous Material**. Licensee will not cause, nor will Licensee allow any of its Agents or Invitees (defined in Section 21 [Indemnity] below) to cause, any Hazardous Material to be brought upon, kept, used, stored, generated, released, or disposed of in, on, under, or about the License Area, or transported to, from, or over the License Area. Licensee will immediately notify City when Licensee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on, under, or about any part of the License Area. Licensee will further comply with all applicable Laws requiring notice of such releases or threatened releases to governmental agencies and will take all action necessary or desirable to mitigate the release or minimize the spread of contamination. If Licensee or its Agents or Invitees cause a release of Hazardous Material, Licensee will promptly return the License Area to the condition immediately prior to the release, without cost to City, in accordance with all applicable Laws, and using the highest and best technology available. In connection with such remedial action, Licensee will afford City a full opportunity to participate in any discussion or negotiations with governmental agencies and environmental consultants regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise proceeding involving Hazardous Material, and any other abatement or cleanup plan, strategy, and procedure. For purposes of this License, "**Hazardous Material**" means material that, because of its quantity, concentration, or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state, or local governmental authority to pose a present or potential hazard to public health, welfare, or the environment. Hazardous Material includes the following: any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code or any other federal, state, or local Law; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the License Area or are naturally occurring substances in the License Area; and any petroleum, including crude oil or any crude-oil fraction, natural gas, or natural gas liquids, provided, the foregoing will not prohibit Licensee from traversing to, from, and across the License Area in standard motor vehicles that do not exceed the weight limitations set forth below.

The term “**release**” or “**threatened release**” when used with respect to Hazardous Material will include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under, or about the License Area.

(e) **Nuisances**. Licensee will not conduct any activities in, on, under, or about the License Area or the Balboa Reservoir Site that constitute waste, nuisance, or unreasonable annoyance (including emission of objectionable odors, noises, or lights) to City, to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se. Licensee will not operate, promote, or permit any dog park or dog relief areas on the License Area.

(f) **Damage**. Licensee will not do anything in, on, under, or about the License Area that could cause damage to or interference with any pipelines, facilities, or other property located in, on, under, or about the License Area. Licensee will compensate City for any and all damage caused to the License Area and City facilities resulting from the activities of Licensee and its Agents and Invitees, including damage resulting from defective work.

(g) **Use of Adjoining Land**. Licensee acknowledges that the privilege given under this License will be limited strictly to the License Area. Except as otherwise expressly permitted or requested by City in writing, Licensee will not:

(i) dedicate, designate, or segregate any portion of the License Area for use exclusively or primarily by any center or other facility established on the Balboa Reservoir Site for the purposes of child-care, child education, or children’s activities (each a “**Child-Related Use**”), provided, however, that the foregoing shall not prevent non-exclusive, shared use of the License Area for Child-Related Uses in conjunction with the open space use of the License Area by the general public as contemplated by this License;

(ii) use or operate, nor permit the use or operation, of any unfenced dog play area on any part of the Balboa Reservoir Site that is in close proximity to the License Area;

(iii) seek nor allow any public access to or through the License Area from or to other adjoining lands owned by City through the SFPUC, including the SFPUC parcel adjacent to the Ingleside Public Library; and

(iv) seek nor allow any public access to or through the License Area from or to the parcel of land (the “**Brighton Driveway Parcel**”) that is located north and northerly of the intersection of Ocean Avenue and Brighton Avenue in San Francisco and currently improved as a driveway and pedestrian pathway to serve the Whole Foods market on Ocean Avenue and the Avalon Communities residential development above and abutting that Whole Foods market, each of which are located on the easterly side of the Brighton Driveway Parcel, and the Avalon Ocean Avenue residential development located on the westerly side of the Brighton Driveway Parcel.

(h) **Ponding; Water Courses**. Licensee will not cause any ponding on the License Area or any flooding on adjacent land. Licensee will not engage in any activity that causes any change, disturbance, fill, alteration, or impairment to the bed, bank, or channel of any natural water course, wetland, or other body of water on, in, under, or about the License Area, nor will Licensee engage in any activity that could pollute or degrade any surface or subsurface waters or result in the diminution or drainage of such waters.

(i) **Heavy Equipment and Vehicles.** To prevent damage to City's underground pipelines, Licensee's use of vehicles and equipment within twenty feet (20') of each side of the centerline of any City pipeline (measured on the surface) will be subject to the following restrictions:

(i) The depth of soil cover over the tops of City's pipelines must be at least three feet (3') for steel cylinder pipe and four feet (4') for reinforced pre-stressed concrete cylinder pipe to accommodate the loading defined in Subsection (ii) below. If any equipment with axle loading exceeds the loads stated in Subsection (ii) below or if the depth of soil cover is less than stated above, Licensee will submit to the SFPUC for review and approval, at the SFPUC's sole discretion, engineering calculations prepared by a licensed Professional Engineer licensed in California showing that City's pipelines will not be adversely affected by Licensee's proposed activities. If City's pipelines may be adversely affected, Licensee will submit remedial measures for City's approval to ensure that no adverse effect will occur.

(ii) The effects of vehicle and equipment loads to the pipeline must not exceed the effects of the "AASHTO Standard H-10 Loading." H-10 loading is defined as loading caused by a two-axle truck with a gross weight of ten tons (20,000 lbs.), axles fourteen feet (14') apart, and rear axle carrying eight tons (16,000 lbs.). Licensee will be responsible for providing the SFPUC adequate evidence that its equipment and vehicles meet the foregoing requirements.

(iii) Licensee will not use vibrating compaction equipment without the SFPUC's prior written approval, which approval may be given or withheld at the SFPUC's sole discretion.

(iv) If the depth of the soil cover over the pipeline (determined by potholing or other proof procedure) is less than the minimum stated in Subsection (i) above, unless an alternate method is approved by the SFPUC in writing, all excavation and grading over the pipeline will be performed manually. For any machinery or equipment excavation and grading over and/or within twenty feet (20') of each side of the centerline of the pipeline (measured on the surface), Licensee will submit a written proposal together with all supporting calculations and data to the SFPUC for review and approval. In any case, the two feet (2') of soil around the pipeline will be removed manually or by other methods approved by the SFPUC with due care as provided in Section 7(e) [Exercise of Due Care] above.

9. **Other Prohibited Activities.** Except to the extent contemplated by the Approved Plans, without City's express prior written approval (which City may grant, condition, or withhold at its sole discretion), Licensee will not (a) install any aerial utility crossing or overhead transmission lines within the License Area; (b) designate or use the License Area as the sole emergency access to any adjoining property; (c) conduct any activity on or about, or make any improvement to, the License Area that increases City's potential liability or diminish the security of City's utility infrastructure; (d) install any utilities parallel to, rather than across, any City pipelines placed on or about the License Area; (e) include any part of the License Area as part of a transit-oriented development plan, dedicated rapid transit lane, or transit corridor; (f) allow the use or condition of the License Area to be a mitigation measure for the Project pursuant to CEQA or otherwise; or (g) conduct any activity on or about, or make any improvement to, the License Area that is inconsistent with any existing or future SFPUC policies, as they may be amended or modified from time to time.

10. **Insurance.**

(a) Licensee will procure and keep in effect at all times during the term of this License,

at Licensee's expense, and cause its contractors and subcontractors to maintain at all times during any construction activities on the License Area, insurance as follows: **(i)** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent contractors, explosion, collapse, and underground (XCU), Broad Form Property Damage, fire legal liability coverage with limits no less than \$1,000,000, Sudden and Accidental Pollution, and Products and Completed Operations coverage during any period of "construction activities"; **(ii)** Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned, and hired automobiles, as applicable, if Licensee uses or causes to be used any vehicles in connection with its use of the License Area, and **(iii)** Workers' Compensation Insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident.

(b) Licensee will also procure and keep in effect at all times during the term of this License, at Licensee's expense during any period of "construction activities" (as defined below) by or on behalf of Licensee on the License Area, pollution legal liability and environmental remediation liability insurance, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; Environmental Damages; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs; defense costs, charges, and expenses incurred in the investigation, adjustment of defense claims for such compensatory damages; sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of Hazardous Materials into or upon City's property, the atmosphere or watercourse or body of water, which results in Environmental Damages; transportation coverage for the hauling of any Hazardous Materials by Licensee or Licensee's Agents, from the City's real property to the final disposal location; and first party environmental remediation that pays for the cost of cleanup and remediation of the City's real property required to comply with all applicable Laws. Such insurance will be endorsed to provide third party disposal site coverage that covers third party bodily injury, property damage and cleanup coverage for pollution conditions emanating from a disposal site or landfill used by the Licensee or Licensee's Agents. Policy limits shall be no less than: Two Million Dollars (\$2,000,000) per accident and Four Million Dollars (\$4,000,000) policy aggregate for bodily injury and property damage. The SFPUC and its Agents and Employees will be included as additional insureds under the Pollution Legal Liability/Environmental Remediation/Cleanup Liability Insurance Policy. As used in this Section, the term "construction activities" includes all activities on, under, or above the License Area related to the construction and installation of improvements or alterations on, above, or under the License Area (including the Facilities) during the period commencing upon the first site permit, first demolition permit, or first building permit relating to any such improvements or alterations and continues until the construction and installation of improvements or alterations are completed and such improvements or alterations have been finally inspected and are ready for public use and occupancy.

(c) All policies required by this License will provide for the following: **(i)** be issued by one or more companies of recognized responsibility approved to do business in the State of California with financial rating of at least a Class A- VII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports;" **(ii)** name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its commissioners, officers, agents, and employees; **(iii)** specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this License

and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability; and (iv) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Licensee's waiver of claims against City. Such policies will also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage will not reduce or void the coverage as to any insured, and will afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and Accidental Pollution coverage in the liability policies required by this License will be limited to losses resulting from Licensee's activities (and Licensee's Agents and Invitees) under this License (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(d) Licensee will provide at least thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice will be provided to City. Within five (5) business days of receiving any notice from its insurance provider or broker of intent to cancel or materially reduce, or cancellation, material reduction, or depletion of, its required coverage, Licensee will provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Section 10 [Insurance] from a different insurer meeting the qualifications of this Section. Notice to City will be mailed to the address(es) for City set forth in Section 33(a) [Notices] below.

(e) Prior to the Commencement Date, Licensee will deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required by this License, together with complete copies of the policies at City's request. Licensee and its contractors will submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any successor program used by City for verification of Licensee and contractor insurance coverage. If Licensee will fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Licensee, and Licensee will reimburse City for any costs so paid by City within five (5) business days after delivery to Licensee of bills therefor.

(f) Should any of the required insurance (excluding Pollution Legal Liability) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit will double the occurrence or claims limits specified above.

(g) Should any of the required insurance (excluding Pollution Legal Liability) be provided under a claims-made form, Licensee will maintain such coverage continuously throughout the term of this License and, without lapse, for a period of three (3) years beyond the License expiration or termination, to the effect that should any occurrences during the Term give rise to claims made after expiration or termination of the License, such claims will be covered by such claims-made policies.

(h) Upon City's request, Licensee and City will periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater

than the amount or coverage then being carried by Licensee for risks comparable to those associated with the License Area, then, at its reasonable discretion, City may require Licensee to increase the amounts or coverage carried by Licensee pursuant to this License to conform to such general commercial practice, provided, however, that City may not require any such changes more than one (1) time in any ten (10) year period.

(i) Licensee's compliance with the provisions of this Section will in no way relieve or decrease Licensee's indemnification or other obligations under this License. Notwithstanding anything to the contrary in this License, this License will terminate immediately, without notice to Licensee, upon the lapse of any required insurance coverage. At its expense, Licensee will be responsible for separately insuring Licensee's personal property.

11. Compliance with Laws. At its expense, Licensee will conduct and cause to be conducted all activities on the License Area permitted by this License in a safe and reasonable manner and in compliance with all laws, statutes, ordinances, rules, regulations, policies, orders, edicts, and the like (collectively, "**Laws**") of any governmental or other regulatory entity with jurisdiction (including the Americans with Disabilities Act) and all covenants, restrictions, and provisions of record, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. At its sole expense, Licensee will procure and maintain in force at all times during its use of the License Area any and all business and other licenses or approvals necessary to conduct the activities allowed by this License. City is entering into this License in its capacity as a property owner with a proprietary interest in the License Area and not as a regulatory agency with police powers. No approval by City for purposes of this License will be deemed to constitute approval of any federal, state, City, or other local regulatory authority with jurisdiction, and nothing in this License will limit Licensee's obligation to obtain all such regulatory approvals at Licensee's sole cost, or limit in any way City's exercise of its police powers.

12. Covenant to Maintain License Area. Throughout the term of this License, at its sole cost, Licensee will maintain the License Area (but not the SFPUC Facilities) at all times in a good, clean, safe, secure, sanitary, and sightly condition.

13. Monuments.

(a) By its execution and delivery of this License, Licensee acknowledges that the monuments shown on the attached **Exhibit B-2**, if any, are in place and in good condition. During the installation of any Facilities or any other improvements to the License Area pursuant to this License and at all times during Licensee's use of the License Area, Licensee will protect and safeguard City's monuments. Licensee will promptly notify City if Licensee becomes aware of any change in the condition of City's monuments, regardless of the cause of such change.

(b) If Licensee damages a monument necessitating resurvey, repair, or replacement, as determined by City at its sole discretion, Licensee will survey, file a land surveyor's map in the County Office, and install a replacement monument within thirty (30) days of completion of work authorized under this License, all at Licensee's expense and to City's satisfaction. A recorded surveyor's map will be furnished by Licensee to the SFPUC for its records.

(c) During the term of this License, City may replace missing monuments or install new monuments. When City replaces missing monuments or installs new monuments, City will give Licensee written notice of such replacement or installation. Upon deposit of such notice in the U.S.

mail by City, postage prepaid, Licensee will assume the protection and replacement responsibilities set forth in this License.

14. Removal or Alteration of Facilities Without limiting City's rights under this License, at City's written request, Licensee will promptly alter or remove, at its sole expense, any and all Facilities, plantings, or other property installed or placed in, on, under, or about the License Area by Licensee, as may be necessary to avoid any actual or potential interference with the installation, construction, maintenance, operation, repair, replacement, or removal of any of City's pipelines, power lines, facilities, or other structures now or later constructed or with any other operations or land uses by City. In the request, City may specify reasonable time limits for completion of the work. If, after such written notice, Licensee fails to complete the requested work within the prescribed time limits, City may perform the requested work and charge Licensee all costs and expenses so incurred by City. Such amount will be due and payable upon City's demand. In the event of an emergency, at City's sole option, at Licensee's sole expense, and without notice, City may, alter, remove, or protect any and all facilities, improvements, plantings, or other property installed or placed in, on, under, or about the License Area by Licensee except for utility facilities owned by either a private company or a public agency that are necessary for operations after an emergency as determined by City at its sole discretion. Upon City's written or oral notice that an emergency exists, the owner of such utility facilities will take immediate action at its sole expense to protect, remove, or relocate such facilities as required by City to meet the emergency.

15. Interruption or Disruption of License Area Without limiting City's rights under this License or any applicable Laws, if Licensee's use of the License Area is interrupted or disrupted for any reason in connection with any City request for removal or alteration of Licensee's Facilities located on the License Area pursuant to Section 4(c) [Suspension during Emergency or SFPUC Project] or Section 14 [Removal or Alteration of Facilities] above, any improvements to, or alterations of, the License Area made by or on behalf of Licensee, at its sole cost, Licensee will be responsible for: **(a)** any and all costs of alteration, removal, and/or restoration of Licensee's Facilities or alterations to a condition similar to that which existed prior to such interruption, disruption, alteration, or removal, and **(b)** the implementation or satisfaction of any mitigation measures or obligations that may arise under any applicable Laws, including CEQA, related to any interruption or disruption of Licensee's use of the License Area. City will not be responsible for mitigation of any potential recreational use impacts or other impacts associated with any interruption or disruption of use of the License Area, or any related costs. If Licensee fails to promptly perform its obligations under this Section, at its sole option, City may elect to terminate this License immediately by written notice, or to exercise any and all other rights or remedies available to City under this License or at law, including the rights set forth in Section 19 [City's Right to Cure Defaults by Licensee] below.

City would not be willing to give this License in the absence of Licensee's assurances under this Section, and Licensee expressly assumes any and all liability or obligations that may arise under this Section.

16. Signs At its sole discretion, City may require Licensee to install signs related to City's ownership of and uses for the License Area. Except for any such signs or pipeline markers required by City or any regulatory agency with jurisdiction, Licensee will not place, erect, or maintain any sign, advertisement, banner, or similar object in, on, or about the License Area without City's prior written consent, which City may give or withhold at its sole discretion; provided, however, that, without City's prior written consent, if necessary for Licensee's use, Licensee may place in the

License Area a temporary sign of less than thirty (30) days' duration that does not penetrate the ground surface.

17. Surrender. Upon the expiration of this License or within ten (10) days after any sooner revocation or other termination of this License, Licensee will surrender the License Area in the same condition as received, and broom clean, free from hazards, and clear of all debris. At such time, upon City's request, Licensee will remove all of its property and signs from the License Area and, upon City's request, the Facilities, or alterations placed on the License Area during the term of this License, and will repair, at its cost, any damage to the License Area caused by such removal. Licensee's obligations under this Section will survive any termination of this License.

18. Repair of Damage. If any portion of the License Area or any City property located on or about the License Area is damaged or threatened by any of the activities conducted by Licensee or anyone acting by or through Licensee, at its sole cost, Licensee will immediately notify City of such damage or threat by **(a)** telephoning the SFPUC's dispatch operator as specified in Section 32(b) [Notices], and **(b)** providing written notice in accordance with Section 32(a) [Notices]. City may, but will not be obligated to, remedy such damage or threat at Licensee's sole cost, or City may elect to witness Licensee's repair work. If City elects not to remedy such damage or threat, Licensee will repair any and all such damage and restore the License Area or property to its previous condition subject to City's inspection, review, and approval. Other than the SFPUC Facilities, City has no responsibility or liability of any kind with respect to any utilities that may be on, in, or under the License Area. Licensee is solely responsible for the location of any such utilities and other existing facilities and their protection from damage. Licensee will be solely responsible to arrange and pay directly for any utilities or services necessary for its activities pursuant to this License; provided, Licensee will obtain City's prior written approval to the provision of such services or utilities in, on, under, or through the License Area.

19. City's Right to Cure Defaults by Licensee. If Licensee fails to perform any of its obligations under this License to restore the License Area, remove or alter any of Licensee's Facilities or alterations, or repair damage, or if Licensee defaults in the performance of any of its other obligations under this License, then, at its sole option, City may remedy such failure for Licensee's account and at Licensee's expense by providing Licensee with) five (5) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice will be required in the event of an emergency as determined by City). Such action by City will not be construed as a waiver of any of City's rights or remedies under this License, and nothing in this License will imply any duty of City to do any act that Licensee is obligated to perform. Licensee will pay to City upon demand, all costs, damages, expenses, or liabilities incurred by City, including reasonable attorneys', experts', and consultants' fees, in remedying or attempting to remedy such default. Licensee's obligations under this Section will survive the termination of this License.

20. No Costs to City. Licensee will bear all costs or expenses of any kind or nature in connection with its use of the License Area and will keep the License Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the License Area.

21. Indemnity. Licensee will indemnify, defend, reimburse, and hold harmless City, its officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("**Claims**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on, or about any part of the License

Area, whether such injury, death, damage, or destruction is caused by the person or property of Licensee, its officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, “**Agents**”), its invitees, guests, or business visitors (collectively, “**Invitees**”), relating to any use or activity under this License, **(b)** any failure by Licensee to faithfully observe or perform any of the terms, covenants, or conditions of this License, **(c)** the use of the License Area or any activities conducted on the License Area by Licensee, its Agents, or Invitees, **(d)** any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents, or Invitees, on, in, under, or about the License Area, any improvements or into the environment, or **(e)** any failure by Licensee to faithfully observe or perform any terms, covenants, or conditions of the Recorded Documents to the extent that such terms, covenants, or conditions relate to or are triggered by the work to be performed or Facilities or alterations installed pursuant to this License; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City’s authorized representatives, including the gross negligence or willful misconduct of City or City’s authorized representatives in connection with the use by City or City’s authorized representatives of the License Area pursuant to the rights reserved to the City under this License. In addition to Licensee’s obligation to indemnify City, Licensee has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to Licensee by City and continues at all times thereafter. The foregoing indemnity will include reasonable attorneys’, experts’, and consultants’ fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including damages for decrease in the value of the License Area and claims for damages or decreases in the value of adjoining property. Licensee’s obligations under this Section will survive the expiration or other termination of this License.

22. Waiver of Claims.

(a) Neither City nor any of its commissions, departments, boards, officers, agents, or employees will be liable for any damage to the property of Licensee, its officers, agents, employees, contractors, or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the License Area or its use by Licensee, or Licensee’s Agents or Invitees.

(b) Because this License is freely revocable by City to the extent set forth in this License, Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, under any present or future Laws, including any claim for inverse condemnation or the payment of just compensation under law or equity, if City exercises its right to revoke or terminate this License.

(c) Licensee acknowledges that it will not be a displaced person at the time this License is terminated or revoked or expires by its own terms, and Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all

persons acting by, through, or under each of them, under any present or future Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) The fees payable pursuant to this License do not take into account any potential City liability for any consequential or incidental damages including lost profits and arising out of disruption to or any improvements or alterations installed pursuant to this License; or Licensee's uses of the License Area permitted by this License. City would not be willing to grant this License in the absence of a waiver of liability for consequential or incidental damages resulting from the acts or omissions of City or its departments, commissions, officers, directors, and employees, and by all persons acting by, through, or under each of them, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES, AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including lost profits) and covenants not to sue for such damages City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, arising out of this License or the uses authorized under this License, including any interference with uses conducted by Licensee pursuant to this License, regardless of the cause, and whether or not due to the negligence of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, except for the gross negligence and willful misconduct of City or its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them.

(e) As part of Licensee's agreement to accept the License Area in its "As Is" condition as provided below, and without limiting such agreement, Licensee, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its officers, agents, and employees, and their respective heirs, successors, administrators, personal representatives, and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and/or unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the License Area and any related improvements or any applicable Laws or the suitability of the License Area for Licensee's intended use.

(f) In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Licensee acknowledges that the releases contained in this License include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee realizes and acknowledges that it has agreed upon this License in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of California Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained in this License will survive any termination of this License.

23. As Is Condition of License Area; Disability Access; Disclaimer of Representations.

Licensee accepts the License Area in its “AS IS” condition, without representation or warranty of any kind by City, its departments, commissions, officers, directors, and employees, and all persons acting by, through, or under each of them, and subject to all applicable Laws governing the use of the License Area. Without limiting the foregoing, this License is made subject to any and all existing covenants, conditions, restrictions, easements, encumbrances, and other title matters affecting the License Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

Under California Civil Code Section 1938, to the extent applicable to this License, Licensee is advised that the License Area has not undergone inspection by a Certified Access Specialist to determine whether it meets all applicable construction-related accessibility requirements.

24. Intentionally Omitted

25. Cessation of Use Licensee will not terminate its activities on the License Area pursuant to this License without prior written notice to City.

26. No Joint Ventures or Partnership; No Authorization This License does not create a partnership or joint venture between City and Licensee as to any activity conducted by Licensee on, in, or relating to the License Area. Licensee is not a state actor with respect to any activity conducted by Licensee on, in, under, or around the License Area. City’s provision of this License does not constitute City’s authorization or approval of any activity conducted by Licensee on, in, around, or relating to the License Area.

27. MacBride Principles - Northern Ireland The provisions of San Francisco Administrative Code Section 12F are incorporated into and made a part of this License by this reference. By signing this License, Licensee confirms that Licensee has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

28. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate In the performance of this License, Licensee will not discriminate against any employee of, any City employee working with Licensee, or applicant for employment with, Licensee, 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.

(b) Other Subcontracts Licensee will include in all subcontracts relating to the License Area a non-discrimination clause applicable to such subcontractor in substantially the form of Subsection (a) [Covenant Not to Discriminate] above. In addition, Licensee will incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and will require all subcontractors to comply with such

provisions. Licensee's failure to comply with the obligations in this subsection will constitute a material breach of this License.

(c) **Non-Discrimination in Benefits.** Licensee does not as of the date of this License and will not during the term of this License, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to License.** As a condition to this License, Licensee will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the license of City property are incorporated in this Section by reference and made a part of this License as though fully set forth. Licensee will comply fully with and be bound by all of the provisions that apply to this License under such Chapters of the San Francisco Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

29. Requiring Health Benefits for Covered Employees. To the extent applicable and unless exempt or preempted by other Laws, Licensee will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q ("**Chapter 12Q**"), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated into this License by reference and made a part of this License as though fully set forth. The text of the HCAO is currently available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this License will have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Licensee will provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Licensee chooses to offer the health plan option, such health plan will meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if Licensee meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with Subsection (a) above.

(c) Licensee's failure to comply with any applicable requirements of the HCAO will

constitute a material breach by Licensee of this License and City's remedies will be those set forth in the HCAO. If, within thirty (30) days after receiving City's written notice of a breach of this License for violating the HCAO, Licensee fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Licensee fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, City will have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Contract or Subcontract regarding services to be performed on the License Area entered into by Licensee will require the Contractors and Subcontractors, as applicable, to comply with the requirements of the HCAO and will contain contractual obligations substantially the same as those set forth in this Section. Licensee will notify the Purchasing Department when it enters into such a Contract or Subcontract and will certify to the Purchasing Department that it has notified the Contractor or Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Contractor or Subcontractor through written agreement with such Contractor or Subcontractor. Licensee will be responsible for ensuring compliance with the HCAO by each Contractor and Subcontractor performing services on the License Area. If any Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Licensee based on the Contractor's or Subcontractor's failure to comply, provided that the Contracting Department has first provided Licensee with notice and an opportunity to cure the violation.

(e) Licensee will not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Licensee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Licensee will keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Licensee will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors or Contractors.

(i) Within five (5) business days after any request by City, Licensee will provide City with access to pertinent records relating to any Licensee's compliance with the HCAO. In addition, City and its officers, agents, and employees may conduct random audits of Licensee at any time during the term of this License. Licensee will cooperate with City in connection with any such audit.

30. Notification of Limitations on Contributions. Licensee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of

negotiations for such contract or six months after the date the contract is approved. Licensee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensee further acknowledges that the prohibition on contributions applies to each Licensee; each member of Licensee's board of directors, and Licensee's chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Licensee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensee. Additionally, Licensee acknowledges that Licensee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensee will provide to City the names of each person, entity, or committee described above.

31. Tropical Hardwoods and Virgin Redwoods. 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. Except as permitted by the application of Sections 802(b) and 803(b), Licensee will not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this License.

32. Taxes, Assessments, Licenses, License Fees, and Liens.

(a) Lessor acknowledges and agrees that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. Licensee further recognizes and understands that any transfer or assignment permitted under this License and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Licensee will pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest created by this License and will pay all other taxes, excises, licenses, permit charges, and assessments based on Licensee's usage of the License Area that may be imposed upon Licensee by law, all of which will be paid when the same become due and payable and before delinquency.

(c) Licensee will not allow or suffer a lien for any such taxes or charges to be imposed upon the License Area or upon any equipment or property located on the License Area without promptly discharging the same, provided that Licensee may contest the validity of the same by paying under protest or posting adequate (at City's sole discretion) security during any such contest.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this License, and any renewals of this License, to the County Assessor within sixty (60) days after any such transaction, and that Licensee report certain information relating to any assignment of or transfer under this License to the County Assessor within sixty (60) days after such assignment or transfer transaction. Licensee will provide such information as may be requested by City to enable City to comply with this requirement.

33. Notices.

(a) Any notice, consent, or approval required or permitted to be given under this License will be in writing and will be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above):

City or the SFPUC: Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Balboa Reservoir Open Space License
License P
Telephone No.: (415) 487-5210
E-mail: RES@sfwater.org

Licensee: Reservoir Partners, LLC in c/o its Members:

BHC Balboa Builders. LLC
c/o BRIDGE Housing
600 California Street, Suite 900
San Francisco, CA 94108
Attn: Brad Wiblin
Telephone: (415) 321-3565
E-mail: bwiblin@bridgehousing.com

with a copy to:

Lubin Olson & Niewiadomski LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Attn: B. Anderson
Telephone: (415) 955-5029
E-mail: Banderson@lubinolson.com

with a copy to:

AVB Balboa LLC
c/o AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203
Attn: Brian R. Lerman, Vice President, Associate General Counsel
Telephone: (703) 317-4132
E-Mail: brian_lerman@avalonbay.com

AVB Balboa LLC
c/o AvalonBay Communities, Inc.
455 Market Street, Suite 1650
San Francisco, CA 94105

Attn: Joe Kirchofer, Vice President, Development
Telephone: (415) 284-9082
E-Mail: joe_kirchofer@avalonbay.com

with a copy to: Greenberg Traurig, P.A.
333 S.E. 2nd Avenue
Miami, FL 33131
Attn: Danielle Gonzalez, Esq.
Telephone: (415) 284-9082
E-Mail: gonzalezda@gtlaw.com

A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon the confirmed date of delivery, attempted delivery, or rejected delivery, whichever occurs first. Any e-mail addresses, telephone numbers, or facsimile numbers provided by one party to the other will be for convenience of communication only; neither party may give official or binding notice orally or by e-mail or facsimile. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of an oral notice or an e-mail or telefacsimile copy of the notice.

(b) Emergency Contacts. Licensee will immediately notify the SFPUC's City Distribution Division (CDD) Dispatch by telephone at (415) 550-4900 regarding any emergency or incident requiring emergency response.

34. Prohibition of Tobacco Sales and Advertising. No advertising or sale of cigarettes or tobacco products is allowed on the License Area. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

35. Prohibition of Alcoholic Beverage Advertising. No advertising of alcoholic beverages is allowed on the License Area. For purposes of this Section, "alcoholic beverage" will be defined as set forth in California Business and Professions Code Section 23004, and will not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

36. Restrictions on the Use of Pesticides. Chapter 3 of the San Francisco Environment Code (Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Licensee will not use or apply or allow the use or application of any pesticides on the License Area or contract with any person or entity to provide pest abatement or control services to the License Area without first receiving City's written approval of an IPM plan that **(a)** lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the License Area during the term of this License, **(b)** describes the steps Licensee will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance and **(c)** identifies, by name, title, address, and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. Licensee will comply, and will require all of Licensee's contractors to comply, with the IPM plan approved by the City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Licensee were a City department. Among other matters,

such provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Licensee to keep certain records and to report to City all pesticide use at the License Area by Licensee's staff or contractors.

If Licensee or Licensee's contractor will apply pesticides to outdoor areas at the License Area, Licensee must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, <http://sfenvironment.org/ipm>.

37. Conflict of Interest. Licensee acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code and certifies that it does not know of any facts that would constitute a violation of said provisions. If Licensee becomes aware of any such fact during the term of this License, Licensee will immediately notify City.

38. Disclosure. City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Sections 6250 et seq.), apply to this License and any and all records, information, and materials submitted to City in connection with this License. Accordingly, any and all such records, information, and materials may be subject to public disclosure in accordance with City's Sunshine Ordinance and the State Public Records Law. Licensee authorizes City to disclose any records, information, and materials submitted to City in connection with this License.

39. Food Service and Packaging Waste Reduction. Licensee will comply fully with and be bound by all applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this License by this reference and made a part of this License as though fully set forth. Capitalized terms used in this Section that are not otherwise defined in this License have the same meaning assigned to such terms in San Francisco Environment Code, Chapter 16. Accordingly, Licensee acknowledges that City contractors, lessees, and licensees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities while performing under a City contract, lease, or license, and will instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this License.

40. Severability. If any provision of this License, or its application to any person, entity, or circumstance, will be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this License will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this License without the invalidated provision would be unreasonable or inequitable under all the

circumstances or would frustrate a fundamental purpose of this License.

41. Cooperative Drafting. This License has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the License reviewed and revised by legal counsel. No party will be considered the drafter of this License, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this License.

42. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Licensee will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; “**Chapter 12T**”), which are hereby incorporated into this License by reference as the same may be amended from time to time, with respect to applicants and employees of Licensee who would be or are performing work at the License Area. Capitalized terms used in this Section that are not otherwise defined in this License will have the meanings assigned to such terms in Chapter 12T.

(b) Licensee will incorporate by reference the provisions of Chapter 12T in all contracts to perform work within the License Area and will require all contractors to comply with such provisions. Licensee’s failure to comply with the obligations in this subsection will constitute a material breach of this License.

(c) Licensee and its contractors performing work in the License Area will not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (i) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (ii) participation in or completion of a diversion or a deferral of judgment program; (iii) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (iv) a Conviction or any other adjudication in the juvenile justice system; (v) a Conviction that is more than seven years old, from the date of sentencing; or (vi) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Licensee and its contractors will not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Subsection (c) above. Licensee and its contractors will not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Licensee and its contractors will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Licensee or its contractor at the License Area, that the Licensee or contractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Licensee and its contractors will post the notice prepared by the Office of Labor Standards Enforcement (“**OLSE**”), available on OLSE’s website, in a conspicuous place at the License Area and at other workplaces within San Francisco where interviews for job opportunities at the License Area. The notice will be posted in English, Spanish, Chinese, and any language

spoken by at least five percent (5%) of the employees at the License Area or other workplace at which it is posted.

(g) Upon any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this License, including a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination or suspension in whole or in part of the License.

(h) If Licensee has any questions about the applicability of Chapter 12T, it may contact City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

43. San Francisco Packaged Water Ordinance. Licensee will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Licensee will not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this License or on City property unless Licensee obtains a waiver from the City's Department of the Environment. If Licensee violates this requirement, the City may exercise all remedies in this License and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

44. Security Deposit. Simultaneously with the delivery of the Commencement Date Notice, Licensee will deposit with City a sum equal to Thirty Thousand Dollars (\$30,000) (the "**Security Deposit**"), in cash, to secure Licensee's faithful performance of all terms, covenants, and conditions of this License. City may apply (but will not be required to apply) the Security Deposit in whole or in part to remedy any damage to the Premises caused by Licensee, its Agents, or its Invitees, or any failure of Licensee to perform any other terms, covenants, or conditions in this License (including the payment of Use Fee either before or after a default), without waiving any of City's other rights and remedies under this License or under applicable Laws. Licensee waives the provisions of Section 1950.7 of the California Civil Code or any similar Laws now or hereafter in effect and agrees that City may retain any portion of Security Deposit reasonably necessary to compensate it for any foreseeable or unforeseeable loss or damage caused by the acts or omissions of Licensee, its Agents, or its Invitees. Without limiting the foregoing, City may apply some or all of the Security Deposit to the payment of future Use Fee following a Licensee default.

If City uses any portion of the Security Deposit to cure any default by Licensee, Licensee will immediately replenish the Security Deposit to the original amount. City's obligations regarding the Security Deposit are solely that of debtor and not trustee. City will not be required to keep the Security Deposit separate from its general funds, and Licensee will not be entitled to interest on the Security Deposit. The amount of the Security Deposit will in no way limit the liabilities of Licensee under any provision of this License.

45. General Provisions. (a) This License may be amended or modified only by a writing signed by City and Licensee. (b) No waiver by any party of any of the provisions of this License will be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver will be deemed a subsequent or continuing waiver of the same, or any other, provision of this License. (c) The exhibits referenced in and attached to this instrument are incorporated into this License. (d) This License contains the

entire agreement between the Parties regarding Licensee's use and occupancy of the License Area during the Term, and all prior written or oral negotiations, discussions, understandings, and agreements regarding Licensee's use and occupancy of the License Area during the Term are merged into this License. **(e)** The section and other headings of this License are for convenience of reference only and will be disregarded in the interpretation of this License. **(f)** Time is of the essence in all matters relating to this License. **(g)** This License will be governed by California law and City's Charter. **(h)** If either party commences an action against the other or a dispute arises under this License, the prevailing party will be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this License and the indemnifications set forth in this License, City's reasonable attorneys' fees will be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys. **(i)** If Licensee consists of more than one person then the obligations of each person will be joint and several. **(j)** Licensee may not record this License or any memorandum of this License. **(k)** Subject to the prohibition against assignments or other transfers by Licensee under this License, this License will be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and assigns. **(l)** Any sale or conveyance of the property burdened by this License by City will automatically revoke this License. **(m)** Each of the persons executing this License on Licensee's behalf do hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon City's request, Licensee will provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties. **(n)** Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by City under this License may be made at City's sole and absolute discretion. **(o)** Whenever this License requires City's or the SFPUC's consent or approval, the General Manager of the SFPUC, or his or her designee, will be authorized to provide such consent or approval, except as otherwise provided by applicable Laws, including City's Charter, or by the SFPUC's Real Estate Guidelines. No consent, approval, election, or option will be effective unless given, made, or exercised in writing. **(p)** This License may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. **(q)** Use of the word "including" or similar words will not be construed to limit any general term, statement, or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used. **(s)** If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this License, then the Parties by mutual agreement may correct such error by written memorandum executed by them without the necessity of a formal amendment of this License.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS INITIAL LICENSE, NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS INITIAL LICENSE UNLESS AND UNTIL CITY'S PUBLIC UTILITIES COMMISSION AND BOARD OF SUPERVISORS WILL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS INITIAL LICENSE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED IN THIS INITIAL LICENSE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS INITIAL LICENSE ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS INITIAL LICENSE WILL BE NULL AND VOID IF CITY'S PUBLIC UTILITIES COMMISSION, MAYOR, AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS INITIAL LICENSE, AT THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS INITIAL LICENSE BY ANY DEPARTMENT,

COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

LICENSEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS LICENSE, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

[SIGNATURES ON FOLLOWING PAGE]

LICENSEE:

RESERVOIR COMMUNITY PARTNERS, LLC,
a Delaware limited liability company

By: BHC BALBOA BUILDERS, LLC,
a California limited liability company,
its Member

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation,
its Manager

By: _____

Name: _____

Title: _____

Date: _____

By: AVB BALBOA, LLC,
a Delaware limited liability company,
its Member

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

By: _____

Joe Kirchofer

Vice President – Development

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

(f) By: _____
Richard Handel
Deputy City Attorney

Authorized by

San Francisco Board of Supervisors

Resolution No. _____
Adopted: _____

San Francisco Public Utilities Commission

Resolution No. _____
Adopted: _____

EXHIBIT A

Depiction of the Retained Fee

[see attached or insert legal description?]

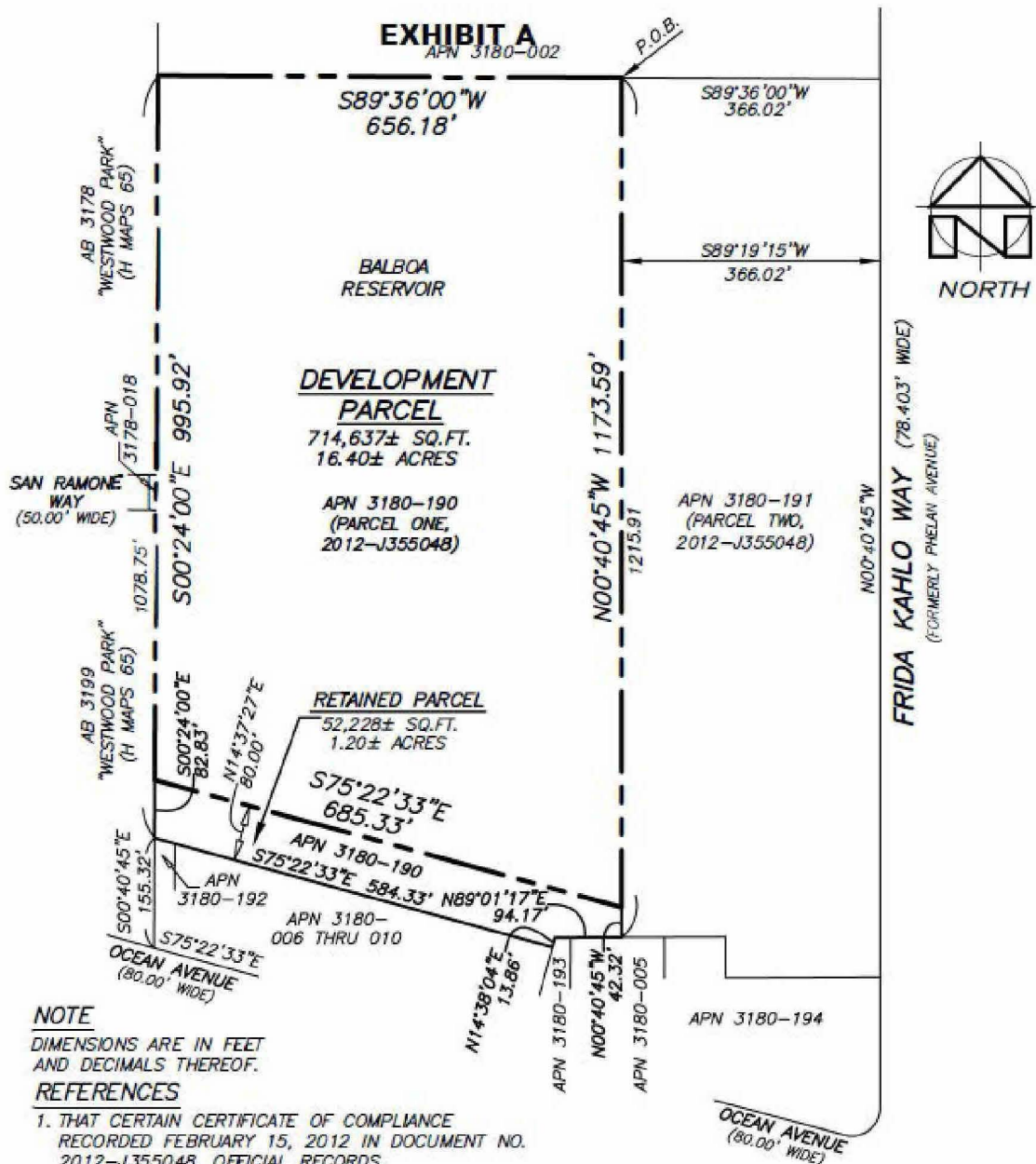


EXHIBIT B-1

Description of the License Area

All that certain real property located in the City and County of San Francisco, California, described as follows:

A portion of Parcel 22, according to SFPUC records and as shown the attached as **Exhibit B-2** and made a part of this License.

EXHIBIT B-2

Depiction of License Area

[see attached]

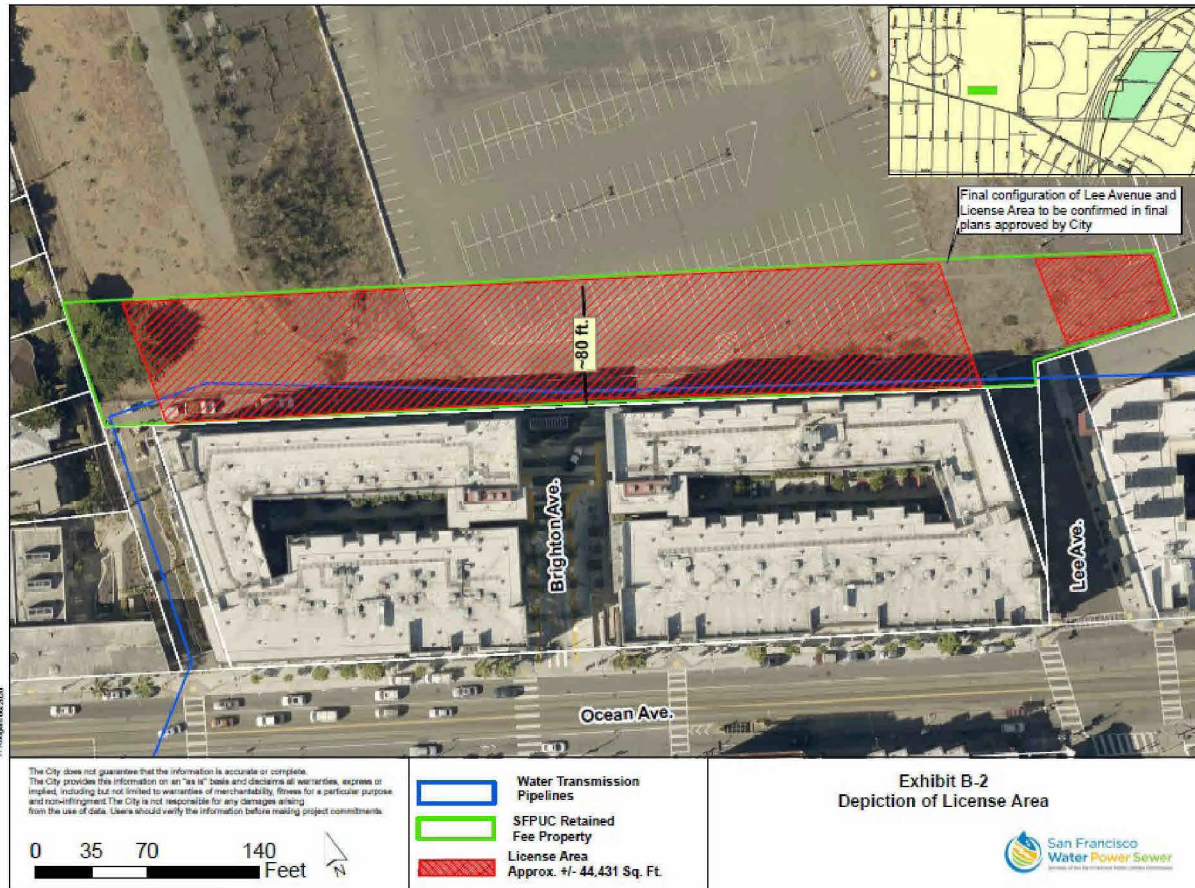


EXHIBIT C

Approved Plans and Specifications

[see attached]

EXHIBIT C: PRELIMINARY OPEN SPACE LICENSE AREA CONCEPT PLAN - SUBJECT TO SFPUC REVIEW AND APPROVAL



LEGEND

- | | | |
|---|------------------------------------|-----------------------------------|
| 1 Meadow Planting | 6 Removable Bollards | --- License Area |
| 2 Nature Exploratory Play Area | 7 Screen Planting at Existing Wall | - - - SFPUC Retained Fee Property |
| 3 Play Area | 8 Picnic Area | |
| 4 Flexible Plaza for Sport and Recreation | | |
| 5 Lee Gateway Plaza | | |

NOTE: 1. Lee Ave is not part of the license area.
2. All trees shall be planted in pots and all vegetation is subject to further approval by the SFPUC.

June 9, 2020

EXHIBIT D

Use Fee Annual Installment Amounts

License Year	Annual Use Fee Installment
1	None
2	None
3	None
4	None
5	None
6	None
7	None
8	None
9	None
10	None
11	\$32,380
12	\$33,675
13	\$35,022
14	\$36,423
15	\$37,880
16	\$39,395
17	\$40,971
18	\$42,610
19	\$44,314
20	\$46,087

EXHIBIT H-1

SELLER FINANCING NOTE

[To be attached]

SECURED PROMISSORY CARRY BACK NOTE
(Balboa Reservoir)

San Francisco, CA

Principal Amount: \$ _____

Date: _____, 202__

FOR VALUE RECEIVED, the undersigned, _____, a California _____ (“Maker”), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “City”), acting by and through its Public Utilities Commission, or holder (as the case may be, “Holder”), the principal sum of _____ and No/100 Dollars (\$ _____)¹ (the “Funding Amount”), together with simple interest on the unpaid principal balance of this Note outstanding from time to time, from the date of this Note until fully repaid at the rates hereinafter set forth, as provided in this Note.

1. Security. Maker's obligations under this Note are secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of even date with this Note, identifying this Note as an obligation secured thereby and encumbering the property described therein (“Property”), which Property was sold to Maker as of the date hereof by the City pursuant to an Agreement for Sale of Real Estate dated as of _____, 2020 (the “Purchase Agreement”). Definitions and rules of interpretation set forth in the Deed of Trust apply to this Note. In the event of any inconsistency between the Deed of Trust and this Note, the Deed of Trust will control.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3%) per annum, simple interest, from the date of the close of escrow through the date of full payment of all amounts owing under the Note and the Deed of Trust (together, the “Loan Documents”). Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

3. Default Interest Rate. Upon the occurrence of an Event of Default under any Loan Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) four percent (4%) plus the base interest rate; or (b) the maximum lawful rate of interest, commencing on the date the Funding Amount is disbursed through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the Loan Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient, and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any Loan Document.

¹ NOTE TO DRAFT: Amount to be completed at Closing.

4. Repayment of Funding Amount.

4.1 Maker shall make payments of principal and interest (each, a “Payment”) on the dates (each, a “Payment Date”) and in the amounts set forth on Schedule A, attached hereto. All Payments will be applied to the following in the following order: (i) costs and fees incurred by Holder in accordance with the Loan Documents and unpaid by Maker as of the Payment Date; (ii) accrued and unpaid interest; and (iii) reduction of the principal balance of the Loan.

4.2 The entire principal balance of the Loan, together with all accrued and unpaid default interest (if any) and other unpaid fees and costs incurred (all together, the “Payment”), will be due and payable on December 31, 2028 (the “Maturity Date”). If the Maturity Date falls on a weekend or holiday, it will be deemed to fall on the next succeeding business day.

5. Reconveyances

5.1 Provided no Event of Default shall have occurred and be continuing, from and after the date on which Maker has made the Closing Payment Phase 1 as set forth on Schedule A, Maker shall have the right to obtain the release (the “Phase I Release”) of the Phase 1 Property (as generally described on Schedule B attached hereto) from the lien of the Deed of Trust and the release of Maker’s obligations under the Loan Documents with respect to the Phase 1 Property (other than those expressly stated to survive in the Loan Documents), by providing Holder with thirty (30) days prior written notice of the requested Phase I Release, upon which Holder shall require and instruct Trustee to reconvey the Phase 1 Property (subject to the Phase 1 Property being a legal parcel) pursuant to Section 11 of the Deed of Trust on the date set forth in such notice.

5.2 Provided no Event of Default shall have occurred and be continuing, from and after the date on which Maker has repaid the Loan in full, Maker shall have the right to obtain the release (the “Full Release”) of the Property (or such portions of the Property not previously so released) from the lien of the Deed of Trust and the release of Maker’s obligations under the Loan Documents with respect to the Property (other than those expressly stated to survive in the Loan Documents), by providing Holder with thirty (30) days prior written notice of the requested Full Release, upon which Holder shall require and instruct Trustee to reconvey the Property pursuant to Section 5(c) of the Deed of Trust on the date set forth in such notice.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at the San Francisco Public Utilities Commission, Real Estate Services Division, 525 Golden Gate Avenue, 10TH Floor, San Francisco, CA 94102, Attention: Real Estate Director, or to any other place Holder from time to time designates. Payments may also be sent by wire using current wire instructions as provided by Holder upon request for such instructions.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the

terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be applied so as to automatically reduce the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note, subject to Section 4.1.

6.5 Except as provided in this Section 6.5, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or nonjudicial foreclosure of the Deed of Trust, and Holder's sole recourse against Maker for any default under this Note will be limited to the Property as the sole collateral for the Loan, provided, however, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose, or acceptance of a deed-in-lieu, following an Event of Default in any legal proceeding on the grounds that the Loan Documents are not valid and enforceable under California law; In addition, Holder shall be made a co-obligee of any bond security provided under any Public Improvement Agreement or Infrastructure Permitting Agreement between the City and the Maker relating to the Project, which bond security shall be sufficient for the restoration of the Property or the completion of improvements on the Property. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, or misapplication of funds (including Rents (as defined in the Deed of Trust)); Maker's failure to obtain and maintain the required insurance under the Deed of Trust; or failure of Maker to pay charges for labor or other materials that create a lien on the Property (subject to notice and cure provisions and Maker's right to contest the same under the Deed of Trust).

6.6 The Loan may be prepaid in whole or in part at any time without the imposition of a prepayment charge or premium.

6.7 Notwithstanding anything to the contrary in this Note or the Deed of Trust, at any time prior to delivering the Phase 1 Release Payment, so long as no Event of Default is continuing under the Loan Documents, Maker shall have the option, to be exercised in Maker's sole discretion, to convey the Property without warranty to Holder in full satisfaction of this Note. Maker shall pay all escrow and recording costs arising from the conveyance of the Property to Holder under this Section 6.7 and shall reimburse Holder for its actual and reasonable costs incurred by Holder in performing its obligations under this Section 6.7, including reasonable attorneys' fees and costs, and at Holder's election Maker shall cause any construction, equipment or services contracts entered into in connection with Maker's development of the Property (the "Project Contracts") to be terminated at Maker's sole cost and expense as of the date of conveyance of the Property to Holder pursuant to this Section 6.7. Upon recordation of a quitclaim deed conveying the Property to Holder, which conveyance is conditioned on Maker providing title to Property that is reasonably acceptable to Holder (i.e., the Property may be conveyed subject to the Permitted Exceptions in existence at the time

Maker acquired title and any amendments thereto, to any encumbrances permitted by the Deed of Trust or previously approved by the Beneficiary thereunder, and to exceptions on title that are otherwise reasonably acceptable to Holder), the Loan shall automatically be deemed paid in full, Holder shall mark this Note as "Cancelled," Holder shall fully and unconditionally release Maker from any and all obligations under this Note, and Maker shall have no further rights or obligations under the Loan Documents; provided, however, that Holder shall have access, as a co-obligee, to any bond security provided under any Public Improvement Agreement or Infrastructure Permitting Agreement between the City and the Maker relating to the Project as necessary for the restoration of the Property or the completion of improvements on the Property.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

(a) Maker fails to make any Payment required under this Note within when due, and such failure continues uncured for five (5) business days after receipt of written notice thereof from Holder to Maker; or

(b) the occurrence of any other Event of Default following expiration of any applicable notice and cure periods under the Deed of Trust or other instrument securing the obligations of Maker under this Note.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the Loan Documents), Holder may exercise all rights and remedies available under this Note and the Deed of Trust. Maker acknowledges and agrees that Holder's remedies include judicial or nonjudicial foreclosure of the Deed of Trust and the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct, or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Deed of Trust, or to the addresses Holder and/or Maker hereafter designate in accordance with the Deed of Trust.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Deed of Trust.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

[signature on following page]

“MAKER”

A _____

By: _____

Name: _____

Its: _____

Schedule A

Expected Payment Schedule

Payments and interest at the rate of three percent per annum will be due as follows:

(a) Between Closing and December 31, 2026:

(i) Annual Payments of \$400,000 on each anniversary of the PSA Effective Date through December 31, 2026, applicable to the loan balance.

(ii) A balloon payment of the remaining loan balance of the \$5,700,000 portion of the Loan attributable to the Phase 1 portion of the Property, minus pre-Closing payments and post-Closing loan payments, plus accrued interest, by December 31, 2026.

(iii) The City will release the Phase 1 portion of the property from the Deed of Trust after the above balloon payment is made.

(b) Between January 1, 2027 and December 31, 2028:

(i) an Annual Payment of \$600,000 on the anniversary of the PSA Effective Date in 2027, applicable to the loan balance; and

(ii) A balloon payment of the remaining loan balance, plus accrued interest, by December 31, 2028.

Estimated Payment Schedule			
Pre Closing Payments	Initial Deposit	Effective Date est. 9/1/ 2020	\$500,000
	Annual Payment 1	est. 9/1/2021	\$400,000
	Annual Payment 2	est. 9/1/2022	\$400,000
Loan Payments	Annual Payment 3	est. 9/1/2023	\$400,000
	Annual Payment 4	est. 9/1/2024	\$400,000
	Annual Payment 5	est. 9/1/2025	\$400,000
	Annual Payment 6	est. 9/1/2026	\$400,000
	Closing Payment Phase 1 *	est. 12/31/2026	\$3,669,399
	Annual Payment 7	est. 9/1/2027	\$600,000
	Closing Payment Phase 2 **	est. 12/16/2028	\$6,693,764
<p>* A balloon payment of \$5,700,000 minus \$2,900,000 in pre and post closing loan payments (as shown above) plus an estimated \$878,573 in accrued interest, calculated at 3% per annum as per the terms of the Note.</p> <p>** A balloon payment of \$5,700,000 minus \$600,000 in post closing payments (as shown above) plus an estimated \$1,593,764 in accrued interest calculated at 3% per annum as per the terms of the Note.</p>			

Schedule B
Illustrative Diagram of Phase 1 Property and Phase 2 Property

[to be finalized by Buyer and Seller prior to Closing]

[See attached]



EXHIBIT H-2

SELLER FINANCING DEED OF TRUST

[To be attached]

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:

Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director
Re: Balboa Reservoir

City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: Balboa Reservoir

Assessor's Lot 190, Block 3180

-----Space Above This Line for Recorder's Use-----
APN: _____

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**
(Balboa Reservoir)

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FIXTURE FILING** ("Deed of Trust") is made as of _____, 202__, by
_____, a California _____ ("Trustor"), whose address is 600
California St, #900, San Francisco, California 94108, to _____ **TITLE INSURANCE
COMPANY** ("Trustee"), whose address is _____, California, for the
benefit of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation,
acting by and through its Public Utilities Commission ("Beneficiary" or "City").

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and
assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title
and interest Trustor now has or may have in the future in the following (all or any part of the
following, or any interest in all or any part of it, as the context requires, the "Property"):

(a) that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the “Land”); and

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the “Improvements”); and

(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions (“Leases”) relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

(d) except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

(e) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

(f) all Loan funds, whether disbursed or not, and all funds now or in the future on deposit in any account required under the Loan Documents; and

(g) all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

(h) all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records

relating to the application and allocation of any federal, state or local tax credits or benefits; and

(i) all rents, revenues, issues, royalties, proceeds and profits, including prepaid rent and security deposits (“Rents”), from the Land and the Improvements, subject to: (i) Trustor's right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under **Section 5(d)**; and

(j) All intangible personal property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, deposits for utility services, installations, refunds due Trustor, trade names, trademarks, and service marks; and

(k) all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

This Deed of Trust constitutes a security agreement under, and a fixture filing in accordance with, the California Uniform Commercial Code, as it may be amended from time to time. The filing of a financing statement pertaining to personal property may not be construed in any way as derogating from or impairing the lien of, or the rights or obligations of the parties under, this Deed of Trust.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the “Secured Obligations”):

(a) performance of all present and future obligations of Trustor set forth in the promissory note dated the date of this Deed of Trust as well as performance of all present and future obligations of Trustor set forth in this Deed of Trust made by Trustor to the order of Beneficiary (as it may be amended from time to time, the “Note”) and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Note;

(b) payment of the indebtedness evidenced by the Note in the original principal amount of _____ Million and No/100 Dollars (\$_____.00), with three percent interest, according to the terms of the Note; and

(c) payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.

3. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; to return to a safe and secure state any Improvements that are part of the Project, as defined in the Development Agreement (as defined below) constructed, damaged or destroyed on the Land; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements which would have the effect of materially diminishing the value thereof; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements; provided, however, that notwithstanding the foregoing, Trustor may without the consent of Beneficiary construct, demolish and reconstruct or substantially renovate the Improvements and develop infrastructure improvements on the Land in a manner consistent with the Balboa Reservoir Master Infrastructure Plan attached to the Development Agreement (as defined below) and following the execution of a Public Infrastructure Agreement ("PIA") or Infrastructure Permitting Agreement ("IPA") with the City, substantially in the form of the City's PIA or IPA template, pursuant to which the City's customary bonding requirements, including without limitation restoration and completion bonding requirements, apply to the entirety of the Land and Improvements, and otherwise develop the Land in a manner consistent with that certain Development Agreement by and between the City and Trustor, dated as of _____, 2020, and recorded in the Official Records of San Francisco County, California (the "Development Agreement"), it being acknowledged that Trustor acquired the Property from Beneficiary for such purposes. "Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act

of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 (“NEPA”) (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the “California Superfund” law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”) (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code; “Hazardous Substance” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a “hazardous substance,” “hazardous waste,” “hazardous material,” “pollutant,” “contaminant,” “pesticide” or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as “hazardous” or “toxic” under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed “Hazardous Substances” for the purposes of this Deed of Trust if used in compliance with applicable Environmental Laws. “Environmental Activity” means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Land;

(c) Unless the City otherwise consents in writing, at all times from and after the date of this Deed of Trust, at its sole expense, Trustor must: (a) comply with all applicable Environmental Laws relating to the Property, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Property, *provided that* nothing contained in this Section will prevent Trustor from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Trustor of any event rendering any compliance with the covenant in (a) incorrect in any respect promptly following Trustor’s discovery;

(d) to provide, maintain and deliver to Beneficiary property and liability insurance as set forth on Exhibit B and apply any insurance proceeds as provided below;

(e) to enter into a PIA or an IPA, which agreement will include all customary restoration, completion, and other bonding provisions required in the City’s form

of PIA or IPA and which provisions will apply to the Land in its entirety and to any Improvements, prior to initiating infrastructure grading or construction work on the Land;

(f) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;

(g) to pay prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto and that are created by, through or under Trustor;

(h) should Trustor fail to make any payment or to do any act as herein provided, then, subject to the notice and cure provisions of the Loan Documents, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and (D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(i) to reimburse within ten (10) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) the default interest rate under the Note or (ii) the maximum lawful rate from date of expenditure to the date of payment.

4. Insurance and Condemnation Proceeds.

(a) Trustor hereby collaterally assigns to Beneficiary any award of damages received by Trustor arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

(b) So long as no Event of Default by Trustor hereunder is continuing, any award of damages or any insurance proceeds shall be paid to Trustor and shall be applied by Trustor to restoration of the Property. Any condemnation award or builders risk or property insurance proceeds not used to repair the property must be paid to Beneficiary to be applied to Trustor's obligations under the Note or, if Beneficiary has entered into an Intercreditor Agreement (as defined below), condemnation and property insurance proceeds shall be used according to the provisions of such Intercreditor Agreement.

(c) If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the restoration of the Property and, if applicable, in accordance with any Intercreditor Agreement. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Note, with the remaining funds, if any, released to Trustor.

(d) Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any Loan Document unless the default has been cured by the application or release of funds.

5. Further Agreements. Trustor further acknowledges and agrees as follows:

(a) Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

(b) Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

(d) As additional security, Trustor hereby irrevocably, absolutely and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due,

subject to Beneficiary's grant to Trustor of a license to collect and retain Rents as they become due and payable so long as no Event of Default by Trustor is continuing hereunder.

(e) Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Loan Documents will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

(f) For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

(g) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Note, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(h) Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

6. Representations and Warranties. Trustor represents and warrants to Beneficiary as follows:

(a) The execution, delivery and performance of the Loan Documents will not contravene or constitute a default under or result in a lien other than this Deed of Trust upon assets of Trustor under any applicable law, any organizational documents of Trustor or any instrument binding upon or affecting Trustor, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Trustor.

(b) When duly executed, the Loan Documents will constitute the legal, valid and binding obligations of Trustor. Trustor hereby waives any defense to the enforcement of the Loan Documents related to alleged invalidity of the Loan Documents.

(c) No action, suit or proceeding is pending or, to Trustor's knowledge, threatened that might affect Trustor's ability to perform hereunder.

(d) Trustor is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Trustor or Trustor's principals, if applicable, has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Trustor or any of its principals, if applicable, been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) All statements and representations made by Trustor in connection with the Loan remain true and correct as of the date of this Deed of Trust.

(g) The Trustor is duly organized and in good standing under applicable laws of the State of California and is qualified to do business in the City and County of San Francisco.

7. Event of Default. Any material breach by Maker of any covenant, agreement, provision or warranty contained in this Deed of Trust or the Note that remains uncured upon the expiration of any applicable notice and cure periods contained therein will constitute an "Event of Default," including the following:

(a) Trustor fails to make any payment required under the Loan Documents within ten (10) days after the date when due, and such failure continues uncured for five (5) business days after receipt of written notice thereof from Beneficiary to Trustor; or

(b) Any lien is recorded against all or any part of the Land without the Beneficiary's prior written consent, whether prior or subordinate to the lien of the Deed of Trust, and the lien is not removed from title or otherwise remedied to the Beneficiary's satisfaction within thirty (30) days after Trustor's receipt of written notice from the Beneficiary to cure the default, or, if the default cannot be cured within a 30-day period, Trustor will have ninety (90) days to cure the default, or any longer period of time deemed necessary by the Beneficiary, *provided that* Trustor commences to cure the default within the 30-day period and diligently pursues the cure to completion; provided, further, that Trustor may contest in good faith the validity or amount of any such lien as long as Trustor has furnished to Beneficiary a cash deposit, statutory release bond or other appropriate security in an amount and form reasonably satisfactory to Beneficiary to protect Beneficiary against the

creation of any lien on, or any sale or forfeiture of, any property encumbered by the Deed of Trust; or

(c) Trustor fails to perform or observe any other term, covenant or agreement contained in any Loan Document, and the failure continues for thirty (30) days after Trustor's receipt of written notice from the Beneficiary to cure the default, or, if the default cannot be cured within a 30-day period, Trustor will have ninety (90) days to cure the default, or any longer period of time deemed necessary by the Beneficiary, *provided that* Trustor commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Trustor in any Loan Document proves to have been intentionally incorrect in any material respect when made, which representation materially and adversely affects Trustor's ability to perform hereunder; or

(e) reserved

(f) Trustor is dissolved or liquidated or merged with or into any other entity; or, if Trustor is a corporation, partnership, limited liability company or trust, Trustor ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Trustor is an individual, Trustor dies or becomes incapacitated; or all or substantially all of the assets of Trustor are sold or otherwise transferred; or

(g) Without the City's prior written consent, Trustor assigns or attempts to assign any rights or interest under any Loan Document, whether voluntarily or involuntarily, other than in connection with a Permitted Transfer; or

(h) Without the City's prior written consent, Trustor voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Trustor or of its right, title or interest in the Project or the Site, other than in connection with a Permitted Transfer; or

(i) If the Deed of Trust ceases to constitute a valid and indefeasible perfected lien on the Property; or

(j) Trustor is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Trustor applies for or consents to the appointment of any

receiver, trustee or similar official for Trustor or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Trustor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Trustor or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Land, the Improvements or any other property of Trustor and is not released, vacated or fully bonded within sixty (60) days after its issue or levy.

Beneficiary agrees to accept full performance and compliance by either BRIDGE Housing Corporation or AvalonBay Communities, Inc. with any provision of the Loan Documents applicable to the obligations of Trustor in order to cure any default by Trustor under the Loan Documents.

8. Beneficiary's Rights Following Default. Upon and during the continuance of any Event of Default by Trustor:

(a) Trustor's license to collect and retain Rents will terminate automatically.

(b) Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

(c) Beneficiary may perform any of Trustor's obligations in any manner, in the Beneficiary's reasonable discretion;

(d) Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property ("Notice of Default"), and:

i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the default rate under the Note; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

9. Notices. ²All notices required by this Deed of Trust must be made in writing and may be communicated by personal delivery, facsimile (if followed within one (1) business day by first class mail), by a nationally recognized courier service that obtains receipts, or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To the City:	Real Estate Services Division San Francisco Public Utilities Commission 525 Golden Gate Avenue, 10th Floor San Francisco, California 94102 Attn: Real Estate Director Re: Balboa Reservoir
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² NOTE TO DRAFT: Update to mirror Notices provisions in final Purchase Agreement.

Telephone: (415) 487-5210
E-mail: RES@sfwater.org

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Andrico Penick, Director of Property
Re: Balboa Reservoir
Telephone: (415) 554-9823
Email: Andrico.Penick@sfgov.org

With a copy to: Elizabeth Dietrich, Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate & Finance Team
Re: Balboa Reservoir
Telephone:
E-mail:

To Trustor: Reservoir Community Partners LLC:

BHC Balboa Builders, LLC
c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108
Attn: Brad Wiblin
Telephone: 415-321-3565
E-mail: bwiblin@bridgehousing.com

With a copy to: c/o AvalonBay Communities, Inc.
455 Market Street, Suite 1650
San Francisco, CA 94105
Attn: Joe Kirchofer, Vice President, Development
Phone: 415-284-9082
E-Mail: joe_kirchofer@avalonbay.com

With a copy to: AVB Balboa LLC
c/o AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203
Attn: Brian R. Lerman, Vice President,
Associate General Counsel
Phone: 703-317-4132
E-Mail: brian_lerman@avalonbay.com

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with this Deed of Trust.

10. City's Recourse. The City's recourse against Trustor following an Event of Default is limited as set forth more specifically in Section 6.5 of the Note.

11. Partial Releases. Upon Trustor's fulfillment of the applicable terms and conditions in the Note, Beneficiary agrees upon the written request of Trustor to instruct the Trustee to execute and deliver a partial release of this Deed of Trust as follows:

(a) Upon satisfaction of the conditions precedent for a release of the Phase 1 Property pursuant to Section 5.1 of the Note, Lender will instruct Trustee to reconvey the Phase 1 Property, and Trustee shall within five (5) business days after receipt of such instructions reconvey without warranty the Phase 1 Property to Trustor.

(b) Additionally, upon the request of Trustor, and without payment of any consideration to Lender, a partial reconveyance may be given from the lien of this Deed of Trust as to any portion of the Property which is about to be conveyed to a public utility, governmental entity, or public maintenance district for easements or other public infrastructure that is necessary as part of Trustor's development of the Land in a manner consistent with the Development Agreement, provided that Trustor shall first present to Beneficiary evidence reasonably satisfactory to Beneficiary that such portion of the Property has been or is about to be conveyed for such purposes.

12. Indemnity.

(a) Trustor must Indemnify the City and its respective officers, agents and employees (individually or collectively, an “Indemnitee”) against any and all loss, liability, damage, cost, expense or charge and reasonable attorneys’ fees and costs (“Loss” or “Losses”) arising out of: (a) any default by Trustor in the observance or performance of any of Trustor’s obligations under the Loan Documents; (b) any failure of any representation by Trustor to be correct in all respects when made; (c) from and after the date Trustor acquires the Property from Beneficiary, injury or death to persons or damage to property or other loss occurring on or in connection with the Property, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) from and after the date Trustor acquires the Property from Beneficiary, any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the Loan Documents, the Loan, or the Property from and after the date the date Trustor acquires the Property from Beneficiary; (f) the occurrence, from and after the date the date Trustor acquires the Property from Beneficiary, until the expiration of the term of this Deed of Trust, of any Environmental Activity or any failure of Trustor or any other person to comply with all applicable Environmental Laws relating to the Property; (g) the occurrence, after the expiration of the term of this Deed of Trust, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring from and after the date Trustor acquires the Property from Beneficiary and before the expiration of the term of this Deed of Trust; (h) any liability of any nature arising from Trustor’s contest of or relating to the application of any law, (i) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of any of the following: (1) the Project Contracts (as defined in the Note); or (2) any agreements or any encumbrances entered into by Trustor which allow any third party the right to use or occupy any portion of the Property to the extent any such claim, demand or cause of action arises from events occurring prior to the expiration of the term of this Deed of Trust; or (j) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (i) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Trustor has indemnified the Indemnitees, upon written notice, Trustor must answer and otherwise defend the action or proceeding using counsel

approved in writing by the Indemnatee at Trustor's sole expense. Each Indemnatee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnatee in connection with the matters covered by this Agreement. The provisions of this Section will survive the repayment of the Loan.

(b) Trustor's obligations under Section 12(a) are not limited by the insurance requirements under this Deed of Trust.

13. General Provisions.

(a) Intercreditor Agreement. Beneficiary and Trustor will cooperate in good faith with providers of other financing to Trustor secured by and used for development of the Property ("Other Lenders") in the negotiation of commercially reasonable intercreditor, recognition or similar agreements between Beneficiary as senior lender and one or more of the Other Lenders, pursuant to which such lenders stipulate in advance the process related to addressing the senior lender and Other Lenders' interests, notice and cure rights in connection with such interests, and how to work in tandem in service to Trustor as their mutual borrower, provided that Beneficiary's first position security interest will not be subordinated (each, an "Intercreditor Agreement"), as required by Trustor's Other Lenders, which may include without limitation the California Department of Housing and Community Development and various private lenders, sufficient to permit Trustor to obtain the financing necessary to permit Trustor to design and construct infrastructure and conduct all other predevelopment activities associated with the construction and development of the Property as contemplated by the Balboa Reservoir Master Infrastructure Plan attached to the Development Agreement. Following review and approval by Beneficiary and approval as to form by the City Attorney's Office, Beneficiary's authorized representative will execute and deliver any approved Intercreditor Agreement. Such agreement may be executed and delivered without additional approval by the City's Board of Supervisors or the San Francisco Public Utilities Commission.

(b) Permitted Transfers. With the prior written consent of Beneficiary, Trustor may assign its rights and obligations under the Loan Documents to a Permitted Transferee under the Purchase Agreement. Consent to the transfer shall include review of evidence supporting the creditworthiness, skill, capability, and experience of the transferee and the SFPUC General Manager must be satisfied that the proposed transferee, including any single-purpose entity specifically established for development of the Property, meets the same standards of creditworthiness, skill, capability, and experience as Trustor.

(c) No Third-Party Beneficiaries. Nothing contained in this Deed of Trust, nor any act of Beneficiary, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the Beneficiary and Trustor or Trustor's agents, employees or contractors.

(d) No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the Beneficiary by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Property. Trustor must include this requirement as a provision in any contracts for the development of the Property.

(e) Entire Agreement. The Deed of Trust incorporates the terms of all agreements made by the Beneficiary and Trustor with regard to the subject matter of the Deed of Trust. No alteration or variation of the terms of this Deed of Trust will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the Beneficiary or Trustor.

(f) No Inconsistent Agreements. Trustor warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of the Loan Documents.

(g) Successors. Except as otherwise limited herein, the provisions of this Deed of Trust bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns.

(h) Severability. The invalidity or unenforceability of any one or more provisions of this Deed of Trust will in no way affect any other provision.

(i) Time. Time is of the essence in this Deed of Trust. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

(j) Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any Loan Document, that party agrees not to withhold or delay its consent or approval unreasonably.

(k) Attorneys' Fees. In the event of any legal proceedings arising from the enforcement of or a default under this Deed of Trust, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration,

mediation or bankruptcy proceeding or on appeal. For the purposes of this Deed of Trust, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney'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. An award of attorneys' fees and costs will bear interest at the default rate under the Note from the date of the award until paid.

[signatures on following page]

“TRUSTOR:”

_____ ,

a _____

By: _____ ,

Name: _____ ,

Its: _____ ,

[ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT A
Legal Description of the Land

[To Be Inserted by Title Company at Acquisition Closing]

EXHIBIT B
Insurance Requirements

Subject to approval by the City's Risk Manager of the insurers and policy forms, Trustor must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date Trustor acquires Control of the Property until the Note is fully repaid at no expense to the City:

1. Trustor, Contractors.

(a) to the extent Trustor or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) With respect to the Trustor, commercial general liability insurance, with limits no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Trustor is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for any owned, hired and non-owned auto coverage, as applicable;

2. Property Insurance.

Trustor must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction, applicable to any existing buildings that will be retained as part of the construction improvements, as well as following completion of construction, applicable to all completed Buildings constructed as part of the Project:

Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Trustor or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including

electrical arcing; one year of business interruption coverage, and with a deductible not to exceed One Hundred Thousand Dollars (\$100,000) each loss, including the City as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Trustor or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed One Hundred Thousand Dollars (\$100,000) each loss, including the City as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Trustor as dual obligees or other completion security approved by the City in its sole discretion.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

3. General Requirements.

(a) General and automobile liability policies of Trustor, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective. If notice cannot be provided by carrier, then the burden of notice to City shall be borne by the Trustor.

(c) With respect to any property insurance, Trustor hereby waives all rights of subrogation against the City to the extent of any loss covered by Trustor's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Trustor's insurance by the City will not relieve or decrease the liability of Trustor under this Agreement.

(e) The City and its officers, agents and employees will not be liable to Trustor for any required premium of policies required of or maintained by Trustor.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Trustor demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Trustor.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion.

(j) Trustor must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

EXHIBIT I

WORKFORCE DECLARATION

[See Attached]

EXHIBIT I

BALBOA RESERVOIR WORKFORCE AGREEMENT

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BALBOA RESERVOIR WORKFORCE AGREEMENT

I. Project Background.

This Workforce Agreement is attached to and made a part of the development agreement (“**Agreement**”) for the Balboa Reservoir Project (the “**Project**”). The Project involves the construction of residential dwelling units and related infrastructure and open space amenities, as described in greater detail in the Agreement. This Workforce Agreement sets forth the activities Developer shall undertake, and require their Construction Contractors, Consultants, Subcontractors, Subconsultants, and Commercial Tenants, as applicable, to undertake, to support workforce development in the construction of the Project and end use phases of the Project Site as required under this Workforce Agreement.

II. Purpose of the Workforce Agreement. This Workforce Agreement sets forth the employment and contracting requirements for the construction and operation of the Project. This Workforce Agreement has been jointly prepared by the City and Developer (on behalf of itself and its successors), in consultation with others including OEWD and other relevant City Agencies.

The purpose of this Workforce Agreement is to ensure training, employment and economic development opportunities are part of the development and operation of the Project. This Workforce Agreement creates a mechanism to provide employment and economic development opportunities for economically disadvantaged persons and San Francisco residents. The City and Developer agree that job creation and equal opportunity contracting opportunities in all areas of employment are an essential part of the redevelopment of the Project Site. The City and Developer agree that it is in the best interests of the Project and the City for a portion of the jobs and contracting opportunities to be directed, to the extent possible based on the type of work required, and subject to collective bargaining agreements, to local, small and economically disadvantaged companies and individuals whenever there is a qualified candidate.

This Workforce Agreement identifies goals for achieving this objective and outlines certain measures that will be undertaken in order to help ensure that these goals and objectives are successfully met. In recognition of the unique circumstances and requirements surrounding the Project, OEWD and Developer have agreed that this Workforce Agreement will constitute the exclusive workforce requirements for the Project.

This Workforce Agreement requires the following:

- Developer to meet the hiring and apprenticeship goals for Local Residents and Disadvantaged Workers for Construction Work on Covered Projects, as set forth in Attachment A (Local Hiring requirements).
- For any work not covered by Local Hiring requirements, Developer to enter into a First Source Hiring Agreement for Construction Work on Covered Projects, in the form attached as Attachment B.

- Developer to meet the utilization and outreach goals applicable to certain construction work for Local Business Enterprises, as set forth in Attachment C (LBE Utilization Plan).
- Developer will comply with Prevailing Wage and Working Conditions terms, as set forth in Section III.B.6.

The foregoing summary is provided for convenience and for informational purposes only. In case of any conflict between this Workforce Agreement and the Development Agreement, the provisions of this Workforce Agreement shall control.

III. Workforce Agreement.

A. DEFINITIONS

The following terms specific to this Workforce Agreement have the meanings given to them below or are defined where indicated. Other initially capitalized terms are defined in the Development Agreement. This Workforce Agreement and all Workforce-Development Plan-specific definitions will prevail over the Development Agreement in relation to the rights and obligations of Developers with respect to workforce development. All references to the Development Agreement include this Workforce Agreement unless explicitly stated otherwise.

“Apprentice” means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

“Apprenticeship” shall mean a work experience that combines formal job-related technical instruction with structured on-the-job learning experiences. Apprentices are hired by employer at outset of training program, and the training program is pre-approved by the US Department of Labor (USDOL) or California Division of Apprenticeship Standards (DAS). Apprentices receive progressive wages commensurate with their skill attainment throughout an apprenticeship training program. Upon successful completion of all phases of on-the-job learning and related instruction components, Apprentices receive nationally recognized certificates of completion issued by the USDOL or DAS.

“Building” means each of the buildings to be constructed on the Project Site under the SUD.

“Chapter 83” means Chapter 83 of the San Francisco Administrative Code (First Source Hiring Program).

“Commercial Activity” means retail sales and services, restaurant, hotel, education and office uses, technology and biotechnology business, and any other non-profit or for-profit commercial uses permitted under the SUD that are conducted within a Building.

“Construction Contractor” means a construction contractor hired by or on behalf of Developer who performs Construction Work on the Project Site or other construction work

otherwise covered under the LBE Utilization Plan or First Source Hiring Agreement for Construction (in the form of Attachment B-3).

“Construction Work” means, as applicable, (a) the construction of all Public Improvements, (b) the initial construction of Publicly Accessible Private Improvements, (c) the construction of all Buildings to be carried out by a Developer under the Development Agreement, and (d) tenant improvement work for all Buildings. For the avoidance of doubt, Construction Work for Buildings shall not include any repairs, maintenance, renovations or other construction work performed on the Building after the City issues the last Certificate of Occupancy for the entirety of the applicable Building, including all initial tenant spaces.

“Construction Workforce Requirements” is defined in Section III.B.1.

“Consultant” is defined in Attachment C.

“Covered Projects” means Construction Work with an estimated cost in excess of the Threshold Amount, as defined in Section 6.1 of the San Francisco Administrative Code.

“Developer” means each and every Developer under the Development Agreement, including any Developer of a Building. For purposes of the initial tenant improvements within a Building, Developer shall mean the property owner or tenant that is responsible for the initial tenant improvements.

“Disadvantaged Worker(s)” is defined in Attachment A.

“Final, Binding and Non-Appealable” means 90-days after the subject approval, or if a third party files an action challenging the approval during such 90-day period, thirty days after the final judgment or other resolution of the action or issue.

“FSHA” means the City’s First Source Hiring Administration.

“Horizontal Improvements” means the (a) the initial construction of all Public Improvements, and (b) the initial construction of Publicly Accessible Private Improvements.

“Local Business Enterprise(s)” or **“LBE”** means a firm that has been certified as an LBE as set forth in Administrative Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance).

“Local Resident(s)” is defined in Attachment C.

“OEWD” means the City’s Office of Economic & Workforce Development.

“OLSE” means the City’s Office of Labor Standards Enforcement.

“Permanent Employer” means each employer in a Covered Operation.

“Referral” shall mean a member of the Workforce System who has participated in an OEWD workforce training program.

“**Subconsultant**” is defined in Attachment C.

“**Subcontractor**” is defined in Attachment B-3.

“**Threshold Amount**” is defined in Section 6.1 of the Administrative Code.

B. CONSTRUCTION WORK

1. ***Application.*** Developer and Construction Contractors shall comply with the applicable provisions of this **Section III.B** (the “**Construction Workforce Requirements**”) during construction of Horizontal Improvements and Buildings.
2. ***Local Hiring Requirements.*** Developer and Construction Contractors (and their subcontractors regardless of tier) must comply with the Local Hiring Requirements set forth on Attachment A attached with respect to Construction Work (as defined therein) for Covered Projects. Local Hiring Requirements supersede the First Source Hiring Program for Construction Work.
3. ***First Source Hiring Program for Construction Work.*** Developer performing any Construction Work that is not subject to the Local Hiring Requirements will enter into a Memorandum of Understanding with the City’s First Source Hiring Administration in the form attached as Attachment B under which Developer must include in their contracts with Construction Contractors for Construction Work a requirement that the applicable Construction Contractor enter into a First Source Hiring Agreement in the form attached as Exhibit B, and to provide a signed copy of the relevant Form exhibits to the FSHA.
4. ***Local Business Enterprise Requirements.*** Developer and their respective Contractors and Consultants (as defined in Attachment C) must comply with the Local Business Enterprise Utilization Program set forth in Attachment C.
5. ***Obligations; Limitations on Liability.*** Developer shall use good faith efforts, working with the OEWD or its designee, to enforce the applicable Construction Workforce Requirements with respect to its Construction Contractors (as defined above), Contractors and Consultants (as defined in Attachment C), and each Construction Contractor, Contractor and Consultant, as applicable, shall use good faith efforts, working with OEWD or its designee, to enforce the Construction Workforce Requirements with respect to its Subcontractors and Subconsultants (regardless of tier). However, Developer shall not be liable for the failure of their respective Construction Contractors, Contractors and Consultants, and Construction Contractors, Contractors and Consultants shall not be liable for the failure of their respective Subcontractors and Subconsultants.
6. ***Prevailing Wages and Working Conditions.*** *Developer agrees that all workers performing labor in the construction of Public Improvements that will be dedicated to the City under this Agreement will: (1) pay workers performing that work not less than the Prevailing Rate of Wages as defined*

in Administrative Code section 6.22 and established under Administrative Code section 6.22(e), (2) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County in Administrative Code section 6.22(f), and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61. Any contractor or subcontractor performing a public work or constructing Public Improvements must make certified payroll records and other records required under Administrative Code section 6.22(e)(6) available for inspection and examination by the City with respect to all workers performing covered labor. OLSE enforces labor laws, and OLSE shall be the lead agency responsible for ensuring that prevailing wages are paid and other payroll requirements are met in connection with the work, as more particularly described in the Workforce Agreement.

C. GENERAL PROVISIONS

1. **Enforcement.** OEWD shall have the authority to enforce the Construction Workforce Requirements and the Operations Workforce Requirements. OEWD staff agree to work cooperatively to create efficiencies and avoid redundancies and to implement this Workforce Agreement in good faith, and to work with all of the Project's stakeholders, including Developer, and Construction Contractors (and Subcontractors) and Permanent Employers, in a fair, nondiscriminatory and consistent manner.
2. **Third Party Beneficiaries.** Each contract for Construction Work and Covered Operations shall provide that OEWD shall have third party beneficiary rights thereunder for the limited purpose of enforcing the requirements of this Workforce Agreement applicable to such party directly against such party.
3. **Flexibility.** Some jobs will be better suited to meeting or exceeding the hiring goals than others, hence all workforce hiring goals under a Construction Contract will be cumulative, not individual, goals for that Construction Contract or Permanent Employer. In addition, Developer shall have the right to reasonably spread the workforce goals, in different percentages, among separate Construction Contracts so long as the cumulative goals among all of the Construction Contracts at any given time meet the requirements of this Workforce Agreement. The parties shall make such modifications to the applicable First Source Hiring Agreements consistent with Developers' allocation. This acknowledgement does not alter in any way the requirement that Developer, Construction Contractors and Permanent Employers comply with good faith effort obligations to meet their respective participation goals for the Construction Work and Covered Operations.
4. **Exclusivity.** OEWD and Developer have agreed that this Workforce Agreement will constitute the exclusive workforce requirements for the Project.

Attachment A

Local Hiring Requirements

[see attached]

ATTACHMENT A

LOCAL HIRING PLAN FOR CONSTRUCTION

1.1 SUMMARY

- A. This Attachment A to the Balboa Reservoir Workforce Agreement (“**Local Hiring Plan**”) governs the obligations of the Project to comply with the City’s Local Hiring Policy for Construction pursuant to Chapter 82 of the San Francisco Administrative Code (the “**Policy**”). In the event of any conflict between Administrative Code Chapter 82 and this Attachment, this Attachment shall govern.
- B. The provisions of this Local Hiring Plan are hereby incorporated as a material term of the Development Agreement. Developer performing any work on City Property under the Development Agreement shall require any Contractor performing Construction Work on City Property to agree that (i) the Contractor shall comply with all applicable requirements of this Local Hiring Plan; (ii) the provisions of this Local Hiring Plan and the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Local Hiring Plan.
- C. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Local Hiring Plan and will be administering its applicable requirements. For more information on the Policy and its implementation, please visit the OEWD website at: www.workforcedevelopmentsf.org.
- D. Capitalized terms not defined herein shall have the meanings ascribed to them in the Development Agreement or the Policy, as applicable.

1.2 DEFINITIONS. For purposes of this Attachment B, the following definitions apply:

- A. “Apprentice” means any worker who is indentured in a construction Apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.
- B. “Area Median Income (AMI)” means unadjusted median income levels derived from the Department of Housing and Urban Development (“HUD”) on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
- C. “Construction Work” means the construction of all buildings and improvements located on the property under the Development Agreement.
- D. “Covered Project” means Construction Work with an estimated cost in excess of the Threshold Amount.

- E. “Contractor” means a prime contractor, general contractor, or construction manager contracted by a Developer who performs Construction Work
- F. “Disadvantaged Worker” as defined in Administrative Code Section 82.3 (as that Code Section is amended from time to time, except to the extent that future changes to the definition are prohibited under the terms of Section 5.3(b)(xi) of the Development Agreement).
- G. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of 3 business days' notice.
- H. “Local Resident” means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project.
- I. “Non-Covered Project” means any construction projects not covered by the San Francisco Local Hiring Policy.
- J. “Project Work” means Construction Work performed as part of a Covered Project.
- K. “Project Work Hours” means the total onsite work hours worked on a construction contract for a Covered Project by all Apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.
- L. “Subcontractor” means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Contractor or another subcontractor to provide services to a Contractor or another subcontractor in fulfillment of the Contractor’s or that other subcontractor’s obligations arising from a contract for construction work on a Covered Project who performs Construction Work on the 28 Acre site.
- M. “Targeted Worker” means any Local Resident or Disadvantaged Worker.
- N. “Threshold Amount” as defined in Section 6.1 of the San Francisco Administrative Code.

1.3 LOCAL HIRING REQUIREMENTS

- A. Total Project Work Hours By Trade. For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers. The mandatory participation levels required under this Local Hire

Program will be determined by OEWD for each Phase under the Development Agreement, and in no event shall be greater than 30%; however, the Parties acknowledge that Developer intends to require each construction contract for Covered Projects to meet the mandatory participation levels on an individual contract level.

- B. Apprentices. For all construction contracts for Covered Projects, at least 50% of the Project Work Hours performed by Apprentices within each trade is required to be performed by Local Residents. Hiring preferences shall be given to Apprentices who are referred by the CityBuild program. This document also establishes a goal of no less than 25% of Project Work Hours performed by Apprentices within each trade to be performed by Disadvantaged Workers.
- C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to OEWD the number of Project Work Hours performed by residents of states other than California.
- D. Pre-construction or other Local Hire Meeting. Prior to commencement of Construction Work on Covered Projects, Contractor and its Subcontractors whom have been engaged by contract and identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by Developer or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority. Contractor and its Subcontractors who are engaged after the commencement of Construction Work on a Covered Project shall attend a future preconstruction meeting or meetings as mutually agreed by Contractor and OEWD staff.
- E. This Local Hiring Plan does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Local Hiring Plan shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.
- F. Construction Work for Non-Covered Projects will be subject to the First Source Hiring Program for Construction Work in accordance with Section III.C.3 of the Workforce Agreement.

1.4 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

- A. OEWD administers the CityBuild Program. Subject to any collective bargaining agreements in the building trades and applicable law, CityBuild shall be a primary

resource available for Contractor and Subcontractors to meet Contractors' local hiring requirements under this Local Hiring Plan. CityBuild has two main goals:

1. Assist with local hiring requirements under this Local Hiring Plan by connecting Contractor and Subcontractors with qualified journey-level, Apprentice, and pre-Apprentice Local Residents.
2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.

B. Where a Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of this Local Hiring Plan, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.
2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under this Local Hiring Plan. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is a "Disadvantaged Worker" as defined above.

C. **CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS**

A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the Local Hiring Requirements of Section 1.3 on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

1. Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of this Local Hiring Plan will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the Project Work Hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.
2. Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

- a. the Targeted Workers are paid the prevailing wages or union scale for work on the Non-Covered Projects; and
 - b. such credit hours shall be committed to by the Contractor on future projects to satisfy any short fall the Contractor may have on a Covered Project. Such commitment shall be in writing by the Contractor, shall extend for a period of time negotiated between the contractor and OEWD, and shall commit to satisfying any assessed penalties should Contractor fail to achieve the required credit hours.
3. Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new Apprentices in trades in which noncompliance is likely and retaining those Apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California Department of Industrial Relations that the new Apprentices are registered and active Apprentices. Contractor will be required to write a sponsorship letter on behalf of the identified candidate to the appropriate Local Union and will make the necessary arrangements with the Union to hire the candidate as soon as s/he is indentured.
 4. Direct Entry Agreements: OEWD is authorized to negotiate and enter into direct entry agreements with Apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with this Local Hiring Plan by Contractor or its Subcontractors hiring and retaining Apprentices who are enrolled through such direct entry agreements. Contractor may also utilize OEWD-approved organizations with direct entry agreements with Local Unions, including District 10 based organizations to hire and retain Targeted Workers. To the extent that Contractor or its Subcontractors have hired Apprentices or Targeted Workers under a direct entry agreement entered into by OEWD or reasonably approved by OEWD, OEWD will not assess penalties for non-compliance with this Local Hiring Plan.
 5. Corrective Actions: Should local employment conditions be such that adequate Targeted Workers for a craft, or crafts, are not available to meet the requirements and Contractor can document their efforts to achieve the requirements through the mechanisms and processes in this document, a corrective action plan must be negotiated between Contractor and OEWD.

1.5 LOCAL HIRING FORMS

- A. Utilizing the City's online Project Reporting System, Contractors for Covered Projects shall submit the following forms, as applicable, to the Contracting City Agency and OEWD:
 1. Form 1: Local Hiring Workforce Projection. OEWD Form 1 (Local Hiring Workforce Projection), a copy of which is attached, shall be initially

submitted prior to the start of construction and updated quarterly by the Contractor until all subcontracting is completed.

2. Job Notifications. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.
3. Form 4: Conditional Waivers. If a Contractor or a Subcontractor believes the local hiring requirements cannot be met, it will submit OEWD Form 4 (Conditional Waiver), a copy of which is attached, as more particularly described in Articles 1.4 and 1.5 above.

1.6 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

- A. Subcontractor Compliance. Each Contractor and Subcontractor shall ensure that all Subcontractors agree to comply with applicable requirements of this document. All Subcontractors agree as a term of participation on the Project that the City shall have third party beneficiary rights under all contracts under which Subcontractors are performing Project Work. Such third-party beneficiary rights shall be limited to the right to enforce the requirements of this Local Hiring Plan directly against the Subcontractors. All Subcontractors on the Project shall be responsible for complying with the recordkeeping and reporting requirements set forth in this Local Hiring Plan. Subcontractors with work in excess of the of \$600,000 shall be responsible for ensuring compliance with the Local Hiring Requirements set forth in Section 1.3 of this Local Hiring Plan based on Project Work Hours performed under their Subcontracts, including Project Work Hours performed by lower tier Subcontractors with work less than the Threshold Amount.
- B. Reporting. Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and will monitor compliance with this Local Hiring Plan electronically.
- C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of Construction Work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on a Covered Project.
 1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Local Resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the Covered Project (e.g., core workforce,

name call, union hiring hall, City-designated referral source, or recruitment or hiring method) as allowed by law.

2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.
3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the OEWD.

D. Monitoring. From time to time and in its sole discretion, OEWD may monitor and investigate compliance of Contractor and Subcontractors working on a Covered Project with requirements of this Local Hiring Plan. Contractor shall allow representatives of OEWD, in the performance of their duties, to engage in random inspections of Covered Projects. Contractor and all Subcontractors shall also allow representatives of OEWD to have access to employees of the Contractor and Subcontractors and the records required to be maintained under this document.

E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of this document and the obligations set forth in this Local Hiring Plan may subject Contractor to the consequences of noncompliance, including but not limited to the assessment of penalties, but only if City determines that the failure to comply results from willful actions of Contractor and/or its Subcontractors, and not by reason of unavailability of sufficient qualified Local Residents and Disadvantaged Workers to meet the goals required hereunder. The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled.

1. **Penalties Amount.** If any Contractor or Subcontractor fails to satisfy the Local Hiring Requirements of this Local Hiring Plan applicable to Project Work Hours performed by Local Residents, and the applicable Contractor or Subcontractor is unable to provide evidence reasonably satisfactory to the City that such failure arose solely due to unavailability of qualified Local Residents despite Contractors or Subcontractors good faith efforts in accordance with this Local Hiring Program, then the Contractor, and in the case of any Subcontractor so failing, and Subcontractor shall jointly and severally forfeit to the City, an amount equal to the Journeyman or Apprentice prevailing wage rate, as applicable, with such wage as established by the Board of Supervisors or the California Department of Industrial Relations under subsection [6.22\(e\)\(3\)](#) of the Administrative Code, for the primary trade used by the Contractor or Subcontractor on the Covered Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. The assessment of penalties under this subsection shall not preclude the City from exercising any other rights or remedies to which it is entitled.

2. **Assessment of Penalties.** OEWD shall determine whether a Contractor and/or any Subcontractor has failed to comply with the Local Hire Requirement. If after conducting an investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of penalties to the Contractor and/or any Subcontractor that sets forth the basis of the assessment and orders payment of penalties in the amounts equal to the Journeyman or Apprentice prevailing wage rates, as applicable, for the primary trade used by the Contractor or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the Local Hiring Requirement. Assessment of penalties under this subsection shall be made only upon an investigation by OEWD and upon written notice to the Contractor or Subcontractor identifying the grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond pursuant to the recourse procedures prescribed in this Local Hiring Plan.
3. **Recourse Procedure.** If the Contractor or Subcontractor disagrees with the assessment of penalties, then the following procedure applies:
 - a. The Contractor or Subcontractor may request a hearing in writing within 15 days of the date of the final notification of assessment. The request shall be directed to the City Controller. Failure by the Contractor or Subcontractor to submit a timely, written request for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed final upon expiration of the 15-day period. The Contractor or Subcontractor must exhaust this administrative remedy prior to commencing further legal action.
 - b. Within 15 days of receiving a proper request, the Controller shall appoint a hearing officer with knowledge and not less than five years' experience in labor law, and shall so advise the enforcing official and the Contractor or Subcontractor, and/or their respective counsel or authorized representative.
 - c. The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.
 - d. Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.
 - e. The Contractor or Subcontractor may appeal a final determination under this by filing in the San Francisco Superior Court a petition for a writ of

mandate under California Code of Civil Procedure Section 1084 *et seq.*,
as applicable and as may be amended from time to time.

1.8 COLLECTIVE BARGAINING AGREEMENT

Nothing in this Local Hiring Plan shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreements or existing employment contracts (Collective Bargaining Agreements"). In the event of a conflict between this Local Hiring Plan and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Local Hiring Plan.

END OF DOCUMENT

FORM 1: LOCAL HIRING WORKFORCE PROJECTION

Contractor: _____ Project Name: _____ Contract #: _____

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) prior to the start of construction and quarterly until all subcontracting is complete. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount.

Will you be able to meet the mandatory Local Hiring Requirements?

- ☐ YES (Please provide information for all contractors performing construction work in Table 1 below.)
☐ NO (Please complete Table 1 below and Form 4: Conditional Waivers.)

INSTRUCTIONS FOR COMPLETING TABLE 1:

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.)
3. If you anticipate utilizing Apprentices on this project, please note the requirement that 30% of Apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: www.workforcedevelopsf.org. For assistance or questions in completing this form, contact (415) 701-4894 or Email @ Local.hire.ordinance@sfgov.org.

TABLE 1: WORKFORCE PROJECTION

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example:</i> Laborer	Contractor X	<i>Journey</i>	800	250	31%
		<i>Apprentice</i>	200	100	50%
<i>Example:</i> Laborer	Contractor Y	<i>Journey</i>	500	100	20%
		<i>Apprentice</i>	0	0	0
<i>Example:</i>	TOTAL LABORER	<i>Journey</i>	1300	350	27%
		<i>Apprentice</i>	200	100	50%
<i>Example:</i>	TOTAL		1500	450	30%
		Journey			
		Apprentice			
		Journey			
		Apprentice			

DISCLAIMER: If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.

Name of Authorized Representative Signature Date Phone Email



FORM 4: CONDITIONAL WAIVERS

Contractor: _____ **Project Name:** _____ **Contract #:** _____

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD. If applicable, each subcontractor must submit their individual Waiver request to OEWD and copy their Prime Contractor. This form can be submitted at any time.

TRADE WAIVER INFORMATION: Please provide information on the Trades you are requesting Waivers for:					
Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

☐ 1. SPECIALIZED TRADES ☐ 2. SPONSORING APPRENTICES ☐ 3. CREDIT FOR NON-COVERED PROJECTS

1. <u>SPECIALIZED TRADES:</u> Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p align="center"><i>Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:</i></p> <div> <input type="checkbox"/> MARINE PILE DRIVER <input type="checkbox"/> HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR <input type="checkbox"/> IRONWORKER CONNECTOR <input type="checkbox"/> STAINLESS STEEL WELDER <input type="checkbox"/> TUNNEL OPERATING ENGINEER <input type="checkbox"/> ELECTRICAL UTILITY LINEMAN <input type="checkbox"/> MILLWRIGHT <input type="checkbox"/> TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS. <i>LIST:</i> </div>			
a. List OEWD-approved project-specific Specialized Trades approved during the bid period:			
		OEWD APPROVAL: <input type="checkbox"/> Yes <input type="checkbox"/> No	OEWD Signature:

2. <u>SPONSORING APPRENTICES:</u> Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs?							<input type="checkbox"/> Yes	<input type="checkbox"/> No
PLEASE PROVIDE DETAILS:		Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed	
Construction Trade								
			Y <input type="checkbox"/> N <input type="checkbox"/>					
			Y <input type="checkbox"/> N <input type="checkbox"/>					
OEWD APPROVAL: <input type="checkbox"/> Yes <input type="checkbox"/> No				OEWD Signature:				

3. <u>CREDIT for HIRING on NON-COVERED PROJECTS:</u> If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects?					<input type="checkbox"/> Yes	<input type="checkbox"/> No
PLEASE PROVIDE DETAILS:		Est. # of Off- site Hire s	Est Total Work Hours Performed	Offsite Project Name	Project Address	
Labor Trade, Position, or Title						
	Journey					
	Apprentice					
			OEWD APPROVAL: <input type="checkbox"/> Yes <input type="checkbox"/> No		OEWD Signature:	

ATTACHMENT B
FORM OF FIRST SOURCE HIRING AGREEMENT FOR CONSTRUCTION

[see attached]

City and County of San Francisco First Source Hiring Program



Office of Economic and Workforce Development
Workforce Development Division

First Source Hiring Agreement For Construction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of , by and between the City and County of San Francisco (the “City”) through its First Source Hiring Administration (“FSHA”) and (“Project Sponsor”).

WHEREAS, Project Sponsor, as developer, proposes to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces (“Project”) at , Lots in Assessor’s Block , San Francisco California (“Site”); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a “First Source Hiring Program” which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

- A. Project Sponsor, upon entering into a contract for the construction of the Project with Contractor after the date of this MOU, will include in that contract a provision requiring the Contractor to enter into a First Source Hiring Agreement in the form attached as Exhibit A. It is the Project Sponsor’s responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.
- B. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified (as defined in Exhibit A) Economically Disadvantaged Individuals for employment on the construction phase of the Project as required under Chapter 83. The First Source Hiring Program will provide referrals of Qualified Economically Disadvantaged Individuals for the permanent jobs located within the commercial space of the Project.

- C. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.
- D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.
- E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.
- F. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.
- G. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____	Date: _____
Name of Authorized Signer: _____	Email: _____
Company: _____	Phone: _____
Address: _____	
Project Sponsor: _____	
Contact: _____	Phone: _____
Address: _____	Email: _____

_____ Date: _____

First Source Hiring Administration
 OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
 Attn: Ken Nim, CityBuild Director, ken.nim@sfgov.org

**Exhibit A:
First Source Hiring Agreement**

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.
- c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two

hiring opportunities for carpentry on the Project.

- d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.
- e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.
- f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.
- g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.
- h. "Entry Level Position". A position that requires less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.
- i. "First Opportunity". Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.
- j. "Job Classification". Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.
- k. "Job Notification". Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.
- l. "Publicize". Advertise or post available employment information, including participation in job fairs or other forums.
- m. "Qualified". An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.
- n. "System". The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.
- o. "System Referrals". Referrals by CityBuild of Qualified applicants for Entry

Level Positions with Contractor.

- p. “Subcontractor”. A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

- a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)’s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor’s employment needs under the Contract:

- i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.
 - ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each of its Subcontractors.
 - iii. Contractor will collaborate with CityBuild staff to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.
 - iv. Contractor and Subcontractors will provide documented verification that its “core” employees for this contract meet the definition listed in Section 1.a.
- b. The Contractor shall perform the following in its good faith efforts to meet the hiring goals set forth in this Agreement:
 - i. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.
 - ii. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

- (A) If Contractor meets the criteria in Section 5(a) below that establishes “good faith efforts” of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and
 - (B) After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes “good faith efforts” of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.
- c. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the first opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor’s only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

- a. Contractor shall notify the appropriate union(s) of the Contractor’s obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).
- b. Contractor shall use “name call” privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).
- c. Contractor shall sponsor Qualified Apprenticeship applicants, referred through the

System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS
HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

- a. *Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and*
- b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11(c) below.
- c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code- Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.
- d. Contact a CityBuild representative to review your hiring projections and goals for the Project. The Project developer and/or Contractor must take active steps to advise all of its Subcontractors of the local hiring obligations on the Project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project
- e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the Project's duration.
- f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).
- g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

- h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on the Project in a timely matter in order to facilitate CityBuild's notification to these unions of the Project's workforce requirements.
- i. Submit a "Job Request" in the form attached as Attachment A-1, Form 3, to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.
- j. Developer has an ongoing, affirmative obligation and must advise each of its Subcontractors of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.
- k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, Project developer and/or Contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, Project developer and/or Contractor will request a meeting with the Project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.
- l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the Project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.
- m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the Contractor and/or Project developer through a San Francisco community-based organization whom the Contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the Project developer and/or Contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and the City's online project reporting system (currently Elation), provided,

however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, “essential functions” means those functions absolutely necessary to remain open for business.

8. CONTRACTOR’S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

- a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.
- b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor’s Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;
- c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;
- d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;
- e. Follow up with Contractor on outcomes of System Referrals and initiate

corrective action as necessary to maintain an effective employment/training delivery system;

- f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and
- g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

- a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:
 - (1) Applicants
 - (2) Job offers
 - (3) Hires
 - (4) Rejections of applicants
- b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.
- c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1)

business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, CityBuild Director,
ken.nim@sfgov.org

If to CityBuild:

CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, CityBuild Director,
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

- a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A “business day” is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.
- b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, “Contractor Reports”) shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____

Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____



FORM 1: CITYBUILD WORKFORCE PROJECTION

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of \$100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*

Construction Project Name: _____	Construction Project Address: _____
Projected Start Date: _____	Contract Duration: _____ (calendar days)
Company Name: _____	Company Address: _____
Main Contact Name: _____	Main Phone Number: _____
Main Contact Email : _____	
Name of Person with Hiring Authority: _____	Hiring Authority Phone Number: _____
Hiring Authority Email: _____	

_____ Name of Authorized Representative	_____ Signature of Authorized Representative*	_____ Date
--	--	---------------

***By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.**

Table 1: Briefly summarize your contracted or subcontracted scope of work

--

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*
- *Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.*

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			
	J <input type="checkbox"/> A <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>			

Table 3: List your core or existing employees projected to work on the project

- Please provide information on your projected core or existing employees that will perform work on the jobsite.
- "Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
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		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		

FOR CITY USE ONLY: CityBuild Staff: _____		Approved: Yes <input type="checkbox"/> No <input type="checkbox"/>	Date: _____
Reason: _____			



FORM 3: CITYBUILD JOB NOTICE FORM

INSTRUCTIONS: To meet the requirements of the First Source Hiring Program (San Francisco Administrative Code Chapter 83), the Contractor shall notify CityBuild, the First Source Hiring Administrator, of all new hiring opportunities with a minimum of 3 business days prior to the start date.

1. Complete the form and fax to CityBuild 415-701-4896 or EMAIL: workforce.development@sfgov.org
2. Contact Workforce Development at 415-701-4848 or by email: local.hire.ordinance@sfgov.org

OR call the main line of the Office of Economic and Workforce Development (OEWD) at 415-701-4848 to confirm receipt of fax or email.

ATTENTION: Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.

Section A. Job Notice Information

Trade _____ # of Journeymen _____ # of Apprentices _____

Start Date _____ Start Time _____ Job Duration _____

Brief description of your scope of work: _____

Section B. Union Information (Union contractors complete Section B. Otherwise, leave Section B blank)

Local # _____ Union Contact Name _____ Union Phone # _____

Section C. Contractor Information

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Contact Signature

Date

OEWD USE ONLY Able to Fill Yes ☐ No ☐

ATTACHMENT C
LBE UTILIZATION PLAN

[see attached]

ATTACHMENT C

LBE UTILIZATION PLAN

1. Purpose and Scope. This Attachment C ("**LBE Utilization Plan**") governs the Local Business Enterprise obligations of the Project pursuant to San Francisco Administrative Code Section 14B.20 and satisfies the obligations of each Project Sponsor and its Contractors and Consultants for a LBE Utilization Plan as set forth therein. Capitalized terms not defined herein shall have the meanings ascribed to them in the Workforce Plan or Section 14B.20 as applicable. Developer will seek to, whenever practicable, conduct outreach to contracting teams that reflect the diversity of the City and include participation of both businesses and residents from the City's most disadvantaged communities such as, but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods. In the event of any conflict between Administrative Code Chapter 14B and this Attachment, this Attachment shall govern.
2. Roles of Parties. In connection with the design and construction phases of all Construction Work (as defined in the Workforce Plan), the Project will provide community benefits designed to foster employment opportunities for disadvantaged individuals by offering contracting and consulting opportunities to local business enterprises ("LBEs"). Each Project Sponsor shall participate in a local business enterprise program, and the City's Contract Monitoring Division will serve the roles as set forth below.
3. Definitions. For purposes of this Attachment, the definitions shall be as follows:
 - a. "CMD" shall mean the Contract Monitoring Division of the City Administrator's Office.
 - b. "Commercially Useful Function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the Contracting Party as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the Contracting Party.
 - c. "Consultant" shall mean a person or company that has entered into a professional services contract for monetary consideration with a Project Sponsor to provide advice or services to the Project Sponsor directly related to the architectural or landscape design, physical planning, and/or civil, structural or environmental engineering of an LBE Improvement.
 - d. "Contract(s)" shall mean an agreement, whether a direct contract or subcontract, for Consultant or Contractor services for all or a portion of an LBE Improvement.
 - e. "Contracting Party" means a Project Sponsor, Contractor or Consultant retained to work on LBE Improvements, as the case may be.

- f. "Contractor" shall mean a prime contractor, general contractor, or construction manager contracted by a Project Sponsor who performs construction work on an LBE Improvement.
- g. "Follow-on Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to an approved building permit or site permit/addenda issued after the building permit or site permit/addenda for the Initial Tenant Improvements.
- h. "Good Faith Efforts" shall mean procedural steps taken by the Project Sponsor, Contractor or Consultant with respect to the attainment of the LBE participation goals, as set forth in Section 7 below.
- i. "Initial Tenant Improvements" means tenant improvements within commercial spaces in residential or commercial buildings (office, retail) that are constructed pursuant to the first building permit or site permit/addenda issued for such spaces after completion of building core and shell.
- j. "Local Business Enterprise" or "LBE" means a business that is certified as an LBE under Chapter 14B.3.
- k. "LBE Liaison" shall mean the Project Sponsor's primary point of contact with CMD regarding the obligations of this LBE Utilization Plan. Each prime Contractor(s) shall likewise have a LBE Liaison.
- l. "LBE Improvements" means, as applicable, (a) all Horizontal Improvements required or permitted to be made to the Project Site to be carried out by Developer under the Development Agreement and (b) Workforce Buildings.
- m. "Project Sponsor" shall mean the Developer of Horizontal Improvements or of Buildings constructed pursuant to the Development Agreement.
- n. "Subconsultant" shall mean a person or entity that has a direct Contract with a Consultant to perform a portion of the work under a Contract for an LBE Improvement.
- o. "Subcontractor" shall mean a person or entity that has a direct Contract with a Contractor to perform a portion of the work under a Contract for Construction Work.
- p. "Workforce Buildings" means the following: (i) residential buildings, including associated residential units, common space, amenities, parking and back of house construction; (ii) commercial office, retail, parking buildings core & shell; (iii) tenant improvement for all commercial spaces in residential or commercial buildings (office, retail) which are 15,000 square feet (per square footage on building permit application) and above; and (iv) all construction related to standalone affordable housing buildings. Workforce Buildings shall expressly exclude residential owner-contracted improvements in for-sale residential units. Developer will use good faith efforts to hire LBEs for ongoing service contracts (e.g. maintenance, janitorial,

landscaping, security etc.) within Workforce Buildings and advertise such contracting opportunities with CMD except to the extent impractical or infeasible. If a master association is responsible for the operation and maintenance of publicly owned improvements within the Project Site, CMD shall refer LBEs to such association for consideration with regard to contracting opportunities for such improvements. Such association will consider, in good faith such LBE referrals, but hiring decisions shall be entirely at the discretion of such association.

4. LBE Participation Goal. Project Sponsor agrees to participate in this LBE Utilization Plan and CMD agrees to work with Project Sponsor in this effort, as set forth in this Attachment C. As long as this Attachment C remains in full force and effect, each Project Sponsor shall make good faith efforts as defined below to achieve an overall LBE participation goal of percent (%) of the total cost of all Contracts for an LBE Improvement awarded to LBE Contractors, Subcontractors, Consultants or Subconsultants that are Small and Micro-LBEs, as set forth in Administrative Code Section 14B.8(A); Follow-on Tenant Improvements and services are not included in the numerical goal. Notwithstanding the foregoing, CMD's Director may, in his or her discretion, provide for a downward adjustment of the LBE participation requirement, depending on LBE participation data presented by the Project Sponsor and its team in quarterly and annual reports and meetings. Where, based on reasonable evidence presented to the Director by a party attempting to achieve the LBE Participation goals, that there are not sufficient qualified Small and Micro-LBEs available, the Director may authorize the applicable party to satisfy the LBE participation goal through the use of Small, Micro or SBA-LBEs (as each such term is defined is employed in Chapter 14B of the Administrative Code), or may set separate subcontractor participation requirements for Small and Micro- LBEs, and for SBA-LBEs.

5. Project Sponsor Obligations. For each LBE Improvement, the Project Sponsor shall comply with the requirements of this Attachment C as follows: Upon entering into a Contract with a Contractor or Consultant, each Project Sponsor will include each such Contract a provision requiring the Contractor or Consultant to comply with the terms of this Attachment C, and setting forth the applicable percentage goal for such Contract, and provide a signed copy thereof to CMD within 10 business days of execution. Such Contract shall specify the notice information for the Contractor or Consultant to receive notice pursuant to Section 17. Each Project Sponsor shall identify a "LBE Liaison" as its main point of contact for outreach/compliance concerns. The LBE Liaison shall be a LBE Consultant with the experience in and responsible for making recommendations on how to maximize engagement of local small businesses/LBEs from disadvantaged communities including but not limited to the Bayview/Hunters Point, Chinatown, Mission, South of Market, Tenderloin, Visitacion Valley and Western Addition neighborhoods.. The LBE Liaison shall be available to meet with CMD staff on a regular basis or as necessary regarding the implementation of this Attachment C. For the term of the Development Agreement, at least once per year, each Project Sponsor shall hold a public workshop for applicable contractor communities to publicize anticipated contracting opportunities for LBE Improvements for the succeeding year, which workshops may be held independently or in conjunction with each other. Each Project Sponsor will use good faith efforts to hire Small, Micro or SBA-LBEs for ongoing service contracts including janitorial, security and parking management contracts and advertise these contracting opportunities with the CMD except to the extent impractical or infeasible (e.g., a parking management contract

cannot be broken down to allow two parking operators). Each Project Sponsor agrees to utilize a “subguard” policy or other means (i.e., OCIP or CCIP) to provide bonding capacity or assistance for LBEs working on the Project at the developer or contractor’s option, should the firm be required to bond. Developer agrees to work in good faith with CMD to set aside at least 50% of eligible contracts that are under the City’s Threshold Amount or Minimum Competitive Amounts (for formal contracting)³ to be let as Micro-LBE set-aside contracts.

If a Project Sponsor fulfills its obligations as set forth in this Section 6 and otherwise cooperates in good faith at CMD's request with respect to any meet and confer process or enforcement action against a non-compliant Contractor, Consultant, Subcontractor or Subconsultant, then it shall not be held responsible for the failure of a Contractor, Consultant, Subcontractor or Subconsultant or any other person or party to comply with the requirements of this Attachment C.

7. Good Faith Efforts. City acknowledges and agrees that each Project Sponsor, Contractor, Subcontractor, Consultant and Subconsultant shall have the sole discretion to qualify, hire or not hire LBEs. If a Contractor or Consultant does not meet the LBE hiring goal set forth above, it will nonetheless be deemed to satisfy the good faith effort obligation of this Section 7 and thereby satisfy the requirements and obligations of this Attachment C if the Contractor, Consultants and their Subcontractors and Subconsultants, as applicable, perform the good faith efforts set forth in this Section 7 as follows:

- a. Advance Notice. Notify CMD in writing of all upcoming solicitations of proposals for work under a Contract at least 15 business days before issuing such solicitations to allow opportunity for CMD to identify and outreach to any LBEs that it reasonably deems may be qualified for the Contract scope of work.
- b. Contract Size. Where practicable, the Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant, in their sole discretion, may divide the work in order to encourage maximum LBE participation or, encourage joint venturing. The Contracting Party will identify specific items of each Contract that may be performed by Subcontractors. Developer agrees to work with CMD to set aside at least 50% of eligible contracts that are under the City’s Threshold Amount or Minimum Competitive Amounts to be let as Micro-LBE set-aside contracts.
- c. Advertise. The Project Sponsor, Contractor, Consultant, Subcontractor or Subconsultant may advertise for at least 30 days professional services and contracting opportunities in media focused on small businesses including the City’s SF City Partners Website (<https://sfcitypartner.sfgov.org/pages/index.aspx>) and other local and trade publications, and allowing subcontractors to attend outreach events, pre-bid meetings, and inviting LBEs to submit bids to Project Sponsor or its prime Contractor or Consultant, as applicable. As Contractor deems necessary,

³ The Threshold Amount for the procurement of construction services and general services is currently \$706,000, effective January 1, 2020. The Minimum Competitive Amounts for the procurement of Professional Services and Commodities is \$129,000, effective January 1, 2020. (Note: The Controller’s Office is charged with recalculating the CPI, inflation-adjusted “Threshold Amounts” and the “Minimum Competitive Amounts” as defined in Chapter 6 and Chapter 21 of the San Francisco Administrative Code)

convene pre-bid or pre-solicitation meetings no less than 15 days prior to the opening of bids and proposals for LBEs to ask questions about the selection process and technical specifications/requirements.

- d. **CMD Invitation.** If a pre-bid meeting or other similar meeting is held with proposed Contractors, Subcontractors, Consultants or Subconsultants, invite CMD to the meeting to allow CMD to explain proper LBE utilization.
- e. **Public Solicitation.** The Project Sponsor or its prime Contractor(s) and/or Consultants, as applicable, will work with CMD to follow up on initial solicitations of interest by contacting LBEs to determine with certainty whether they are interested in performing specific items in a project.
- f. **Outreach and Other Assistance.** The Project Sponsor or its prime Contractor (s) and/or Consultants, as applicable, will a) provide LBEs with plans, specifications and requirements for all or part of the project; b) notify LBE trade associations that disseminate bid and contract information and provide technical assistance to LBEs. The designated LBE Liaison(s) will work with CMD to conduct outreach to LBEs for all consulting/contracting opportunities in the applicable trades and services in order to encourage them to participate on the project.
- g. **Contacts.** Make contacts with LBEs, associations or development centers, or any agencies, which disseminate bid and contract information to LBEs and document any other efforts undertaken to encourage participation by LBEs.
- h. **Good Faith/Nondiscrimination.** Make good faith efforts to enter into Contracts with LBEs and give good faith consideration to bids and proposals submitted by LBEs. Use nondiscriminatory selection criteria (for the purpose of clarity, exercise of subjective aesthetic taste in selection decisions for architect and other design professionals shall not be deemed discriminatory and the exercise of its commercially reasonable judgment in all hiring decisions shall not be deemed discriminatory).
- i. **Incorporation into contract provisions.** Project Sponsor shall include in Contracts provisions that require prospective Contractors and Consultants that will be utilizing Subcontractors or Subconsultants to follow the above good faith efforts to subcontract to LBEs, including the overall LBE participation goal and any LBE percentage that may be required under such Contract (Note: Developer/applicable tenants shall follow this programs Good Faith Efforts for Follow-on Tenant Improvements and services, but such work is not subject to the numerical LBE goal).
- j. **Monitoring.** Allow CMD Contract Compliance unit to monitor Consultant/Contractor selection processes and, when necessary give suggestions as to how best to maximize LBEs ability to complete and win procurement opportunities.
- k. **Maintain Records and Cooperation.** Maintain records of LBEs that are awarded Contracts, not discriminate against any LBEs, and, if requested, meet and confer

with CMD as reasonably required in addition to the meet and confer sessions described in Section 10 below to identify a strategy to meet the LBE goal;

- l. Quarterly and Annual Reports. During construction, the LBE Liaison(s) shall prepare a quarterly and annual report of LBE participation goal attainment and submit to CMD as required by Section 10 herein; and
 - m. Meet and Confer. Attend the meet and confer process described in Section 10.
8. Good Faith Outreach. Good faith efforts shall be deemed satisfied solely by compliance with Section 7. Contractors and Consultants, and Subcontractors and Subconsultants as applicable shall also work with CMD to identify from CMD's database of LBEs those LBEs who are most likely to be qualified for each identified opportunity under Section 7.a, and following CMD's notice under Section 9.a, shall undertake reasonable efforts at CMD's request to support CMD's outreach identified LBEs as mutually agreed upon by CMD and each Contractor or Consultant and its Subcontractors and Subconsultants, as applicable.
9. CMD Obligations. The following are obligations of CMD to implement this LBE Utilization Plan:
- a. During the fifteen (15) business day notification period for upcoming Contracts required by Section 7.a, CMD will work with the Project Sponsor and its Contractor and/or Consultant as applicable to send such notification to qualified LBEs to alert them to upcoming Contracts.
 - b. Provide assistance to Contractors, Subcontractors, Consultants and Subconsultants on good faith outreach to LBEs.
 - c. Review quarterly reports of LBE participation goals; when necessary give suggestions as to how best to maximize LBEs ability to compete and win procurement opportunities.
 - d. Perform other tasks as reasonably required to assist the Project Sponsor and its Contractors, Subcontractors, Consultants and Subconsultants in meeting LBE participation goals and/or satisfying good faith efforts requirements.
 - e. Insurance and Bonding. Recognizing that lines of credit, insurance and bonding are problems common to local businesses, CMD staff will be available to explain the applicable insurance and bonding requirements, answer questions about them, and, if possible, suggest governmental or third-party avenues of assistance.
10. Meet and Confer Process. Commencing with the first Contract that is executed for an LBE Improvement, and every six (6) months thereafter, or more frequently if requested by either CMD, Project Sponsor or a Contractor or Consultant and the CMD shall engage in an informal meet and confer to assess compliance of such Contractor and Consultants and its Subcontractors and Subconsultants as applicable with this Attachment C. When deficiencies are noted, meet and confer with CMD to ascertain and execute plans to increase LBE participation.

11. Prohibition on Discrimination. Project Sponsors shall not discriminate in its selection of Contractors and Consultants, and such Contractors and Consultants shall not discriminate in their selection of Subcontractors and Subconsultants against any person on the basis of race, gender, or any other basis prohibited by law. As part of its efforts to avoid unlawful discrimination in the selection of Subconsultants and Subcontractors, Contractors and Consultants will undertake the Good Faith Efforts and participate in the meet and confer processes as set forth in Sections 7 and 10 above.

12. Collective Bargaining Agreements. Nothing in this Attachment C shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, project labor agreement, project stabilization agreement, existing employment contract or other labor agreement or labor contract ("Collective Bargaining Agreements"). In the event of a conflict between this Attachment C and a Collective Bargaining Agreement, the terms of the Collective Bargaining Agreement shall supersede this Attachment C.

13. Reporting and Monitoring. Each Contractor, Consultant, and its Subcontractors and Subconsultants as applicable shall maintain accurate records demonstrating compliance with the LBE participation goals, including keeping track of the date that each response, proposal or bid that was received from LBEs, including the amount bid by and the amount to be paid (if different) to the non-LBE contractor that was selected, documentation of any efforts regarding good faith efforts as set forth in Section 7. Project Sponsors shall create a reporting method for tracking LBE participation. Data tracked shall include the following (at a minimum):

- a. Name/Type of Contract(s) let (e.g. civil engineering contract, environmental consulting, etc.)
- b. Name of Contractors (including identifying which are LBEs and non-LBEs)
- c. Name of Subcontractors (including identifying which are LBEs and non-LBEs)
- d. Scope of work performed by LBEs (e.g. under an architect, an LBE could be procured to provide renderings)
- e. Dollar amounts associated with both LBE and non-LBE Contractors at both prime and Subcontractor levels.
- f. Total LBE participation is defined as a percentage of total Contract dollars.
- g. Outcomes with respect to Developer's efforts to engage (hire) local small businesses/LBEs from disadvantaged communities including the 94124, 94134 and 94107 zip codes.

14. Written Notice of Deficiencies. If based on complaint, failure to report, or other cause, the CMD has reason to question the good faith efforts of a Project Sponsor, Contractor, Subcontractor, Consultant or Subconsultant, then CMD shall provide written notice to the Project Sponsor, each affected Contractor or Consultant and, if applicable, also to its Subcontractor or Subconsultant. The Contractor or Consultant and, if applicable, the Subcontractor or

Subconsultant, shall have a reasonable period, based on the facts and circumstances of each case, to demonstrate to the reasonable satisfaction of the CMD that it has exercised good faith to satisfy its obligations under this Attachment C. When deficiencies are noted CMD staff will work with the appropriate LBE Liaison(s) to remedy such deficiencies.

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

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

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

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

For all other violations of this Attachment C, the sole remedy for violation shall be specific performance, without the limits with respect thereto in Section 9.3 of the Development Agreement.

16. Duration of this Agreement. This Attachment C shall terminate (i) as to each work of Horizontal Improvement where work has commenced under the Development Agreement, upon a determination by the City that such Horizontal Improvement is complete; and (ii) as to each Workforce Building, upon the issuance of the last Certificate of Occupancy for such Workforce Building (i.e., upon completion of the Workforce Building); and (iii) as to all Initial Tenant Improvements and Follow-on Tenant Improvements, ten (10) years after issuance of the last Temporary Certificate of Occupancy for the Buildings in which the Initial Tenant Improvements or Follow-on Tenant Improvements are located. Upon such termination, this Attachment C shall be of no further force and effect.

17. Notice. All notices to be given under this Attachment C shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to CMD:

Attn: _____

If to Project Sponsor:

Attn: _____

If to Contractor:

Attn: _____

If to Consultant:

Attn: _____

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

EXHIBIT J

INSURANCE

During the term of this Agreement, Buyer shall at its own costs and expense at all times while accessing the Property prior to Closing in connection with its right to do so hereunder (the “**Permitted Activities**”), procure and maintain and shall cause all Agents to procure and maintain, insurance in the following amounts and coverages; provided, however that Contractor’s Pollution Liability insurance specified below shall be provided only by Buyer or Buyer’s Agents that perform invasive testing on the Property or that perform removal or transport of any Hazardous Material from the Property:

- (a) Workers' Compensation as required by laws, with Employers' Liability limits not less than \$1,000,000 for each accident, injury or illness.
- (b) Commercial General Liability Insurance with limits not less than \$2,000,000 for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 General Annual Aggregate Limit (other than Products-Completed Operations). The Commercial General Liability Insurance provided shall cover any property damage or personal injury resulting from any work conducted as part of the Permitted Activities.
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
- (d) Contractor's Pollution Legal Liability Insurance with combined single limit of \$1,000,000 each claim, \$2,000,000 policy aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.
- (e) All policies and certificates shall be endorsed to provide that no cancellation for any reason, non-renewal, major change of coverage, or expiration shall become effective or occur until at least thirty (30) days' notice, if commercially available. Buyer shall provide thirty (30) days' advance written notice to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Within five (5) business day of receiving any notice from its insurance provider or broker of intent to cancel, or materially reduce, or cancellation, material reduction, or depletion of, its required coverage, Buyer shall provide a copy of such notice to City and take prompt action to prevent cancellation, material reduction, or depletion of coverage, reinstate or replenish the cancelled, reduced, or depleted coverage, or obtain the full coverage required by this Exhibit (Insurance) from a different insurer meeting the qualifications of this Exhibit. Notice to City shall be delivered to the address(es) for City set forth in the Agreement.
- (f) If at any time during the term of this Agreement, Buyer or its Agents, as the case may be, fails to maintain the required insurance in full force and effect, all work on the Property

under the Agreement shall be discontinued immediately, and shall not resume until City receives notice that the required insurance has been renewed to full force and effect for a period satisfactory to City.

(g) City's approval of insurance shall not relieve or decrease the liability of Buyer or its Agents under this Agreement.

(h) Certificates of insurance, in form and with insurers satisfactory to the City, evidencing all coverages above shall be furnished to the City before commencement of any Permitted Activities under this Agreement, with complete copies of policies to be furnished promptly upon City's request.

(i) Buyer's provision of satisfactory evidence of the insurances required pursuant to this Exhibit is a condition precedent to Buyer engaging in the Permitted Activities.

(j) The parties release each other, and their respective authorized representatives, from any claims for damage to the Property or personal property of either City or Buyer in or on the Property which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

(k) All policies required by this Agreement shall provide for the following: (i) be issued by one or more companies of recognized responsibility approved to do business in the State of California with financial rating of at least a Class A-VII (or its equivalent successor) status, as rated in the most recent edition of A.M. Best's "Best's Insurance Reports"; (ii) name as additional insureds the City and County of San Francisco, its Public Utilities Commission and its commissioners, officers, agents, and employees; (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limit of liability; and (iv) include a waiver of subrogation endorsement or provision wherein the insurer acknowledges acceptance of Buyer's waiver of claims against City. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury, or damage that occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(l) Buyer shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required by this Agreement, together with complete copies of the policies at City's request. Buyer and its contractors shall submit or cause their respective insurance brokers to submit requested information through the Exigis insurance verification program designated by City or any

successor program used by City for verification of Buyer and contractor insurance coverage. If Buyer shall fail to procure such insurance, or to deliver such policies or certificates, at its option, City may procure the same for the account of Buyer, and Buyer shall reimburse City for any costs so paid by City within five (5) business days after delivery to Buyer of bills therefor.

(m) Should any of the required insurance (except Contractor's Pollution Liability) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(n) Should any of the required insurance be provided under a claims-made form (except Contractor's Pollution Liability), Buyer shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of two (2) years beyond the Agreement expiration or termination, to the effect that should any occurrences during the Agreement term give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

EXHIBIT K

BILL OF SALE

[See Attached]

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, THAT CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission ("**Seller**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) lawful money of the United States and other good and lawful consideration, to it paid by _____, a _____, whose address is _____ ("**Buyer**"), the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, conveyed, sold, transferred and delivered, and by these presents does grant, bargain, convey, sell, transfer and deliver unto the said Buyer, its successors and assigns, all of its right, title, and interest, if any, and solely to the extent transferrable, in and to all personal property owned by Seller located upon or used in connection with the operation of that certain real property located in San Francisco County, California, and being more particularly described in **Exhibit "A"** attached hereto and made a part hereof by reference. The foregoing conveyance is expressly made "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AS OF THE DATE HEREOF, WITHOUT ANY RECOURSE, REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, except only as expressly provided in that certain Agreement for Sale of Real Estate dated _____, by and between Seller and Buyer.

TO HAVE AND TO HOLD the same under the Buyer, its successors and assigns forever.

[signature page follows]

NOW THEREFORE, the Seller has hereunto set its hand and seal effective the _____ day of _____, _____.

SELLER:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission
Date: _____

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

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION
Pursuant to Resolution No. _____
Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS
Pursuant to Resolution No. _____
Adopted _____

EXHIBIT L

GENERAL ASSIGNMENT

[See Attached]

ASSIGNMENT OF INTANGIBLE PROPERTY RIGHTS

THIS ASSIGNMENT is made as of _____ by **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its Public Utilities Commission ("**Assignor**") in favor of _____, a _____ ("**Assignee**").

WITNESSETH :

WHEREAS, Assignor is on this date conveying to Assignee that certain real property (the "**Property**") legally described as follows: see Exhibit A attached hereto and by this reference made a part hereof.

WHEREAS, Assignor has agreed to assign to Assignee certain appurtenances, documents, intangibles and other interests pertaining to the Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign, transfer, grant and convey unto Assignee, all of Assignor's right, title and interest in or to all the intangible property whatsoever in any way affecting or pertaining to the use, development or operation of the Property, that are possessed by Assignor with respect to the Property. This Assignment is made by Assignor without representation or warranty of any kind, except only as expressly provided in that certain Agreement for Sale of Real Estate dated _____, by and between Assignor and Assignee.

[Signatures Begin On Next Page]

NOW THEREFORE, this Assignment has been duly executed by the Assignor as of the day and year first set forth above.

SELLER:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission
Date: _____

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

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION
Pursuant to Resolution No. _____
Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS
Pursuant to Resolution No. _____
Adopted _____

EXHIBIT M

RECOGNITION AGREEMENT

[See Attached]

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (the “**Agreement**”) is made as of the ____ day of _____, 2020 (the “**Effective Date**”), by and among: (i) the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its Public Utilities Commission, (ii) RESERVOIR COMMUNITY PARTNERS, LLC, a Delaware limited liability company (“**RCP**”), (iii) BHC BALBOA BUILDERS, LLC, a California limited liability company (“**BHC**”), and (iv) AVB BALBOA, LLC, a Delaware limited liability company (“**AVB**”).

RECITALS

A. Simultaneously with the Effective Date, City (as Seller) and RCP (as Buyer) entered into that certain Agreement for Sale of Real Estate (the “**PSA**”) with respect to that certain approximately 16-acre property owned by City commonly known as the “Balboa Reservoir” site, as more particularly described in the PSA (the “**Property**”).

B. RCP intends to transfer its rights under the PSA to BHC in accordance with Section 11.2 of the PSA (the “**PSA Assignment**”).

C. Pursuant to the terms and conditions of Section 11.2 of the PSA, City has consented to the assignment of all (but not a portion) of the rights and obligations of Buyer under the PSA, by RCP to BHC and by BHC to AVB, provided that Buyer is not released from any past or prospective liability or obligation under the PSA.

D. City, RCP, BHC and AVB desire to enter into this Agreement to memorialize their understanding and agreement with respect to certain matters pertaining to the PSA and the PSA Assignment.

NOW, THEREFORE, for and in consideration of the Property and other good and valuable consideration, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Definitions. Unless otherwise defined to the contrary in this Agreement, capitalized terms used in this Agreement shall have the corresponding meaning set forth for such terms in the PSA.

3. Recognition. If the PSA is assigned by RCP to BHC pursuant to Section 11.2(c)(i) of the PSA, then this Section 3 shall apply.

(a) Reassignment Notice. City acknowledges that AVB and BHC have represented to City that AVB and BHC are the parties to a separate agreement (the “**AVB/BHC Agreement**”) pursuant to which AVB has the right to require BHC to assign all of its rights and obligations (but not a portion of its rights and obligations) under the PSA to AVB in the event of BHC’s uncured default under the PSA (the “**Reassignment Rights**”). City is not a party to the AVB/BHC Agreement and has no independent knowledge of the AVB/BHC Agreement. In the event that AVB’s Reassignment Rights are exercised under the AVB/BHC Agreement and provided that AVB’s exercise of the Reassignment Rights is made concurrently with an approved

assignment of all of the rights and obligations under the Development Agreement from BHC to AVB in substantially the form required by the Development Agreement (and that BHC is not released from any past or prospective liability or obligation under the PSA), then each of AVB and BHC shall notify City within five (5) business days of such event that AVB has exercised its Reassignment Rights (which notices will include an executed copy of the BHC/AVB PSA Assignment (as defined in the PSA) and the corresponding executed Development Agreement assignment). After receipt of such notices and a copy of the fully executed assignments, City agrees to recognize AVB as the Buyer under the PSA for all purposes. AVB and BHC shall indemnify City and its officers, agents and employees from, and if requested, shall defend them against any and all loss, expense, cost, damage, attorney's fees, penalties, claims or liabilities resulting directly or indirectly from any dispute between AVB and BHC arising from the AVB/BHC Agreement, the Reassignment Rights, the Development Agreement, or the PSA.

(b) No Amendments. City will not enter into any amendment of the PSA with BHC without first obtaining AVB's prior written consent thereto, which AVB may grant or deny in AVB's reasonable discretion.

(c) Performance Rights.

i) Right to Perform. City acknowledges that AVB and BHC have represented to City that pursuant to the AVB/BHC Agreement, AVB has the right, but not the obligation, to perform any or all of the obligations of BHC under the PSA in accordance with the terms of this Agreement in the event that BHC is in default under the PSA.

ii) Right to Cure. If AVB has exercised its Reassignment Rights and AVB and BHC have given City notice of such exercise (including providing City with a fully executed copy of the BHC/AVB PSA Assignment and the corresponding Development Agreement assignment), then in connection with the rights set forth under Section 3(c)(i), as between City and AVB, AVB may enter upon the Property to exercise any of the rights granted to BHC under the PSA, and City agrees to accept full performance and compliance by AVB with any provision of the PSA applicable to the obligations of BHC in order to cure any default by BHC under the PSA.

iii) Third-Party Developer. In connection with the Reassignment Rights set forth under Section 3(a), AVB shall have the right to assign and/or designate all (but not a portion) of the rights and obligations of the Buyer under the PSA to a third-party non-profit housing developer (the "**Third-Party Developer**"), provided that (A) such Third-Party Developer meets the experience and financial capacity requirements described in the Balboa Reservoir Request for Qualifications dated November 10, 2016, as determined by City in its reasonable discretion, (B) City approves such Third-Party Developer, such approval not to be unreasonably withheld, conditioned or delayed, (C) such assignment is made concurrently with an approved assignment of all of the rights and obligations under the Development Agreement from AVB to such Third-Party Developer in substantially the form required by the Development Agreement, and (D) AVB is not released from any past or prospective liability or obligation under the PSA. In connection with any such request for approval, AVB shall submit a written request to City, together with the name of the proposed Third-Party Developer and such other information as City may reasonably require (the "**Third-Party Developer Request Letter**"). City shall have thirty (30) days following receipt of the Third-Party Developer Request Letter and receipt of all

information reasonably requested by City, to grant or deny such consent. If City denies such request, City must specify the reasons for denial.

(d) Additional Assignment Rights of Buyer under PSA. So long as either RCP or BHC is the “Buyer” under the PSA, in the event that the AVB/BHC Agreement is terminated as a result of default by AVB thereunder, then each of AVB and BHC shall notify City of such termination, and BHC shall thereafter have the right but not the obligation to assign and/or designate any or all of the rights of the Buyer under the PSA to a third-party housing developer (or to an entity of which BHC and such third-party developer are members or general partners) (the “**BHC Assignee**”) provided that that (A) such BHC Assignee meets the experience and financial capacity requirements described in the Balboa Reservoir Request for Qualifications dated November 10, 2016, as determined by City in its reasonable discretion, (B) City approves the BHC Assignee, such approval not to be unreasonably withheld, conditioned or delayed, (C) such assignment is made concurrently with an approved assignment of all of the rights and obligations under the Development Agreement from BHC to the BHC Assignee in substantially the form required by the Development Agreement, and (D) BHC is not released from any past or prospective liability or obligation under the PSA. In connection with any such request for approval, BHC shall submit a written request to City, together with the name of the proposed BHC Assignee and such other information as the City may reasonably require (the “**BHC Assignee Request Letter**”). City shall have thirty (30) days following receipt of the BHC Assignee Request Letter and receipt of all information reasonably requested by City to grant or deny such consent. If City denies such request, City must specify the reasons for denial.

4. General Provisions.

(a) Affiliates. Any references to BHC and/or AVB under this Agreement shall include any Affiliates of BHC and/or AVB.

(b) Amendments. This Agreement may be amended or modified only by a written instrument signed by all of the parties to this Agreement. Any waiver of conditions or obligations under this Agreement only if in writing and signed by the party waiving such conditions or obligations.

(c) Governing Law. This Agreement will be governed by, subject to, and construed in accordance with the laws of the State of California and City’s Charter and Administrative Code.

(d) Merger of Prior Agreements. This Agreement, together with the exhibits to this Agreement, contain any and all representations, warranties and covenants made by City, RCP, BHC and AVB and constitutes the entire understanding between the said parties to this Agreement with respect to the subject matter of this Agreement. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with any exhibits to this Agreement.

(e) Interpretation of Agreement. The section references and other headings of this Agreement are for convenience of reference only and will not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will be deemed to include the other and the neuter. No representation, warranty,

covenant, agreement or condition that is not expressed in this Agreement will be binding upon the parties to this Agreement or will affect or be effective to interpret, change or restrict the provisions of this Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement. Except as otherwise specifically provided, wherever in this Agreement one Party is required or requested to give its consent or approval to any matter or action by the other, such consent or approval will not be unreasonably withheld or delayed. Use of the word "**including**" or similar words will not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Any exhibit to this Agreement is incorporated herein and made a part of this Agreement as if set forth in full. Use of the word "**Section**" refers to the particular Section of this Agreement unless indicated otherwise.

(f) Attorneys' Fees. If any Party fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties to this Agreement concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, will pay any and all costs and expenses incurred by the other Party on account of such default or in enforcing or establishing its rights under this Agreement, including court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the terms "court costs and reasonable attorneys' fees" means 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 "court costs and attorneys' fees" also includes all 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 the fees and costs were incurred. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco will 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 services were rendered who practice in City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

(g) Time of Essence. Time is of the essence with respect to the performance of the parties' respective obligations contained in this Agreement. All rights and remedies set forth in this Agreement will be cumulative, except as otherwise expressly provided.

(h) No Merger; No Implied Waiver. The obligations contained in this Agreement will not merge with the transfer of title to the Property but will remain in effect until fulfilled. No failure by either Party to insist upon the strict performance of any obligation of the other Party or to exercise any right, power or remedy consequent upon a breach of this Agreement will constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision of this Agreement will affect

any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

(i) Proprietary Capacity. RCP, BHC and AVB acknowledge and agree that City is acting in its proprietary capacity with respect to the matters contemplated in this Agreement, and agree that City is in no way constrained from acting in its regulatory capacity in any manner with regard to any approval relating to the Project. RCP, BHC and AVB understand and agree that City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property and not as a regulatory agency of City with certain police powers. Except as specifically stated herein, RCP, BHC and AVB further understand and agree that no approval by City for purposes of this Agreement will be deemed to constitute any approval required by any federal, state, regional or City authority. To the fullest extent permitted by law, RCP, BHC and AVB agree to indemnify and hold City and Agents harmless from and against any loss, expense, cost, damage, attorney's fees, penalties, claims or liabilities which City or its Agents may incur as a result of RCP, BHC and/or AVB's failure to obtain or comply with the terms and conditions of any regulatory approval relating to the Property or the Project.

(j) Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no Agent of City will be personally liable to RCP, BHC and/or AVB, their successors and assigns, in the event of any default or breach by City or for any amount that may become due to RCP, BHC and/or AVB, its successors and assigns, or for any obligation of City under this Agreement.

(k) Conflicts of Interest. Through its execution of this Agreement, RCP, BHC and AVB acknowledge that they are familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certify that they do not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, RCP, BHC and/or AVB, as applicable, will immediately notify City.

(l) Notification of Prohibition on Contributions. Through its execution of this Agreement, RCP, BHC and AVB acknowledge and agree that they are familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from any department of City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. RCP, BHC and AVB acknowledge and agree that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. RCP, BHC and AVB acknowledge and agree further acknowledge that (i) the prohibition on contributions applies to each of RCP, BHC and AVB; each member of RCP, BHC and AVB's respective board of directors, chief executive officers, chief financial officers and chief operating officers; any person with an ownership interest of more than ten percent (10%) in such Parties; any subcontractor listed

in the contract; and any committee that is sponsored or controlled by such Parties; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom such Party is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, RCP, BHC and AVB certify that each Party has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

(m) Sunshine Ordinance. RCP, BHC and AVB understand and agree that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City under this Agreement are public records subject to public disclosure. RCP, BHC and AVB hereby acknowledge that City may disclose any records, information and materials submitted to City in connection with this Agreement.

(n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco 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.

(o) Severability. If any provision of this Agreement or the application of this Agreement to any person, entity or circumstance will be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

(p) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, RCP, BHC AND AVB ACKNOWLEDGE AND AGREE THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS IS DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH ORDINANCE WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

The Parties have duly executed this Agreement as of the respective dates written below.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Harlan L. Kelly, Jr., General Manager
San Francisco Public Utilities Commission

Date: _____

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

Elizabeth A. Dietrich
Deputy City Attorney

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Pursuant to Resolution No. _____

Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS

Pursuant to Resolution No. _____

Adopted _____

RCP:

RESERVOIR COMMUNITY PARTNERS, LLC,
a Delaware limited liability company

BHC BALBOA BUILDERS, LLC,
a California limited liability company,
its Member

By: BRIDGE Housing Corporation,
a California nonprofit public benefit corporation,
its Manager

By: _____
Name: _____
Title: _____

Date: _____

AVB BALBOA, LLC,
a Delaware limited liability company, its Member

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

By: _____
Name: Joe Kirchofer
Title: Vice President – Development

Date: _____

BHC:

BHC BALBOA BUILDERS, LLC,
a California limited liability company

By: BRIDGE Housing Corporation,
a California nonprofit public benefit
corporation, its Manager

By: _____
Name: _____
Title: _____

Date: _____

AVB:

AVB BALBOA, LLC,
a Delaware limited liability company

By: AvalonBay Communities, Inc.,
a Maryland corporation, its sole member

By: _____
Name: Joe Kirchofer
Title: Vice President – Development

Date: _____

EXHIBIT N

MEMORANDUM

[See Attached]

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

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

With a copy to:

San Francisco Public Utilities Commission
Real Estate Services Division
525 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
Attn: Real Estate Director

MAIL TAX STATEMENTS TO:

Attn: _____

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
Documentary Transfer Tax of \$_____ based upon full
market value of the property without deduction for any lien or
encumbrance.

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

Portion of Assessor's Block 3180, Lot 190, City and
County of San Francisco

RECORDING INFORMATION AREA

MEMORANDUM OF AGREEMENT FOR SALE OF REAL ESTATE

THIS MEMORANDUM OF AGREEMENT FOR SALE OF REAL ESTATE is entered into as of _____, 2020, by and between **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, acting by and through its Public Utilities Commission ("**Seller**") and **RESERVOIR COMMUNITY PARTNERS, LLC**, a Delaware limited liability company ("**Buyer**").

RECITALS

A. Buyer and Seller are parties to that certain Agreement for Sale of Real Estate dated as of _____, 2020 (the "**Agreement**"), which encumbers that certain real property located in San Francisco County, California, as more particularly described on Exhibit A attached hereto and made a part hereof.

B. The parties desire to place all persons to whom these presents may come upon notice of the existence of the Agreement.

AGREEMENT

NOW THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1) **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference. Any capitalized terms used herein but not separately defined shall have the meanings ascribed thereto in the Agreement.

2) **Notice.** All persons are hereby placed on notice of the existence of the Agreement.

3) **Controlling Document.** This Memorandum of Agreement for Sale of Real Estate is subject to all the terms and conditions of the Agreement. Should there be any inconsistency between the terms of this instrument and the Agreement, the terms of the Agreement shall prevail. The terms of this Memorandum can only be modified or amended by an instrument in writing, duly executed by Buyer and Seller.

4) **Counterparts.** This Memorandum of Purchase and Sale Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement for Sale of Real Estate under seal as of the day first above written.

SELLER:

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

By: _____
Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

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

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

APPROVED BY
SAN FRANCISCO PUBLIC UTILITIES
COMMISSION

Pursuant to Resolution No. _____
Adopted _____

Secretary

APPROVED BY BOARD OF SUPERVISORS

Pursuant to Resolution No. _____
Adopted _____

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

State of California)
) ss
County of)

On _____, before me, _____, a notary public in and for said State, 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 _____ (Seal)

BUYER:

**RESERVOIR COMMUNITY PARTNERS,
LLC,**
a Delaware limited liability company

By: _____
Name: _____
Title: _____

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

State of California)
) ss
County of)

On _____, before me, _____, a notary public in and for said State, 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 _____ (Seal)

EXHIBIT O

PRELIMINARY TITLE REPORT

[See Attached]



Chicago Title Company

1200 Concord Ave., #400, Concord, CA 94520
Phone: (925) 288-8000 • Fax:

Issuing Policies of Chicago Title Insurance Company

Order No.: 15605681-156-TJK-JM

Title Officer: Jeff Martin

TO:

Chicago Title Company
One Embarcadero Center, Suite 250
San Francisco, CA 94111
(415) 291-5100
(415) 896-9423

Escrow Officer: Terina J. Kung
One Embarcadero Center, Suite 250
San Francisco, CA 94111
(415) 291-5100
(415) 896-9423

ATTN: Terina J. Kung

PROPERTY ADDRESS: Block 3180 Lot 190, (Balboa Reservoir), San Francisco, CA

PRELIMINARY REPORT – AMENDMENT “D”

In response to the application for a policy of title insurance referenced herein, **Chicago Title Company** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of **Chicago Title Insurance Company**, a Florida corporation.


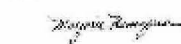
Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Chicago Title Company

By: 
Authorized Signature




Terina J. Kung

Jeff Martin



PRELIMINARY REPORT – AMENDMENT “D”

EFFECTIVE DATE: **October 7, 2019 at 7:30 a.m.**

ORDER NO.: **15605681-156-TJK-JM**

The form of policy or policies of title insurance contemplated by this report is:

ALTA Extended Owners Policy (6-17-06)
ALTA Extended Loan Policy (6-17-06)

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:
A Fee as to Parcels One and an Easement as to Parcels Two and Three
2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:
City and County of San Francisco, a municipal corporation
3. THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:
See Exhibit A attached hereto and made a part hereof.

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL ONE:

A PORTION OF THAT CERTAIN TRACT DESCRIBED AS PARCEL 22 IN THAT CERTAIN DEED FROM THE SPRING VALLEY WATER COMPANY, A CORPORATION, TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, RECORDED MARCH 3, 1930, IN [BOOK 2002 AT PAGE 1](#), OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, ALSO BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED IN THAT CERTAIN DEED FROM THE CITY AND COUNTY OF SAN FRANCISCO TO THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, RECORDED OCTOBER 15, 1992 IN [BOOK F-734, PAGE 746](#), OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THAT CERTAIN PARCEL DESCRIBED IN THAT CERTAIN DEED FROM THE CITY AND COUNTY OF SAN FRANCISCO, TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, RECORDED JULY 28, 1947, IN [BOOK 4681 AT PAGE 278](#), OFFICIAL RECORDS, FROM WHICH THE SOUTHEASTERLY CORNER OF SAID PARCEL BEARS NORTH 89° 36' 00" EAST, 366.02 FEET DISTANT; SAID CORNER ALSO BEING ON THE WESTERLY LINE OF PHELAN AVENUE, (78.403 FEET WIDE), AS NOW ESTABLISHED AND SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" FILED FEBRUARY 15, 1954 IN [BOOK R OF MAPS AT PAGE 56](#), OFFICIAL RECORDS; THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF SAID PARCEL

1. SOUTH 89° 36' 00" WEST 656.18 FEET, TO THE SOUTHWESTERLY CORNER OF SAID PARCEL, SAID CORNER ALSO BEING THE NORTHWESTERLY CORNER OF SAID PARCEL 22; THENCE SOUTHERLY ALONG THE WESTERLY, LINE OF LAST SAID PARCEL

2. SOUTH 00° 24' 00" EAST, 1078.75 FEET TO A POINT, FROM WHICH THE SOUTHWEST CORNER OF SAID PARCEL 22, SAID CORNER ALSO BEING ON THE NORTHERLY LINE OF OCEAN AVENUE (80.00 FEET WIDE), BEARS SOUTH 00° 24' 00" EAST, 155.32 FEET DISTANT; THENCE LEAVING THE LINE OF SAID PARCEL 22 AND ALONG THE SOUTHERLY LINE OF SAID PARCEL DESCRIBED IN SAID DEED FROM THE CITY AND COUNTY OF SAN FRANCISCO TO THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT

3. SOUTH 75° 22' 33" EAST 584.33 FEET; THENCE

4. NORTH 14° 38' 04" EAST 13.88 FEET; THENCE

5. NORTH 89° 01' 17" EAST 94.17 FEET TO A POINT WESTERLY 366.02 FEET PERPENDICULARLY DISTANT FROM THE WESTERLY LINE OF SAID PHELAN AVENUE; THENCE LEAVING SAID SOUTHERLY LINE ALONG A LINE PARALLEL WITH AND WESTERLY 366.02 FEET PERPENDICULARLY DISTANT FROM SAID WESTERLY LINE OF PHELAN AVENUE

6. NORTH 00° 40' 45" WEST 1215.91 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THAT CERTAIN CERTIFICATE OF COMPLIANCE, RECORDED FEBRUARY 15, 2012, AS [INSTRUMENT NO. 2012-J355048-00, REEL K584, IMAGE 0927 OF OFFICIAL RECORDS](#), IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ASSESSOR'S PARCEL NO. : LOT 190, BLOCK 3180 (FORMERLY PORTION OF LOT 001, BLOCK 3180)

PARCEL TWO:

**EXHIBIT A
(Continued)**

A NON-EXCLUSIVE EASEMENT FOR ROADWAY PURPOSES APPURTENANT TO PARCEL ONE ABOVE, SHOWN IN THAT CERTAIN ACCESS EASEMENT AGREEMENT, RECORDED MAY 17, 2012, AS [INSTRUMENT NO. 2012-J414058-00, REEL K849, IMAGE 0119 OF OFFICIAL RECORDS](#), OVER AND ACROSS THE FOLLOWING STRIP OF LAND, SIXTY (60) FEET WIDE, THE NORTHERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN THAT CERTAIN DEED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, RECORDED JULY 28, 1947, IN [BOOK 4681 AT PAGE 278](#), OFFICIAL RECORDS, SAID CORNER ALSO BEING ON THE WESTERLY LINE OF PHELAN AVENUE, (78.403 FEET WIDE), AS NOW ESTABLISHED AND SHOWN ON THAT CERTAIN MAP ENTITLED "MAP SHOWING THE WIDENING OF PHELAN AVENUE & OCEAN AVENUE FROM OCEAN AVENUE TO JUDSON AVENUE" FILED FEBRUARY 15, 1954 IN [BOOK R OF MAPS AT PAGE 58](#), OFFICIAL RECORDS; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID PARCEL SOUTH 89° 38' 00" WEST 366.02 FEET, MORE OR LESS, TO A POINT WESTERLY 366.02 FEET PERPENDICULARLY DISTANT FROM SAID WESTERLY LINE OF PHELAN AVENUE.

PARCEL THREE:

AN EASEMENT FOR PIPELINE PURPOSES AS AN APPURTENANCE TO PARCEL ONE AND PARCEL TWO ABOVE, SHOWN IN THAT CERTAIN PIPELINE EASEMENT AGREEMENT, RECORDED MAY 17, 2012, AS [INSTRUMENT NO. 2012-J414494-00, REEL K849, IMAGE 0555 OF OFFICIAL RECORDS](#), UNDER AND ACROSS THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 22 IN THAT CERTAIN DEED TO CITY AND COUNTY OF SAN FRANCISCO, RECORDED MARCH 3, 1930, IN [BOOK 2002 AT PAGE 1](#), OFFICIAL RECORDS, SAID POINT BEING ON THE NORTHERLY LINE OF OCEAN AVENUE; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID PARCEL 22 NORTH 00° 24' 00" WEST 155.32 FEET TO THE SOUTHERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, RECORDED OCTOBER 15, 1992, IN [BOOK F-734 AT PAGE 748, OFFICIAL RECORDS](#); THENCE ALONG SAID SOUTHERLY LINE SOUTH 75° 22' 33" EAST 584.33 FEET; THENCE NORTH 14° 38' 04" EAST 13.88 FEET; THENCE NORTH 89° 01' 17" EAST 242.20 FEET; THENCE LEAVING SAID SOUTHERLY LINE AT A RIGHT ANGLE SOUTH 00° 58' 43" EAST 58.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE AT A RIGHT ANGLE NORTH 89° 01' 17" EAST 114.92 FEET; THENCE NORTH 75° 33' 48" WEST 119.21 FEET; THENCE SOUTH 00° 58' 43" EAST 31.89 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTIONS

AT THE DATE HEREOF, ITEMS TO BE CONSIDERED AND EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. Property taxes, including any personal property taxes and any assessments collected with taxes are as follows:

Code Area: 1000
Tax Identification No.: Lot 0190, Block 3180
 Fiscal Year: 2019-2020
 1st Installment: \$8,121.54 Open – due 11/1/19 and delinquent after 12/10/19
 2nd Installment: \$8,124.54 Open – due 2/1/20 and delinquent after 4/10/20
 Bill No.: 111494

2. There were no taxes levied for the fiscal year 2018-2019 as the property was vested in a public entity.
3. The Land lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

CFD No: 90-1
 For: School Facility Repair and Maintenance

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

Chief Financial Officer
 San Francisco Unified School District
 135 Van Ness Ave. – Room 300
 San Francisco, CA 94102
 Phone (415) 241-6542

4. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
5. Matters contained in that certain document

Entitled: Agreement
 Dated: Not Shown
 Executed by: City and County of San Francisco and Dept. of City Planning
 Recording Date: June 17, 1953
 Recording No: 77776, Book 8176, Page 339, of Official Records

Reference is hereby made to said document for full particulars.

6. A Notice of Special Restrictions under the Planning Code

Recorded: February 27, 1997, Instrument No. 97-G124348, Book G828, Page 597, of Official Records

Reference is made to said document for full particulars.

EXCEPTIONS (Continued)

7. A Notice of Special Restrictions under the Planning Code

Recorded: March 18, 1997, [Instrument No. 97-G131680](#), Book G841, Page 289, of Official Records

Reference is made to said document for full particulars.

8. A Notice of Special Restrictions under the Planning Code

Recorded: November 26, 2001, [Instrument No. 2001-59833](#), Book I20, Page 576, of Official Records

Reference is made to said document for full particulars.

9. Resolution to Establish the Ocean Avenue Community Benefits District, Resolution No. 587-10, recorded January 31, 2011, [Series No. 2011-J128528](#), Book K322, Page 542, of Official Records.

10. Matters as shown on the Record of Survey No. 5951, [Book DD of Survey Maps, pages 38 and 39](#), of Official Records.

Certificate of Correction recorded July 20, 2010, [Series No. 2010-I998415](#), Book K189, Page 371, Official Records.

Certificate of Correction recorded December 14, 2010, [Series No. 2010-I98072](#), Book K289, Page 559, Official Records.

11. Matters contained in that certain document

Entitled: Quitclaim Deed
 Dated: May 1, 2012
 Executed by: City and County of San Francisco, a municipal corporation; San Francisco Community College District
 Recording Date: May 17, 2012
[Recording No.: 2012-J414055-00, Reel K649, Image 0116](#) of Official Records

Reference is hereby made to said document for full particulars.

12. Matters contained in that certain document

Entitled: Quitclaim Deed
 Dated: May 17, 2012
 Executed by: City and County of San Francisco, a municipal corporation; San Francisco Community College District
 Recording Date: May 17, 2012
[Recording No.: 2012-J414058-00, Reel K649, Image 0117](#) of Official Records

Reference is hereby made to said document for full particulars.

13. Matters contained in that certain document

Entitled: Pipeline Easement Agreement
 Dated: May 17, 2012
 Executed by: City and County of San Francisco and San Francisco Community College
 Recording Date: May 17, 2012
[Recording No.: 2012-J414494, of Official Records, Reel K649, Image 0555](#) of Official Records

**EXCEPTIONS
(Continued)**

Reference is hereby made to said document for full particulars.

14. Matters which may be disclosed by an inspection and/or by a correct ALTA/ACSM Land Title Survey of said Land that is satisfactory to the Company, and/or by inquiry of the parties in possession thereof.

15. Matters contained in that certain document

Entitled: Access Easement Agreement
Dated: May 17, 2012
Executed by: City and County of San Francisco and San Francisco Community College District
Recording Date: May 17, 2012
Recording No.: 2012-J414058, [Reel K849, Image 0119 of Official Records](#)

Reference is hereby made to said document for full particulars.

16. Recitals as shown on that certain map/plat entitled, Record of Survey #7017

Recording Date: May 21, 2012
Recording No.: EE of Survey Maps, Pages 14-15, inclusive

Reference is hereby made to said document for full particulars.

17. Any rights of the parties in possession of a portion of, or all of, said Land, which rights are not disclosed by the public records.

The Company will require, for review, a full and complete copy of any unrecorded agreement, contract, license and/or lease, together with all supplements, assignments and amendments thereto, before issuing any policy of title insurance without excepting this item from coverage.

The Company reserves the right to except additional items and/or make additional requirements after reviewing said documents.

18. The Company will require that an Owner's Affidavit be completed by the party(s) named below before the issuance of any policy of title insurance.

Party(s): City and County of San Francisco, a municipal corporation

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.

19. The requirement that the complete and correct name(s) of the buyer(s) in this transaction be submitted to the Title Department at least 5 days prior to the close of Escrow.

20. The transaction contemplated in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company reserves the right to add additional items or make further requirements after such review.

END OF EXCEPTIONS

NOTES

1. None of the items shown in this report will cause the Company to decline to attach CLTA Endorsement Form 100 to an Extended Coverage Loan Policy, when issued.
2. Note: The Company is not aware of any matters which would cause it to decline to attach CLTA Endorsement Form 116 indicating that there is located on said Land Commercial Property, known as Block 3180 Lot 190, (Balboa Reservoir), San Francisco, CA, to an Extended Coverage Loan Policy.
3. Note: The name(s) of the proposed insured(s) furnished with this application for title insurance is/are:

No names were furnished with the application. Please provide the name(s) of the buyers as soon as possible.
4. Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.
5. Note: The charge for a policy of title insurance, when issued through this title order, will be based on the Basic Title Insurance Rate.
6. Effective December 27, 2016, as mandated through local ordinance, the transfer tax rates are as follows:

More than \$100 but Less than or Equal to \$250,000 at \$2.50 for each \$500 or portion thereof (\$5.00 per thousand)

\$250,001 but Less than \$999,999 at \$3.40 for each \$500 or portion thereof (\$6.80 per thousand)

\$1,000,000 or More but Less than \$4,999,999 at \$3.75 for each \$500 or portion thereof (\$7.50 per thousand)

\$5,000,000 or More but Less than \$9,999,999 at \$11.25 for each \$500 or portion thereof (\$22.50 per thousand)

\$10,000,000.00 or More but Less than \$24,999,999 at \$13.75 for each \$500 or portion thereof (\$27.50 per thousand)

\$25,000,000.00 or More at \$15.00 for each \$500 or portion thereof (\$30.00 per thousand)

NOTE: These rates are for documents recorded on or after December 27, 2016, regardless of when the instrument was executed.
7. Your application for title insurance was placed by reference to only a street address or tax identification number. Based on our records, we believe that the legal description in this report covers the parcel(s) of Land that you requested. If the legal description is incorrect, the seller/borrower must notify the Company and/or the settlement company in order to prevent errors and to be certain that the correct parcel(s) of Land will appear on any documents to be recorded in connection with this transaction and on the policy of title insurance.

**NOTES
(Continued)**

8. Note: If a county recorder, title insurance company, escrow company, real estate broker, real estate agent or association provides a copy of a declaration, governing document or deed to any person, California law requires that the document provided shall include a statement regarding any unlawful restrictions. Said statement is to be in at least 14-point bold face type and may be stamped on the first page of any document provided or included as a cover page attached to the requested document. Should a party to this transaction request a copy of any document reported herein that fits this category, the statement is to be included in the manner described.
9. Note: Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent, an authorized employee of the insured lender, or by using Bancserv or other approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.
10. Note: The policy of title insurance will include an arbitration provision. The Company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.
11. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
12. Pursuant to Government Code Section 27388.1, as amended and effective as of 1-1-2018, a Documentary Transfer Tax (DTT) Affidavit may be required to be completed and submitted with each document when DTT is being paid or when an exemption is being claimed from paying the tax. If a governmental agency is a party to the document, the form will not be required. DTT Affidavits may be available at a Tax Assessor-County Clerk-Recorder.
13. Due to the special requirements of SB 50 (California Public Resources Code Section 8560 et seq.), any transaction that includes the conveyance of title by an agency of the United States must be approved in advance by the Company's State Counsel, Regional Counsel, or one of their designees.

END OF NOTES

Jeff Martin/cl



Inquire before you wire!

Wire Fraud Alert

This Notice is not intended to provide legal or professional advice. If you have any questions, please consult with a lawyer.

All parties to a real estate transaction are targets for wire fraud and many have lost hundreds of thousands of dollars because they simply relied on the wire instructions received via email, without further verification. **If funds are to be wired in conjunction with this real estate transaction, we strongly recommend verbal verification of wire instructions through a known, trusted phone number prior to sending funds.**

In addition, the following non-exclusive self-protection strategies are recommended to minimize exposure to possible wire fraud.

- **NEVER RELY** on emails purporting to change wire instructions. Parties to a transaction rarely change wire instructions in the course of a transaction.
- **ALWAYS VERIFY** wire instructions, specifically the ABA routing number and account number, by calling the party who sent the instructions to you. **DO NOT** use the phone number provided in the email containing the instructions, use phone numbers you have called before or can otherwise verify. **Obtain the phone number of relevant parties to the transaction as soon as an escrow account is opened.** **DO NOT** send an email to verify as the email address may be incorrect or the email may be intercepted by the fraudster.
- **USE COMPLEX EMAIL PASSWORDS** that employ a combination of mixed case, numbers, and symbols. Make your passwords greater than eight (8) characters. Also, change your password often and do **NOT** reuse the same password for other online accounts.
- **USE MULTI-FACTOR AUTHENTICATION** for email accounts. Your email provider or IT staff may have specific instructions on how to implement this feature.

For more information on wire-fraud scams or to report an incident, please refer to the following links:

Federal Bureau of Investigation:
<http://www.fbi.gov>

Internet Crime Complaint Center:
<http://www.ic3.gov>

FIDELITY NATIONAL FINANCIAL, INC.
PRIVACY NOTICE

Fidelity National Financial, Inc. and its majority-owned subsidiary companies (collectively, "FNF," "our," or "we") respect and are committed to protecting your privacy. This Privacy Notice explains how we collect, use, and protect personal information, when and to whom we disclose such information, and the choices you have about the use and disclosure of that information.

Types of Information Collected

We may collect two types of information from you: Personal Information and Browsing Information.

Personal Information. FNF may collect the following categories of Personal Information:

- contact information (e.g., name, address, phone number, email address);
- demographic information (e.g., date of birth, gender, marital status);
- identity information (e.g., Social Security Number, driver's license, passport, or other government ID number);
- financial account information (e.g., loan or bank account information); and
- other personal information necessary to provide products or services to you.

Browsing Information. FNF may automatically collect the following types of Browsing Information when you access an FNF website, online service, or application (each an "FNF Website") from your Internet browser, computer, and/or mobile device:

- Internet Protocol (IP) address and operating system;
- browser version, language, and type;
- domain name system requests; and
- browsing history on the FNF Website, such as date and time of your visit to the FNF Website and visits to the pages within the FNF Website

How Personal Information is Collected

We may collect Personal Information about you from:

- information we receive from you on applications or other forms;
- information about your transactions with FNF, our affiliates, or others; and
- information we receive from consumer reporting agencies and/or governmental entities, either directly from these entities or through others.

How Browsing Information is Collected

If you visit or use an FNF Website, Browsing Information may be collected during your visit. Like most websites, our servers automatically log each visitor to the FNF Website and may collect the Browsing Information described above. We use Browsing Information for system administration, troubleshooting, fraud investigation, and to improve our websites. Browsing Information generally does not reveal anything personal about you, though if you have created a user account for an FNF Website and are logged into that account, the FNF Website may be able to link certain browsing activity to your user account.

Other Online Specifics

Cookies. When you visit an FNF Website, a "cookie" may be sent to your computer. A cookie is a small piece of data that is sent to your Internet browser from a web server and stored on your computer's hard drive. Information gathered using cookies helps us improve your user experience. For example, a cookie can help the website load properly or can customize the display page based on your browser type and user preferences. You can choose whether or not to accept cookies by changing your Internet browser settings. Be aware that doing so may impair or limit some functionality of the FNF Website.

Web Beacons. We use web beacons to determine when and how many times a page has been viewed. This information is used to improve our websites.

Do Not Track. Currently our FNF Websites do not respond to "Do Not Track" features enabled through your browser.

Links to Other Sites. FNF Websites may contain links to other websites. FNF is not responsible for the privacy practices or the content of any of those other websites. We advise you to read the privacy policy of every website you visit.

Use of Personal Information

FNF uses Personal Information for three main purposes:

- To provide products and services to you or in connection with a transaction involving you.
- To improve our products and services.
- To communicate with you about our, our affiliates', and third parties' products and services, jointly or independently.

When Information Is Disclosed

We may make disclosures of your Personal Information and Browsing Information in the following circumstances:

- to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure;
- to nonaffiliated service providers who provide or perform services or functions on our behalf and who agree to use the information only to provide such services or functions;
- to nonaffiliated third party service providers with whom we perform joint marketing, pursuant to an agreement with them to jointly market financial products or services to you;

- to law enforcement or authorities in connection with an investigation, or in response to a subpoena or court order; or
- in the good-faith belief that such disclosure is necessary to comply with legal process or applicable laws, or to protect the rights, property, or safety of FNF, its customers, or the public.

The law does not require your prior authorization and does not allow you to restrict the disclosures described above. Additionally, we may disclose your information to third parties for whom you have given us authorization or consent to make such disclosure. We do not otherwise share your Personal Information or Browsing Information with nonaffiliated third parties, except as required or permitted by law.

We reserve the right to transfer your Personal Information, Browsing Information, and any other information, in connection with the sale or other disposition of all or part of the FNF business and/or assets, or in the event of bankruptcy, reorganization, insolvency, receivership, or an assignment for the benefit of creditors. By submitting Personal Information and/or Browsing Information to FNF, you expressly agree and consent to the use and/or transfer of the foregoing information in connection with any of the above described proceedings.

Please see "Choices With Your Information" to learn the disclosures you can restrict.

Security of Your Information

We maintain physical, electronic, and procedural safeguards to guard your Personal Information. We limit access to nonpublic personal information about you to employees who need to know that information to do their job. When we provide Personal Information to others as discussed in this Privacy Notice, we expect that they process such information in compliance with our Privacy Notice and in compliance with applicable privacy laws.

Choices With Your Information

If you do not want FNF to share your information with our affiliates to directly market to you, you may send an "opt out" request by email, phone, or physical mail as directed at the end of this Privacy Notice. We do not share your Personal Information with nonaffiliates for their use to direct market to you.

Whether you submit Personal Information or Browsing Information to FNF is entirely up to you. If you decide not to submit Personal Information or Browsing Information, FNF may not be able to provide certain services or products to you.

For California Residents: We will not share your Personal Information and Browsing Information with nonaffiliated third parties, except as permitted by California law.

For Nevada Residents: You may be placed on our internal Do Not Call List by calling (888) 934-3354 or by contacting us via the information set forth at the end of this Privacy Notice. Nevada law requires that we also provide you with the following contact information: Bureau of Consumer Protection, Office of the Nevada Attorney General, 555 E. Washington St., Suite 3900, Las Vegas, NV 89101; Phone number: (702) 486-3132; email: BCPINFO@ag.state.nv.us.

For Oregon Residents: We will not share your Personal Information and Browsing Information with nonaffiliated third parties for marketing purposes, except after you have been informed by us of such sharing and had an opportunity to indicate that you do not want a disclosure made for marketing purposes.

For Vermont Residents: We will not share information about your creditworthiness to our affiliates and will not disclose your personal information, financial information, credit report, or health information to nonaffiliated third parties to market to you, other than as permitted by Vermont law, unless you authorize us to make those disclosures.

Information From Children

The FNF Websites are meant for adults and are not intended or designed to attract persons under the age of eighteen (18). We do not collect Personal Information from any person that we know to be under the age of thirteen (13) without permission from a parent or guardian.

International Users

FNF's headquarters is located within the United States. If you reside outside the United States and choose to provide Personal Information or Browsing Information to us, please note that we may transfer that information outside of your country of residence for any of the purposes described in this Privacy Notice. By providing FNF with your Personal Information and/or Browsing Information, you consent to our collection, transfer, and use of such information in accordance with this Privacy Notice.

FNF Website Services for Mortgage Loans

Certain FNF companies provide services to mortgage loan servicers, including hosting websites that collect customer information on behalf of mortgage loan servicers (the "Service Websites"). The Service Websites may contain links to both this Privacy Notice and the mortgage loan servicer or lender's privacy notice. The sections of this Privacy Notice titled When Information is Disclosed, Choices with Your Information, and Accessing and Correcting Information do not apply to the Service Websites. The mortgage loan servicer or lender's privacy notice governs use, disclosure, and access to your Personal Information. FNF does not share Personal Information collected through the Service Websites, except (1) as required or authorized by contract with the mortgage loan servicer or lender, or

(2) as required by law or in the good-faith belief that such disclosure is necessary to comply with a legal process or applicable law, to enforce this Privacy Notice, or to protect the rights, property, or safety of FNF or the public.

Your Consent To This Privacy Notice; Notice Changes

By submitting Personal Information and/or Browsing Information to FNF, you consent to the collection and use of the information in accordance with this Privacy Notice. We may change this Privacy Notice at any time. The revised Privacy Notice, showing the new revision date, will be posted on the FNF Website. Each time you provide information to us following any amendment of this Privacy Notice, your provision of information to us will signify your assent to and acceptance of the terms of the revised Privacy Notice for all previously collected information and information collected from you in the future. We may use comments, information or feedback that you submit to us in any manner that we may choose without notice or compensation to you.

Accessing and Correcting Information; Contact Us

If you have questions, would like to access or correct your Personal Information, or want to opt-out of information sharing for affiliate marketing, send your requests via email to privacy@fnf.com, by phone to (888) 934-3354, or by mail to:

Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, Florida 32204
Attn: Chief Privacy Officer

Notice of Available Discounts

Pursuant to Section 2355.3 in Title 10 of the California Code of Regulations Fidelity National Financial, Inc. and its subsidiaries ("FNF") must deliver a notice of each discount available under our current rate filing along with the delivery of escrow instructions, a preliminary report or commitment. Please be aware that the provision of this notice does not constitute a waiver of the consumer's right to be charged the field rate. As such, your transaction may not qualify for the below discounts.

You are encouraged to discuss the applicability of one or more of the below discounts with a Company representative. These discounts are generally described below; consult the rate manual for a full description of the terms, conditions and requirements for each discount. These discounts only apply to transaction involving services rendered by the FNF Family of Companies. This notice only applies to transactions involving property improved with a one-to-four family residential dwelling.

FNF Underwritten Title Company

FNTC - Chicago Title Company

FNTCCA - Fidelity National Title Company of California

FNF Underwriter

CTIC - Chicago Title Insurance Company

Available Discounts

CREDIT FOR PRELIMINARY REPORTS AND/OR COMMITMENTS ON SUBSEQUENT POLICIES (CTIC)

Where no major change in the title has occurred since the issuance of the original report or commitment, the order may be reopened within 12 or 36 months and all or a portion of the charge previously paid for the report or commitment may be credited on a subsequent policy charge.

DISASTER LOANS (CTIC)

The charge for a lender's Policy (Standard or Extended coverage) covering the financing or refinancing by an owner of record, within 24 months of the date of a declaration of a disaster area by the government of the United States or the State of California on any land located in said area, which was partially or totally destroyed in the disaster, will be 50% of the appropriate title insurance rate.

CHURCHES OR CHARITABLE NON-PROFIT ORGANIZATIONS (CTIC)

On properties used as a church or for charitable purposes within the scope of the normal activities of such entities, provided said charge is normally the church's obligation the charge for an owner's policy shall be 50% to 70% of the appropriate title insurance rate, depending on the type of coverage selected. The charge for a lender's policy shall be 40% to 50% of the appropriate title insurance rate, depending on the type of coverage selected.

ATTACHMENT ONE
CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY – 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
 - a. building;
 - b. zoning;
 - c. land use;
 - d. improvements on the Land;
 - e. land division; and

- f. environmental protection.
- This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.
 This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 18:	1.00% % of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 10,000.00
Covered Risk 19:	1.00% % of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$5,000.00 (whichever is less)	\$ 25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or \$2,500.00 (whichever is less)	\$ 5,000.00

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

(Except as provided in Schedule B - Part II, (t) or (T) this policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

(PART I

(The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:)

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

(The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

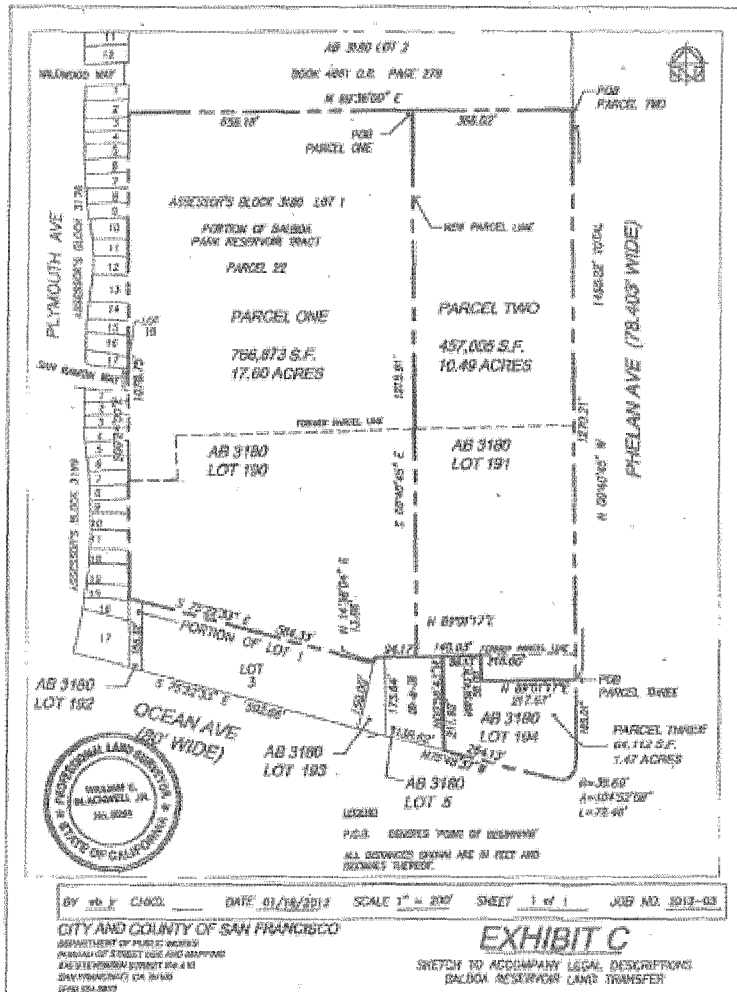
1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
7. (Variable exceptions such as taxes, easements, CC&R's, etc. shown here.)

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (12-02-13)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
San Francisco Public Utilities Commission
Attention: Real Estate Director
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

with a copy to:

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

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

DECLARATION OF RESTRICTIONS

Dated as of _____, 20__

RE: Portion of Assessor's Parcel No. 1, Block 3180 -XXX Street

DECLARATION OF RESTRICTIONS

THIS DECLARATION of RESTRICTIONS (“Declaration”) is dated as of _____, 20__, by THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission (“Declarant”).

RECITALS

A. Declarant has jurisdiction over certain real property located in the City and County of San Francisco, California, known as a portion of Assessor’s Parcel No. 1, Block 3180, commonly identified as _____, San Francisco, California, and as more particularly described in Exhibit A to this Declaration (the “Balboa Reservoir”).

B. This approximately 17.6 acres of real property under the jurisdiction of the San Francisco Public Utilities Commission (“SFPUC” or “Declarant”) is near Frida Kahlo Way and Ocean Avenue, commonly known as the Balboa Reservoir.

C. On November 14, 2017 via Resolution No. 17-0225, the SFPUC Commission approved an Exclusive Negotiating Agreement (ENA) between City, through the SFPUC, and a joint venture comprised of AvalonBay Communities and Bridge Housing (the “Developer”) concerning the development and sale of the majority of Balboa Reservoir.

D. The Developer seeks to purchase approximately 16 acres of the Balboa Reservoir (“Property”) and develop the Property with improvements that will deliver 1,100 units of much needed housing including 550 affordable housing units. The development project includes mixed-income multi-family rental residential units, for-sale residential units, ground-floor community space, privately owned and publicly accessible open space, parking garages, and a child-care facility (“Project”).

E. City and the Developer have agreed to the terms of a proposed Development Agreement (“Development Agreement”), which recognizes that, in exchange for defined public benefits, the Project will be subject to only certain defined ordinances, regulations, rules, and policies governing the design, construction, fees and exactions, use, or other aspects of the Project.

F. The Project is supported by extensive investments in public infrastructure, including new streets, water distribution, auxiliary water supply facilities, stormwater management improvements, sanitary sewer systems, power facilities, and street lighting that the City will accept at their completion.

G. City, under the SFPUC’s jurisdiction, will retain an 80-foot-wide approximately one-acre parcel of land (“Retained Fee” or “Burdened Property”) with surface appurtenances and a subsurface SFPUC water transmission facility north of Ocean Avenue along the southern boundary of the Balboa Reservoir.

H. In accordance with the terms of the Development Agreement, the San Francisco Subdivision Code, and other Municipal Codes and regulations, the Developer is obligated to build the Lee Avenue Extension off-site to the east of the Property and irrevocably offer the improvements to the City for public use. Upon completion, the Board of Supervisor will dedicate the Lee Avenue Extension as a public street for public right-of-way purposes and accept the street for City maintenance and liability. San Francisco Public Works ("Public Works"), in consultation with the SFPUC and other affected City departments, will review, permit, inspect, and issue a completion determination for the Lee Avenue Extension pursuant to the abovementioned laws.

I. Declarant acknowledges that Developer will construct a portion of the Lee Avenue Extension on a part of the Retained Fee on an area generally described in Exhibit B (hereinafter referred to as "Lee Avenue Retained Fee") and attached to this Declaration.

J. After the Board of Supervisors dedicates the portions of the Lee Avenue Extension on the Lee Avenue Retained Fee as a public street for public right-of-way purposes and accepts this area for City maintenance and liability, the City will maintain and be liable for this public street and its appurtenances in perpetuity or until the Board of Supervisors terminates the public street use.

K. For purposes of permitting construction of the Lee Avenue Extension as a dedicated public street and providing for future City maintenance and liability of this street segment, Public Works has requested that Declarant agree to restrict the use of the Lee Avenue Retained Fee for public street purposes as further set forth herein.

L. Declarant agrees to such restrictions as the public street overlay is consistent with its current use, management, and maintenance of current and future SFPUC assets in the Lee Avenue Retained Fee.

NOW, THEREFORE, for the consideration of allowing Public Works to assert public street use regulatory jurisdiction over the Lee Avenue Retained Fee without limiting the SFPUC's rights over its assets and the Retained Fee, Declarant does hereby declare that the Burdened Parcel is to be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following limitations, restrictions, reservations, rights, easements, conditions and covenants, all of which are imposed as equitable servitudes upon the Burdened Parcel. All of the limitations, restrictions, reservations, rights, conditions and covenants in this Declaration shall run with and burden the Burdened Parcel, any portion of them and any interest in them, and all persons having or acquiring any rights, title or interest in the Burdened Parcel, any portion of them and any interest in them, and their successors, heirs and assigns.

1. Public Use of Lee Avenue Retained Fee. At the start of construction for the phase of the Lee Avenue Extension on the Lee Avenue Retained Fee, Declarant at all times thereafter shall treat the Lee Avenue Retained Fee as a dedicated public street and allow its use for public right-of-way purposes.

2. Construction of Lee Avenue Retained Fee. Declarant shall allow Developer or Developer's successor to construct Lee Avenue on the Lee Avenue Retained Fee in accordance with

plans and permits that Public Works issues after consultation and authorization from SFPUC. Should additional portions of the Retained Fee be necessary to temporarily stage this construction, this Declaration explicitly authorizes such temporary use, subject to any reasonable terms and conditions of the SFPUC and Public Works. Notwithstanding the above, Declarant at all times shall retain its customary authority to use, manage, and maintain SFPUC assets during the term of construction of Lee Avenue on the Lee Avenue Retained Fee. Should Developer or Developer's Successor fail to complete construction of Lee Avenue on the Lee Avenue Retained Fee, Declarant allows Public Works to complete the construction if acceptable to the parties to this Declaration.

3. Maintenance and Repair. Until the Board of Supervisors dedicates the portion of Lee Avenue Extension constructed on the Lee Avenue Retained Fee and accepts it for City maintenance and liability purposes, Developer shall be responsible for the maintenance and repair of the Lee Avenue Extension. When the above referenced Board of Supervisors action is final and effective, Declarant at all times shall allow Public Works and other affected City departments to maintain and assume liability for the publicly dedicated street that are within the jurisdictional authority of each affected City department.

4. Developer Insurance, Liability, Indemnity. Any activity that Developer undertakes as recognized in this Declaration shall be subject to the same Developer requirements for insurance, liability, indemnity, and other construction related terms contained in the Development Agreement and any public improvement agreement or equivalent document governing the construction of the Lee Avenue Extension on the Lee Avenue Retained Fee.

5. Special Restrictions. With respect to the Burdened Parcel, Declarant as part of undertaking any of its own work within the Lee Avenue Retained Fee, shall cooperate with Public Works in the same manner and with the same procedures as applicable to all dedicated public streets.

6. Duration. The restrictions contained in this Declaration shall be perpetual, unless modified, revoked or terminated pursuant to Paragraph 7 below.

7. Modification or Revocation. This Declaration may not be modified, revoked or terminated without the written consent of Declarant or its respective successor(s)-in-interest, and no such modification, revocation or termination shall be effective unless and until the Director of Public Works or his/her designee consent thereto in writing and such modification, revocation or termination is executed by Declarant or its successor-in-interest and the Director of Public Works or his/her designee, and is recorded in the Official Records of the City.

8. Beneficiary. The City's Department of Public Works is hereby recognized as a beneficiary of this Declaration, with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions hereof (including, but not limited to, remedies for violation of a permit); provided, however that the Public Works liability whatsoever hereunder is the same as for any dedicated public street that the City accepts for maintenance and liability purposes..

9. No Public Dedication. Nothing Contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, it being the intention that this Declaration be strictly limited to and for the purposes expressed.

10. Entire Agreement. This Declaration, together with any attachments hereto or inclusions by reference, constitutes the entire agreement on the subject matter hereof, and this Declaration supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, concerning the Burdened Parcel.

11. Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same Declaration.

IN WITNESS WHEREOF, Declarant executed this instrument effective as of the day and year first above written.

DECLARANT, as owner of the Burdened Parcel (Balboa Reservoir Retained Fee):

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Public Utilities Commission

By: _____
Harlan Kelly
General Manager

APPROVED

THE CITY AND COUNTY OF SAN FRANCISCO,
acting by and through Public Works

By _____

Its _____

APPROVED AS TO FORM

Dennis J. Herrera, City Attorney

By: _____

Deputy City Attorney