RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attention: City Manager

Space Above This Line Reserved for Recorder's Use
Exempt from Recording Fee Per Government Code Section 27383

DEVELOPMENT AGREEMENT

by and between the

CITY OF BURLINGAME,
a California municipal corporation

and

220 PARK – BURLINGAME, LLC,
a Delaware limited liability company

regarding the

220 Park Post Office Project

Effective Date: _____, 2021

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LIST OF EXHIBITS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes as of the Adoption Date, is entered into by and between the CITY OF BURLINGAME, a California municipal corporation organized and existing under the laws of the State of California ("**City**") and 220 PARK – BURLINGAME, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to individually herein as a "**Party**" and collectively as "**Parties**."

RECITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq*. of the Government Code ("**Development Agreement Statute**") which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property. This Agreement has been drafted and processed pursuant to the Development Agreement Statute.

B. Developer is under contract to purchase fee title to the approximately 1.28 acres of real property located at 220 Park Road, Burlingame, California (APN 029-204-250), more fully described on Exhibit A-1, attached and incorporated herein by reference ("**220 Park Property**" or "**Property**"). The Property is located in the heart of downtown Burlingame and is currently occupied by a 13,300 square foot Post Office building and supporting features constructed in 1941 and closed in 2015 ("**Historic Post Office**"). The Historic Post Office is subject to an existing 2013 preservation covenant ("**Historic Covenant**") that requires preservation or reuse of portions of the building to meet the United States Secretary of the Interior's Standards for the Treatment of Historic Properties ("**SOI Historic Standards**") and has been listed on the City's Local Register of Historic Places ("**Historic Register Listing**") pursuant to the City's Historic Preservation Ordinance ("**HPO**"). Collectively, the Historic Covenant, the SOI Historic Standards and the HPO are the "**Historic Requirements**." The Property also includes a 1,275 square foot free-standing garage, a surface parking lot and driveway with approximately 51 surface parking spaces, and portions of an underground storm water culvert owned and operated by the City. The Property has remained unused since 2015 and is currently surrounded by a chain link fence.

C. City owns an adjacent approximately 0.65 acres of real property referred to as "**Lot E**" and more fully described on Exhibit A-2, attached and incorporated herein by reference ("**City Property**"). The City Property is currently operated as a surface public parking lot but is being considered by the City for potential redevelopment into a town square/community open space, as suggested by the Burlingame Downtown Specific Plan ("**City Town Square Project**").

D. Developer wishes to redevelop the 220 Park Property, consistent with the Historic Requirements, as a six-story building with approximately 12,500 gross square feet ("**gsf**") of

ground-floor retail space inclusive of preserved portions of the existing Post Office building; approximately 140,000 gsf of upper-story office space; an additional approximately 27,500 gsf of lobby, circulation, and back-of-house space within the building; an approximately 280-space two-level underground garage, part of which will underlie the City Property ("**Parking Garage**"); and related infrastructure and landscaping, including the Terrace Improvements on the City Property described in Recital D, below (collectively, the "**Project**").

E. To allow the Project to provide the required parking per the Existing Approvals (defined below) while meeting the Historic Requirements, the Developer will design, construct, maintain and operate a portion of the Parking Garage (approximately 32 spaces and drive aisle) on an approximately 6,900 gsf underground portion of the City Property ("**Parking Garage Easement Area**"), subject to certain night and weekend public parking rights in the Parking Garage as further described herein and in the form of City Easement and Public Use Agreement as defined below.

F. In addition, to provide a mutually attractive transition between the Project and the City Property and potential future City Town Square Project and to activate the edge of the potential future City Town Square Project, the Developer has agreed to design, construct, maintain and operate a patio/terrace and related surface improvements that link the Historic Post Office with the City Town Square Project ("**Terrace Improvements**"), on an approximately 6,900 gsf portion of the City Property bordering the 220 Park Property ("**City Property Terrace Improvements Easement Area**"), subject to the City retaining the right to authorize and permit public access as further described herein. This Agreement sets forth the terms and timing of these easement rights and terms for public access, including a form of City Easement and Public Use Agreement as defined below. The City Property Terrace Improvements Easement Area consists of the entire surface area above the Parking Garage Easement Area, and are collectively, the "**City Easement Area**." City Property outside the City Property Terrace Improvements Easement Area shall be referred to as the "**Remaining City Property**."

G. To maximize the Parties' mutual interests in the protection and preservation of the historic elements of the Historic Post Office and to minimize construction traffic and scheduling disruptions, this Agreement provides for temporary use of the City Property and a portion of the public parking along Park Road for temporary storage of the historic elements of the Historic Post Office and construction staging, subject to certain payment obligations that increase over time to incentive redevelopment. Upon completion, Developer will, at the City's option and discretion, either: (i) restore surface conditions on the Remaining City Property with anticipated surface parking use to be reinstated, or (ii) if the City is proceeding with the City Town Square Project, deliver the Remaining City Property in an unrestored condition and contribute the cost that otherwise would go to restoration of the surface parking to help fund the City Town Square Project, all as further described herein.

H. The Parties acknowledge that the City Town Square Project is entirely separate from the Project and is subject to the sole discretion of the City, including as to whether and when it is developed and what improvements are included. It is, however, the Parties' intention and desire to expedite planning, permitting, construction, and occupancy of the Project so that: (i) what has been a vacant property in the heart of downtown can be activated and will once again be a center of activity for the community, and (ii) the opportunities for synergy and cost

efficiencies with the potential City Town Square Project can be maximized. This Agreement includes a Schedule of Performance set forth on Exhibit C, attached and incorporated herein by reference ("**Schedule of Performance**") to incentive redevelopment and coordinate the Project with the City Town Square Project. This Agreement is in no way intended to require the City to proceed with the City Town Square Project, only to maximize opportunities for coordination and potential cost efficiencies. This Agreement provides for the terms and timing of payment by Developer of $2,000,000 as part of the consideration for City granting easements for the Parking Garage and Terrace Improvements, which City may use towards construction costs if City decides to proceed with the City Town Square Project, subject to certain adjustments.

I. To improve the aesthetics of the Property pending redevelopment given the prominent downtown location, this Agreement also includes certain commitments by the Developer to, if approved by the land owner prior to Developer's acquisition of the Property: (i) wrap the perimeter fencing with graphic "fence wrap" to promote and market the future Project, celebrate the Historic Post Office, and/or promote downtown Burlingame, (ii) implement necessary protective measures to mitigate and/or reduce further physical degradation of the historically significant portions of the Historic Post Office, and (iii) clean trash and graffiti on the Property.

J. To achieve the Parties' mutual goals of redevelopment consistent with the Historic Requirements as expeditiously as possible, the Developer desires to receive assurance that it may proceed with the Project, including the terms of use of the City Property, in accordance with the Applicable City Regulations. Therefore, this Agreement between City and Developer sets forth, among other things, the applicable fees, policies and zoning requirements that will apply to Developer's development of the Project and provides Developer with a vested right to develop the Project.

K. Approval and development of the Project relies on the following analysis under the California Environmental Quality Act ("**CEQA**") (set forth in Public Resources Code, Section 21000 *et seq*.) and the State CEQA Guidelines ("**CEQA Guidelines**") (set forth in California Code of Regulations section 15000 *et seq*.): (1) a Final Environmental Impact Report for the 2040 General Plan Update (SCH #2010122012) ("**GPEIR**") certified by the City Council on January 11, 2019; (2) a Mitigated Negative Declaration for the Burlingame Downtown Specific Plan (SCH #2010052073) ("**MND**") certified by the City Council on May 27, 2020; and (3) an Environmental Compliance Checklist approved by the Planning Commission pursuant to CEQA Guidelines Section 15183 on November 23, 2020 ("**Environmental Compliance Checklist**"), including a Mitigation Monitoring and Reporting Program ("**MMRP**"), concluding that no additional environmental review is necessary.

L. Prior to approval of this Agreement, City has taken numerous actions in connection with the development of the Project on the Property. Following approval of the Environmental Compliance Checklist and MMRP, on November 23, 2020, (1) the Burlingame Historic Preservation Commission approved the Historic Register Listing by its Resolution No. 2020-58, and (2) the City Planning Commission approved the following by its Resolution No. 2020-61:

(a) Commercial Design Review;

(b) Historic Variance (parking); and

(c) Historic Variance (height).

The approvals and development policies described in this Recital K, together with the Environmental Compliance Checklist and MMRP and this Agreement, are collectively referred to herein as the "**Existing Approvals**."

M. The Development Agreement Statute provides that the purpose of development agreements is to strengthen the public planning process, encourage comprehensive planning, obtain private participation in meeting community needs, and reduce uncertainty in the approval of development. The City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Statute and City will benefit from the redevelopment of the Property consistent with the Historic Requirements, public parking, financial contributions and other benefits provided in this Agreement.

N. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the goals, policies, standards and land use designations specified in the City's General Plan, Burlingame Downtown Specific Plan and Historic Preservation Ordinance and, further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Agreement.

O. On January 11, 2021, after a duly noticed public hearing, the Planning Commission, the initial hearing body for purposes of development agreement review, adopted its Resolution No. 2-21-05 recommending approval of this Agreement to the City Council. After duly noticed public hearings, on February 1, 2021, the City Council introduced Ordinance No. _____ approving this Agreement ("**Enacting Ordinance**"), and adopted it on February 15, 2021 ("**Adoption Date**"). The Enacting Ordinance will become effective on March 17, 2021, thirty (30) days after the Adoption Date ("**Effective Date**").

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions.

"**Administrative Project Amendment**" is defined in Section 9.3.2.

"**Adoption Date**" is defined in Recital N.

"**Affiliate of Developer**" means an entity or person that directly or indirectly controls, is controlled by, or is under common control with Developer. For the purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity or person, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"**Agreement**" means this Development Agreement.

"**Agreement Amendment**" is defined in Section 9.13.

"**Applicable City Regulations**" means (a) all City policies, standards and specifications set forth in this Agreement and the Existing Approvals, including the specific conditions of approval adopted with respect to the Existing Approvals; (b) with respect to matters not addressed by this Agreement or the Existing Approvals but governing permitted uses of the Property, building locations, sizes, densities, intensities, design and heights, site design, setbacks, lot coverage and open space, and parking, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Effective Date; and (c) with respect to all other matters, including building, plumbing, mechanical and electrical codes, those New City Laws which may be applied to the Project and Developer pursuant to the terms of this Agreement, including but not limited to Section 4.2.

"**Applicable Laws**" means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time; and (b) the Applicable City Regulations.

"**Certificate of Occupancy**" or "**COO**" means an official document issued by the City Building Official that certifies that the Superstructure of the building (not including any tenant improvements) proposed as part of the Project has been inspected and determined to comply with the Project Approvals, including the applicable California Building Standards Code and the City's local ordinances which govern construction and occupancy. A "temporary" COO

confirms the building is safe for the proposed temporary use or occupancy but is still subject to a punch list of items required to be complete to obtain a final COO. A "final" COO means the building has been inspected and determined safe for the proposed use and occupancy and all final punch list items are complete.

"**CEQA**" is defined in Recital I.

"**CEQA Guidelines**" is defined in Recital I.

"**Changes in the Law**" is defined in Section 4.8.

"**City**" means the City of Burlingame, a California municipal corporation.

"**City Easement and Public Use Agreement**" is defined in Section 6.4 and shall be substantially in the form set forth in Exhibit D.

"**City Easement Area**" is defined in Recital E and depicted in Exhibit D, and includes the subsurface Parking Garage Easement Area and surface City Property Terrace Improvements Easement Area.

"**City Party**" and "**City Parties**" are defined in Section 10.9.

"**City Property**" is defined in Recital B and described on Exhibit A-2.

"**City Property Terrace Improvements Easement Area**" is defined in Recital E.

"**City Town Square Project**" is defined in Recital B.

"**City Town Square Improvements**" are defined in Section 6.5.3.

"**Claims**" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys' fees and costs.

"**Close**" or "**Closing**" means the date the Developer obtains fee title interest to the Property.

"**Commences Construction of the Project**" (or "**Commencement of Construction of the Project**") is defined on the Schedule of Performance.

"**Connection Fees**" means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

"**Community Development Director**" means the Director of Community Development of the City of Burlingame, or his/her designee.

"**Default**" is defined in Section 12.1.

"**Developer**" means 220 Park – Burlingame, LLC, a Delaware limited liability company (a joint venture of Sares Regis Group of Northern California and Dostart Development Company, Inc.), and its permitted assignees and successors-in-interest under this Agreement.

"**Development Agreement Statute**" is defined in Recital A.

"**Effective Date**" is defined in Recital N.

"**Enacting Ordinance**" is defined in Recital N.

"**Environmental Compliance Checklist**" is defined in Recital I.

"**Exactions**" means exactions that may be imposed by the City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

"**Existing Approvals**" is defined in Recital J.

"**Expiration Date**" is defined in Section 3.2.1.

"**Force Majeure Delay**" is defined in Section 3.2.2.

"**GDP**" is defined in Section 3.2.2.

"**GPEIR**" is defined in Recital I.

"**Historic Covenant**" is defined in Recital A.

"**Historic Post Office**" is defined in Recital A.

"**Historic Register Listing**" is defined in Recital A.

"**HPO**" is defined in Recital A.

"**Historic Requirements**" is defined in Recital A.

"**Impact Fees**" means the monetary amount charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the development project or development of the public facilities related to the development project, including, any "fee" as that term is defined by Government Code Section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Fee and an Exaction, will be considered to be an Impact Fee. Impact Fees do not include Other Agency Fees.

"**Litigation Challenge**" is defined in Section 10.6.

"**MMRP**" is defined in Recital I.

"**MND**" is defined in Recital I.

"**Mortgage**" is defined in Section 8.1.

"**Mortgagee**" is defined in Section 8.1.

"**New City Laws**" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated, adopted, enacted or amended by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

"**Operating Memorandum**" is defined in Section 9.1.2.

"**Other Agency Fees**" is defined in Section 5.3.

"**Other Agency Subsequent Project Approvals**" means Subsequent Project Approvals to be obtained from entities other than City.

"**Outside Closing Date**" is defined in the Schedule of Performance.

"**Parking Garage**" is defined in Recital C.

"**Parking Garage Easement Area**" is defined in Recital D.

"**Party/Parties**" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"**Planning Commission**" means the Planning Commission of the City of Burlingame.

"**Prevailing Wage Laws**" is defined in Section 10.9.

"**Processing Fees**" means all fees for processing development project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, encroachment permits, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for and in effect at the time such work occurs, and which are intended to cover the actual costs of processing the foregoing, and which may include the cost of retaining outside contractors for plan checking or other purposes and City's administrative expenses related to such retention as set forth in Section 10.3.

"**Project**" is defined in Recital C.

"**Project Approvals**" means the Existing Approvals and the Subsequent Project Approvals.

"**Property**" or "**220 Park Property**" is defined in Recital A and described on Exhibit A-1.

"**PSA**" is defined in Section 2.1.

"**Remaining City Property**" is defined in Recital E.

"**Schedule of Performance**" is defined in Recital F and set forth in Exhibit C.

"**Staging Use Fee**" is defined in Section 6.3.2.

"**Subsequent Project Approvals**" is defined in Section 10.1.

"**Superstructure**" means the core and shell building structure with required parking provided, where tenant improvements remain incomplete.

"**Term**" is defined in Section 3.2.1.

"**Terrace Improvements**" is defined in Recital E.

"**Town Square Contribution**" is defined in Section 6.5.1.

ARTICLE 2

GENERAL PROVISION

2.1 Ownership of Property; Termination by Outside Closing Date; Recordation.

(a) The Parties hereby acknowledge that, as of the Effective Date, Developer has an equitable interest in the Property by virtue of its contractual right to purchase the Property pursuant to the terms of a valid purchase and sale agreement ("**PSA**") with the current owner of the Property. The Parties acknowledge and agree this Agreement, and the Existing Project Approvals, are personal to the Developer and do not bind or benefit the current owner of the Property, and City does not intend by this Agreement to confer any benefits on or bind the current owner of the Property or any successor, assignee or Mortgagee of such owner. In the event the Developer does not Close on the Property by the Outside Closing Date as defined in the Schedule of Performance, this Agreement and all Project Approvals automatically shall terminate and have no further force or effect. If Developer does not Close on the Property by the Outside Closing Date, or this Agreement otherwise is terminated by its terms, the City shall, upon the request of the Developer, deliver a recordable form of termination notice. The obligations of this Agreement shall bind the City as of the Effective Date, and shall bind the Developer only as expressly provided herein prior to Closing, and shall fully bind both Parties upon Closing.

(b) This Agreement shall be executed and recorded pursuant to Section 13.7.

ARTICLE 3

EFFECTIVE DATE AND TERM

3.1 Effective Date. This Agreement shall become effective upon the Effective Date.

3.2 Term.

3.2.1 Term of Agreement. The "**Term**" of this Agreement shall commence on the Effective Date and shall expire upon the earliest to occur of the following: (1) the issuance of a final Certificate of Occupancy for the Project; (2) termination of this Agreement in accordance with its terms, including without limitation Section 2.1; or (3) the fifth (5^{th}) anniversary of the Effective Date. Upon such termination, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the extension provisions set forth in Section 3.2.2 and Section 3.2.3, and subject to Section 12.8 below and those provisions that expressly survive termination. Termination of the Term as it may be extended is referred to herein as the "**Expiration Date**." City shall have the right to extend the Term if it deems necessary for Developer to satisfy all its obligations under this Agreement.

3.2.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended (except as otherwise excluded or qualified herein), where delays are due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics or epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation and arbitration, including court delays; legal challenges to this Agreement, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; environmental conditions, pre-existing or discovered; compliance with Historic Requirements delaying the construction or development of the Property or any portion thereof arising from an unforeseen condition of the Property not discovered as of the Effective Date or arising from an unforeseen complication occurring during removal and reinstallation of historic elements of the Property; unusually severe weather but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for every winter season occurring after Commencement of Construction of the Project; acts or omissions of the other party; or acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City); moratorium (each a "**Force Majeure Delay**"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If written notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Developer's inability or failure to obtain financing or otherwise timely satisfy the Conditions Precedent to Closing on or before the Outside Date shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for an excused delay. The Term of this Agreement shall not be subject to extension of more than two

(2) years in the aggregate for any Force Majeure Delay, and the Outside Closing Date shall not be subject to extension for any Force Majeure Delay.

3.2.3 Extension of Term for Commencement of Construction of the Project. If the Developer is in good faith compliance with this Agreement and Commences Construction of the Project, as defined in the Schedule of Performance, the initial five (5) year Term set forth in Section 3.2.1 shall be automatically extended until the issuance of a final Certificate of Occupancy for the Project; provided, notwithstanding such extension, subject to Force Majeure and all applicable notice and opportunity to cure, the Term shall expire and this Agreement shall terminate (a) if Developer fails to comply with the Post-Commencement milestones in the Schedule of Performance or (b) after Commencement of Construction of the Project, work stops for more than twelve (12) months. Upon such termination, this Agreement shall be deemed terminated and of no further force and effect except for those provisions that expressly survive termination.

3.3 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

3.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

3.3.2 The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

3.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written notice of such fact or condition to Developer.

3.4 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

3.4.1 Developer is duly organized and validly existing under the laws of the State of Delaware, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

3.4.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary company action and all necessary member approvals have been obtained.

3.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

3.4.4 Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.4 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 4

DEVELOPMENT OF PROPERTY

4.1 Vested Rights. The City hereby grants to Developer the present vested right to develop and construct on the Property all the improvements authorized by, and in accordance with, the Project Approvals. To the extent permitted by Applicable Laws, and except as otherwise provided herein, no future modification of the City's General Plan, Municipal Code, ordinances, policies or regulations shall apply to the Property that purports to: (i) limit the permitted uses of the Property, the density and intensity of use, or the maximum height and size of proposed buildings; (ii) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals or pursuant to this Agreement; (iii) impose conditions upon development of the Property other than as permitted by the Applicable Laws, Changes in the Law, the Project Approvals and this Agreement; (iv) limit the timing, phasing or rate of development of the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any land use ordinances, policies, regulations or amendments permitted herein or relieve Developer of its obligation to develop the Property within the times provided in this Agreement, including the Schedule of Performance in Exhibit C; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with or substantially more restrictive than the limitations included in this Agreement or the Project Approvals; (vi) frustrate in a more than insignificant way the intent or purpose of the Project Approvals in relation to the Project; (vii) limit or control the ability to obtain public utilities, services, or facilities; (viii) require the issuance of additional permits or approvals by the City other than those required by Applicable Laws; or (ix) limit the processing or procuring of applications and approvals of Subsequent Project Approvals.

4.2 Reservations of Authority. The Parties acknowledge and agree that City is restricted in its authority to limit its police power by contract. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

4.2.1 Except as otherwise provided in Section 5.1, Processing Fees, Connection Fees and other fees of every kind and nature imposed by the City, and any increase or

modification to those fees that are in force and effect at the time land use or development permits, approvals or entitlements are applied for or issued on any or all portions of the Project.

4.2.2 Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure then applicable in City at the time of permit application.

4.2.3 Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of permit application.

4.2.4 New City Laws applicable to the Property or Project, which do not conflict with this Agreement.

4.2.5 New City Laws which may be in conflict with this Agreement but which are necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition.

4.2.6 Exactions required by this Agreement, the Existing Approvals or any Subsequent Project Approvals.

4.3 Regulation by Other Public Agencies. Developer acknowledges and agrees that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees, including Other Agency Fees, when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement by Developer, or to amend any policy, regulation or ordinance of City in connection therewith.

4.4 Life of Project Approvals; Termination.

4.4.1 Generally. Except as otherwise expressly provided herein, the term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals, subject to the provisions of this Section 4.4. The termination of this Agreement at the end of the Term set forth in Section 3.2.1 shall have no effect on the Project Approvals, subject to the provisions in Section 4.4.2 below; provided, however, (a) as provided in Section 2.1, in the event the Developer does not Close on the Property by the Outside Closing Date as defined in the Schedule of Performance, or

(b) if this Agreement is terminated by either Party before expiration of the Term other than by Developer due to a Default by City, this Agreement and all Project Approvals shall terminate and have no further force or effect.

4.4.2 Continuing Vested Rights. In order to address and clarify Developer's ability to build and operate the Project after the Expiration Date if not yet completed, the Parties agree that the following terms shall govern Developer's vested rights.

(a) Provided Developer has satisfied all its obligations under this Agreement as of the Expiration Date and termination of this Agreement, and Developer has obtained a final Certificate of Occupancy for the Project, the Project Approvals shall continue in effect as required for operation and use of the Project, subject only to California law that may apply to continued reliance on such approvals.

(b) If development of the Project has not been completed as of the Expiration Date and termination of this Agreement, Developer may continue work after such termination and may complete the Project as approved by the Project Approvals so long as the following conditions are satisfied:

(i) As of the Expiration Date Developer is not in Default, or if subject to a breach that has not yet been cured then Developer may not exercise its rights under this Section 4.4.2(b) unless and until it timely cures the breach in the reasonable judgment of City;

(ii) As of the Expiration Date, physical site work has commenced under the Superstructure Permit and qualifies for vesting under California common law established by *Avco Community Builders v. South Coast Regional Commission*, 17 Cal.3rd 785 (1976), provided such work does not stop for twelve (12) months or longer; and

(iii) As of the Expiration Date, Developer has satisfied all applicable mitigation measures and conditions of approval adopted by City as part of the Project Approvals that have come due as and when required.

(c) If Developer fails to satisfy all conditions under Section 4.4.2(b) by the Expiration Date, the following shall apply with regard to future development or operation of the Project:

(i) Developer's vested rights secured by this Agreement with regard to the Project shall terminate and all Project Approvals shall be deemed terminated and may not be relied on by Developer or the Project, notwithstanding any ability under Applicable City Regulations that may provide for extensions of the Project Approvals; and

(ii) Developer shall have no vested right to construct or continue construction of the Project without first obtaining new City discretionary approvals then required.

(d) The terms and conditions of this Section 4.4.2 and their enforcement shall survive expiration or termination of this Agreement.

4.5 Initiatives. If any New City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting any entitlements or permits to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.

4.6 No Affirmative Obligation to Develop; Timing of Development. The City acknowledges and agrees that the Developer has no affirmative obligation to Close or develop the Project. However, if the Developer, in its sole discretion, Closes on the Property and opts to develop the Project, such development shall comply with this Agreement, including the Schedule of Performance. However, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement or the Existing Approvals, Developer shall have the vested right to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment.

4.7 No Conflicting Enactments. Except as otherwise provided in this Agreement, City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any New City Law that is in conflict with this Agreement or the Existing Approvals. Without limiting the generality of the foregoing, the City shall not (i) apply to the Property any change in land use designation or permitted use of the Property; (ii) limit or control the ability to obtain public utilities, services, or facilities; (iii) limit or control the uses; building setbacks, square footage, dimensions, floor plates, height; or location of buildings and structures; or spacing between buildings in a manner that is inconsistent with or more restrictive than the limitations included in the Existing Approvals or this Agreement; or (iv) limit or control the rate, timing, or sequencing of the approval, development or construction of all or any part of the Project or Existing Approvals, except as otherwise provided in this Agreement or the Existing Approvals.

4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall agree to such action as may be reasonably required. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law.

4.9 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, nothing in this Agreement is intended to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity. Nonetheless, to the maximum extent permitted by law and consistent with its authority, City upon Developer's request shall cooperate with Developer (at no expense to City) in Developer's effort to reserve such capacity for sewer and water services as may be necessary to serve the Project.

ARTICLE 5

FEES AND OTHER CHARGES

5.1 City Fees.

5.1.1 Impact Fees. Developer shall, for the first three (3) years of the Term, pay when due all existing Impact Fees as shown on Exhibit B at the rates in effect as of the Effective Date, and shall not be required to pay any Impact Fee enacted or established after the Effective Date or any increase in such existing Impact Fees. Thereafter, and during the remainder of the Term (as it may be extended), Developer shall pay all original and any new Impact Fees at the rates in effect at the time due. The Impact Fees itemized on Exhibit B represent the Parties' good faith effort to identify the Impact Fees applicable to the Project. City and Developer agree to amend and restate Exhibit B, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any cost or credit amounts have been inadvertently miscalculated.

5.1.2 All Other City Fees. Except as otherwise provided in Section 5.1.1 above as to Impact Fees, Developer agrees to pay when due any existing, new, increased or modified fees, including Processing Fees and Connection Fees, at the rates then in effect at the time land use or development permits, approvals or entitlements are applied for or issued on any or all portions of the Project so long as any new fees or increases in existing fees from the amount

existing as of the Effective Date applies on a Citywide basis and is consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq*.

5.1.3 Right to Protest. Developer acknowledges being aware of all City fees in effect as of the Effective Date that might be imposed on the Property and the Project, and Developer accepts and shall not protest or challenge imposition of the types and amounts of such fees in effect as of the Effective Date. Other than as specified in the previous sentence, Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020, and nothing in this Agreement shall diminish or eliminate any of Developer's rights set forth in such Section 66020. City may impose and Developer shall comply with those Exactions required by this Agreement and the Existing Project Approvals.

5.2 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect on behalf of such other agencies ("**Other Agency Fees**").

5.3 Taxes and Assessments. As of the Effective Date, assessments are in effect and applicable to the Property or the Project as shown on the latest property tax bill for the Property. City is not aware of any pending efforts to initiate or consider new or increased assessments that would apply to the Property or the Project. City may impose and Developer agrees to pay any and all existing, new, modified or increased taxes and assessments, other than Impact Fees, imposed on the Property or the Project in accordance with the laws in effect as of the date due, at the rate in effect at the time of payment. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property; provided, Developer acknowledges being aware of all taxes and assessments in effect as of the Effective Date, and Developer accepts and agrees that it shall not protest or challenge their imposition on the Property and the Project. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals or this Agreement, then at City's election, taking into consideration City's expectations as to when it would receive Developer's payment of such fees or assessments, either (a) the fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district, or (b) the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or this Agreement.

ARTICLE 6

DEVELOPER AND CITY COORDINATION AND COVENANTS

6.1 Interim Use and Maintenance. Both the City and Developer have an interest in the Project commencing as soon as possible. With an understanding that timely redevelopment is the primary priority, Developer also understands the desire of the City to mitigate the negative

impacts of the current condition of the Property to the extent that is within Developer's control (as the prospective purchaser, but not yet the owner as of the Effective Date). Due to the abandoned state and intended redevelopment of the Property, both the City and Developer acknowledge the infeasibility of allowing for temporary uses of the Property due to insurance, liability, and property condition exposures, as well as the limitations of the Developer's rights prior to Closing. Notwithstanding the foregoing, Developer shall use commercially reasonable efforts to obtain written permission from the current owner of the Property to undertake, and following receipt of such permission Developer, at its expense and in consultation with City and after receipt of necessary permits, shall commence and complete the following within the times specified, except as may be extended by the Community Developer Director in his or her reasonable discretion. Developer shall keep City informed of the status of receiving owner approvals and notify City of any obstacles to or delays in receiving such approvals.

(a) Fence Wrap. As soon as practicable and in any case within thirty (30) days after receiving any City approvals and property owner approval, Developer shall commence and thereafter diligently complete work to wrap the existing Lorton Avenue, Park Road, and Lot E-fronting chain link perimeter fencing with graphic "**fence wrap**" to promote and market the future Project, celebrate and provide educational information about the Historic Post Office building, and/or promote downtown Burlingame. Once installed, Developer shall maintain the fence wrap in good condition and repair until removed. The materials used and graphics shown on the fence wrap shall be subject to approval by the Community Development Director in his/her reasonable discretion. Developer shall submit its proposed fence wrap materials and graphics to the Community Development Director on or before the Effective Date, in order to obtain approval to begin work in a timely manner.

(b) Historic Covenant Compliance to Protect Historic Resource. As soon as practicable and in any case within thirty (30) days after the Effective Date, Developer shall submit to City's Building Division its plans and permit applications for necessary protective measures to reasonably prevent, mitigate and/or reduce further physical degradation of the historically significant portions of the Historic Post Office, and promptly after receiving any required City approvals and property owner approval, Developer shall commence and thereafter diligently complete the protective measures.

(c) Site Maintenance. As soon as practicable and in any case within seven (7) days after the Effective Date and approval by the property owner, the Developer shall begin a regular program to remove trash and graffiti as needed and maintain the Property in a reasonable clean condition as approved by the property owner and in good faith consultation with the Community Development Director.

6.2 Building Permit Applications and Compliance. Developer acknowledges City's intent that once work on the Project begins it will continue diligently and without interruption, to minimize the length of time of any disruptions in the area. Developer shall apply for and obtain building and other permits for development of the Project and complete work under each permit as and when specified in the Schedule of Performance in Exhibit C. Developer shall make good faith efforts to ensure that its initial submissions for such applications are sufficiently complete to allow necessary City review and processing and are not missing required elements or details, subject to the common process of refinement through City feedback and revision. Developer

shall be ready and able financially and otherwise to obtain permits at the time that applications are submitted. Developer shall pay such fees and take such actions as needed to obtain such permits promptly after City indicates the permits are ready for issuance, and Developer shall be ready and able financially and otherwise to begin work under each permit promptly after its issuance.

6.3 Temporary Construction Staging and Restoration. To maximize the Parties' mutual interests in the protection and preservation of the historic elements of the Historic Post Office and minimize construction traffic and scheduling disruptions, the City shall grant the Developer the right to temporary use of the City Property, as well as a portion of the public parking along Park Road ("**Temporary Use Areas**"), as generally depicted on the "220 Park – Temporary Storage and Staging Plans" prepared by Sares Regis dated January 25, 2021 consisting of eight (8) sheets and on file with City's Community Development Department, Planning Division ("**Temporary Storage and Staging Plans**"). This Section 6.3 shall be implemented by an encroachment permit, license or easement in a form reasonable acceptable to the Developer and the City Attorney, subject to standard terms that do not conflict with this Agreement. The City acknowledges these Temporary Use Areas are essential to the Developer's ability to implement the Project as contemplated in this Agreement. Developer's use of the Temporary Use Areas shall be subject to City's requirement to have access from time to time as City reasonably requires to the area around the cleanout for the culvert running through the City Property, for maintenance and cleaning of the culvert, for which City shall give Developer two (2) weeks' advance notice. Use of Park Road shall be limited to the parking lane, the street shall remain open to traffic at all times (except as may be requested on a case-by-case basis by the Developer during construction and approved by the City through the City's temporary street closure process), and a temporary walkway shall be provided when needed to allow unimpeded pedestrian access along the 220 Park Property and City Property side of Park Road.

6.3.1 Historic Storage. As shown on the Temporary Storage and Staging Plans, portions of the Temporary Use Areas are essential to comply with the Historic Covenant to temporarily and safely relocate and store elements of the Historic Post Office for just the length of time necessary for construction. In light of the essential nature of this temporary use, the Parties' mutual interest in meeting the Historic Requirements, and the Town Square Contribution described below, the City shall grant this temporary historic storage use initially at no additional compensation by the Developer; provided, if such storage continues for more than twenty-four (24) months, Developer thereafter shall pay the Staging Use Fee (as defined below) for each parking space affected by the historic storage as described in Section 6.3.2, including payment of such fee for each parking space on Park Road that is not available for public use.

6.3.2 Construction Staging. As shown on the Temporary Storage and Staging Plans, the Temporary Use Areas are also very helpful for the temporary staging of certain construction equipment near the Project, including but not limited to, building materials, stockpiles, and dewatering equipment. The Parties acknowledge this nearby location will help shorten the overall construction time, avoid potential delays in construction, facilitate on-site management and security, and reduce/minimize construction traffic and associated noise, vibration and dust throughout the rest of downtown. The Developer shall compensate the City for this construction staging use at the current rate of a Burlingame Business Parking Permit of $60 per parking stall per month for the first three (3) years after the Effective Date of this

Agreement, and escalating with annual increases of $5 thereafter during the Term as it may be extended (e.g., $65 in Year 4, $70 in Year 5, $75 in Year 6, etc.) ("**Staging Use Fee**"). Developer shall pay City the Staging Use Fee monthly in advance, with payment due on or before the tenth (10^{th}) day of each month, with the amount based on the number of parking stalls occupied or rendered unusable during the previous month. The Parties agree to consult in good faith if there is disagreement or uncertainty as to the number of stalls for which the Staging Use Fee should be paid.

6.3.3 Restoration or Additional Contribution. At the times set forth on the Schedule of Performance, the Developer shall, as directed by the City in its sole discretion by its written notice to the Developer, either: (i) restore the Remaining City Property to the current surface parking use (with the exception of any City Town Square Improvements installed pursuant to Section 6.5.3, below) as City may reasonably direct to repair or restore the area to a condition substantially similar to its condition prior to the temporary use (including without limitation repairing pavement, repairing any damage to drainage facilities, repairing or revising striping for parking spaces and driving lanes based on a parking layout fitting the Remaining City Property, and repairing or replacing damaged lights, parking meters and signs); or (ii) if the City in its sole discretion has decided to proceed with the City Town Square Project promptly after Project completion, deliver the Remaining City Property in an unrestored but clean condition appropriate for future construction and increase the Town Square Contribution by the mutually agreed reasonable estimated cost if Developer had been required to perform the surface lot restoration work described in clause (i) less the actual hard and soft costs of delivering the surface ready for the City Town Square Project pursuant to this clause (ii). The Parties will cooperate in good faith to document, including photo documentation, an assessment of the condition of the Remaining City Property prior to initiation of the temporary use. The Developer will consult with the City on transferring any construction fence rental agreement to the City or facilitating the City entering into a separate rental agreement to retain the construction fencing, in the City's sole discretion. If Developer fails to perform the work necessary, City may but is not obligated to perform such work and Developer thereafter shall promptly reimburse City its costs and expenses, including attorney's fees.

6.4 Community Outreach. At least sixty (60) days prior to closing public parking use of the Temporary Use Areas in preparation for implementation of the Temporary Storage and Staging Plans and with prior good faith consultation with the City, Developer shall provide notice to the community of the closure, construction status and anticipated timing in the form of Property signage, a website and other reasonable measures developed in consultation with the City. The Developer shall maintain updated information and on-site signage which provides regular updates on construction status, timing and alternative locations for parking.

6.5 Easements and Public Use.

6.5.1 Parking Garage. To meet the City's parking requirements and Historic Requirements for the Project, an underground parking garage, with a portion located within the City Easement Area, is essential to the Project during the life of the Project. The Developer shall be solely responsible for the design, permitting, construction, operation, maintenance, repair, and security of the Parking Garage, including the portion on the City Easement Area (consisting of approximately thirty-two (32) parking spaces and one drive aisle). As part of the consideration

for City entering into this Agreement and granting Developer the right to locate a portion of the Parking Garage on the Parking Garage Easement Area, Developer shall grant an irrevocable license to the City to provide public parking in the Parking Garage, including rights of ingress and egress to and from the Parking Garage on the 220 Park Property, which shall have priority over Mortgagees, pursuant to the terms of a City Easement and Public Use Agreement in a form substantially similar to Exhibit D attached hereto and incorporated herein by this reference.

6.5.2 Terrace Improvements. The Parties agree the Project provides an opportunity to have a mutually attractive transition between the Project and the Remaining City Property, which may become the future City Town Square Project. As requested by the City, the Developer shall be solely responsible for design, permitting, construction, operation, and repair of the Terrace Improvements on the City Terrace Improvements Easement Area. To facilitate the Developer's commitment, the City shall grant to the Developer an easement on the City Terrace Improvements Easement Area, subject to the City retaining certain rights to require the Developer allow public access to a substantial portion, all as provided in the City Easement and Public Use Agreement in a form substantially similar to Exhibit D. The Developer shall submit, and the City shall review and in good faith approve, the Terrace Improvements conceptual design as set forth on the Schedule of Performance.

6.5.3 Consideration. The Parties acknowledge that the Developer's commitment to construct the Terrace Improvements and make them available for City use, provide public parking in the Parking Garage, and pay the Town Square Contribution are all provided in exchange for the City's agreements herein, including granting the two easements on the City Easement Area, and each provides substantial benefits and cost savings to the City. The Parties also acknowledge that the City considers the Town Square Contribution, public parking in the Parking Garage, and construction and use of the Terrace Improvements to be consideration for City granting the easements for the Parking Garage and Terrace Improvements.

6.5.4 Execution and Recordation. The Parties will execute and record the City Easement and Public Use Agreement as set forth on the Schedule of Performance. Prior to recordation of the City Easement and Public Use Agreement, the Developer shall submit to the City Community Development Director evidence of debt and equity commitments sufficient to acquire the 220 Park Property and pay the full estimated cost, including reasonable contingencies, to construct the Project, including the Parking Garage and the Terrace Improvements, and to satisfy Developer's financial obligations specified in this Agreement. In the event Developer identifies legal, financial, regulatory or other concerns arising from relying on an easement from City for the Parking Garage or Terrace Improvements which may prevent their development, City agrees in its reasonable discretion to cooperate with Developer to consider alternative means to provide such rights.

6.6 City Town Square Project Coordination. The Parties acknowledge and agree that the City Town Square Project is entirely separate from the Project and is subject to the sole discretion of the City. It is, however, the Parties' intention and desire to expedite planning, permitting, construction, and occupancy of the Project so that: (i) what has been a vacant property in the heart of downtown can be activated and will once again be a center of activity for the community, and (ii) the opportunities for synergy and cost efficiencies with the future Town Square (if City elects to develop it) may be maximized. This Agreement includes a Schedule of

Performance, set forth on Exhibit C, to incentive redevelopment and coordinate the Project with the potential City Town Square Project. This Agreement is in no way intended to commit or require the City to proceed with the City Town Square Project, only to maximize opportunities for coordination and potential cost efficiencies.

6.6.1 Town Square Contribution. At the issuance of the Superstructure permit, the Developer shall pay City Two Million Dollars ($2,000,000), which City agrees to use towards construction of the City Town Square Project if the Town Square Project proceeds, subject to the adjustments in Section 6.3.3 above and Sections 6.6.2 through Section 6.6.5, below (the "**Town Square Contribution**").

6.6.2 Escalator. To incentivize an earlier start to Project construction and to account for inflation and potential additional cost escalation over time, in the event the Developer has not either (i) Commenced Construction of the Project or (ii) obtained the Superstructure permit for the Project within three (3) years after the Effective Date of this Agreement, the amount of the Town Square Contribution shall be increased by five percent (5%) per year thereafter (compounded annually) until paid to the City. Force Majeure Delay pursuant to Section 3.2.2 shall not apply to postpone applying this escalator provision to the Town Square Contribution.

6.6.3 Potential Off-Site Improvements and Credits. Only if desired and requested by the City in its sole discretion within the times set forth on the Schedule of Performance and approved by City as provided in this Section 6.3.3, Developer shall design and construct one or more improvements for the City Town Square Project listed below. The Parties acknowledge that the list of possible improvements may change as the Town Square design is refined, but currently includes the following as depicted in the Offsite Improvements Alternatives Diagram prepared by Bionic dated January 27, 2021 consisting of one sheet and on file with the City's Community Development Department, Planning Division ("**City Town Square Improvements**"):

(a) Improvements to the Lorton Avenue and Park Road sidewalks fronting the Town Square parcel.

(b) Widening of the Lorton Avenue sidewalk into the street right-of-way along the Town Square parcel and/or along the Project parcel.

(c) Construction of a new culvert clean-out within Park Road, provided there are no significant utility conflicts or relocations involved in this scope.

The City Town Square Improvements are optional and independent and can be requested by the City individually or collectively or not at all, and only if the City makes the findings required under Applicable Law to permit the work by the Developer without a competitive public bid process. If constructed, these City Town Square Improvements shall be separately contracted by the Developer, shall be considered each a "public work" under applicable Prevailing Wage Laws, and credited dollar-for-dollar (both reasonable and actual third party soft and hard costs) against and in no event to exceed the amount of the Town Square Contribution. At the times set forth on the Schedule of Performance, the City shall provide Developer a written notice stating

its desire for the Developer to complete the design and construct any, all, or none, of the City Town Square Improvements, and the Parties shall cooperate in good faith to complete the design and cost estimate. At the times set forth on the Schedule of Performance, the Developer shall notify the City in writing of the final cost estimates for the City Town Square Improvements (broken down by line item), and the City shall provide final written notice to the Developer confirming whether it would like the Developer to build any, some, all or none of the selected City Town Square Improvements at stated cost estimates and schedule. If the Developer has not yet contributed the Town Square Contribution, then the cost estimates of the City Town Square Improvements City has selected and approved shall be credited against the Town Square Contribution. If the Developer has already contributed the Town Square Contribution, then the City shall reimburse the Developer the amount of the approved cost estimates concurrently with its approval notice. If City opts not to proceed with any of the City Town Square Improvements, Developer shall not be entitled to any credit or reimbursement. The City shall waive or pay on Developer's behalf any permit or inspection fees for the City Town Square Improvements. With City approval by separate agreement specifying the financial terms (e.g., Guaranteed Maximum pricing commitment, contingency fund, schedule and assumption of overrun risk), the Developer shall construct the City Town Square Improvements and complete such improvements on a schedule agreed to by the City and Developer at the time of City approval. Nothing in this Agreement commits the Developer to construct the Town Square Improvements that exceed the Town Square Contribution or to accept any potential overrun risks that could exceed the Town Square Contribution. The City agrees it shall not delay or withhold a Certificate of Occupancy (or any other permit or inspection) for the Project related to the construction of these City Town Square Improvements. At the completion of the City Town Square Improvements (final inspection and acceptance by City), the Developer shall submit to City a reasonable accounting of the actual City Town Square Improvements costs Developer has incurred for approval and dollar-for-dollar reconciliation with the Town Square Contribution, and the Party owing money in accordance with the reconciliation shall reimburse the other Party within thirty (30) days of delivery of the accounting.

6.6.4 Use of Town Square Contribution.

(a) The City agrees that for a reasonable time after the Effective Date as the City may determine in its discretion, the Town Square Contribution shall not be treated as general funds of the City and shall be earmarked and accounted for separately to be used for the actual construction costs associated with the City Town Square Project. City may determine after such reasonable time that the Town Square Contribution is not required to be earmarked for the City Town Square Project, whether because the City Town Square Project will not be constructed, or will not be constructed for a considerable time, or does not require use of the Town Square Contribution, or another reason, and thereafter the Town Square Contribution may be treated as general funds of the City for City's use in its discretion.

(b) If at any time after the Effective Date the City wishes the Developer to construct all or any portion of the City Town Square Project with the construction of the Project beyond what is identified in Section 6.3.3, above, the Parties will meet and confer in good faith to negotiate and document the terms of such construction as either an amendment to this Agreement pursuant to Section 9.1 so long as this Agreement is in effect or by separate agreement if it has terminated by its terms. If the Developer has paid the Town Square

Contribution to the City, this Section 6.6.54 shall survive the termination of this Agreement until the obligations herein are satisfied.

6.6.5 Good Faith Coordination. The Developer and the City Community Development Director shall provide regular, as-needed updates, including meet and confer as necessary, regarding the status and schedule of the Project and the City Town Square Project.

6.6.6 Compliance with Laws. Developer shall comply with all Applicable Laws in its construction of the Project and each component, including but not limited to applicable California Labor Code requirements.

ARTICLE 7

ANNUAL REVIEW

7.1 Periodic Review.

7.1.1 As required by California Government Code Section 65865.1, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement.

7.1.2 The annual review shall be conducted as provided herein:

(a) Developer's Submittal. By the anniversary of the Effective Date each year or other annualized date established by the City, the Developer shall provide documentation of its compliance with this Agreement during the previous calendar year.

(b) Finding of Compliance. Within thirty (30) days after the Developer submits its documentation under Section 7.1.2(a), the Community Development Director shall review the submittal and make an initial determination as to whether the Developer has demonstrated good faith compliance with the material terms of this Agreement. If the Community Development Director makes an affirmative determination, or does not determine otherwise within thirty (30) days, the annual review shall be deemed concluded. The Community Development Director may also, prior to the expiration of the 30-day period specified in this Section 7.1.2(b), refer the determination of good faith compliance to the City Council, and shall provide Developer notice of his or her intent to make such referral in said 30-day period.

(c) Hearing to Determine Compliance Upon Referral.

(i) If the Community Development Director issues the notice under Section 7.1.2(b), within seven (7) days of such notice, the Community Development Director shall request that the City Council schedule a public hearing on Developer's good faith compliance with the material terms of this Agreement. The Community Development Director shall prepare and submit to the City Council, City Manager and Developer a staff report making his or her initial recommendation at least fourteen (14) days prior to the public hearing. Such

report shall specify in reasonable detail the basis for the recommendation so that Developer may address the recommendation at the hearing held by the City Council, including, if necessary, a proposal for a reasonable time for Developer to take any necessary corrective action(s).

(ii) If scheduled as provided in Section 7.1.2(c)(i), above, the City Council shall conduct a noticed public hearing to make a final determination on the good faith compliance by Developer with the material terms of this Agreement. At such hearing, Developer shall be given an opportunity to be heard and submit evidence, orally and in writing, and address the recommendations of the staff report germane to the issue of Developer's good faith compliance. The findings of the City Council on whether Developer has complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded.

(iii) If, however, the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of the Agreement, the City Council may take those actions it deems appropriate, including but not limited to, modification or termination of this Agreement, in accordance with California Government Code Section 65865.1. Alternatively, in its discretion the City Council may specify a reasonable time and steps for Developer to bring its performance into good faith compliance with the materials terms of this Agreement ("**City Recommendation**"). If the City Council provides a City Recommendation, Developer shall submit evidence of compliance to the Community Development Director within the time period granted, and the Director shall report the results and the Director's recommendation to the City Council. If the areas of noncompliance specified in the City Recommendation are not corrected within the time limits so prescribed, then the City Council may, in its discretion, extend the time for compliance as it may determine (with conditions, if the City Council deems appropriate) take action to modify this Agreement (subject to agreement by Developer if such modifications would materially increase any obligation, cost or liability of the Developer), or take action to terminate this Agreement.

7.2 Certificate of Good Faith Compliance. If, after an annual review, City finds Developer has complied in good faith with the material terms of this Agreement, City shall within ten (10) days after receiving a request from Developer issue to Developer a certificate of compliance certifying that Developer has so complied through the period of the applicable annual review.

7.3 No Waiver. Failure of City to conduct an annual review shall not constitute a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

7.4 Reimbursement of Annual Review Costs. Developer shall pay the City for the reasonable costs incurred, including charges for City Attorney and other City staff time, in conducting its annual review of the Agreement within thirty (30) days of receipt of an invoice therefore. Reimbursement shall be based on City's charges for City Attorney and staff time

billed for legal review and development project application review pursuant to City's fee schedule in effect at the time.

ARTICLE 8

MORTGAGEE PROTECTION

8.1 Mortgagee Protection. This Agreement, expressly including but not limited to the City Easement and Public Use Agreement which is intended to and shall run with the land upon recordation, shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, subject to the provisions in Section 2.1 limiting the benefits of this Agreement to Developer and its successors but not a separate owner of the Property.

8.2 Mortgagee Not Obligated.

8.2.1 Notwithstanding the provisions of Section 8.1 above, except as specified in Section 8.2.2, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals

8.2.2 Any Mortgagee or successor in interest to a Mortgagee that is not proceeding to construct or complete construction of the Project pursuant to the Project Approvals and this Agreement must comply with all federal and state law and permit conditions applicable to the Project construction and shall not allow or permit a nuisance. The Parties agree that this Agreement is not intended to allow or authorize a Mortgagee to remain on the City Property for any longer than would otherwise be allowed by the terms of this Agreement, the City Easement and Public Use Agreement or any agreement with the City related to the Temporary Use Areas.

8.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

8.3.1 City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

8.3.2 In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 8.3.1 above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 8.3.2 and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

8.3.3 Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagee at the address provided by Mortgagee to City. Any notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 13.5, or at such other address as shall be designated by City by notice in writing given to the Mortgagee in like manner.

8.4 No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement, the City Easement and Public Use Agreement, temporary access agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.5 Technical Amendments to this Article 8. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith with Developer at Developer's expense to facilitate Developer's negotiations with lenders.

ARTICLE 9

AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

9.1 Amendment of this Agreement.

9.1.1 Amendment of Agreement by Mutual Consent. Except as otherwise expressly provided herein (including but not limited to Section 2.1 related to termination in the event Developer does not timely Close, Section 7.1 relating to City's annual review and Section 12.3 relating to termination in the event of a Default), this Agreement may be terminated, modified or amended in writing from time to time only by mutual consent of the Parties hereto or

their successors-in-interest or assigns, and in accordance with the provisions of Government Code sections 65867, 65867.5 and 65868.

9.1.2 Refinement by Operating Memoranda.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and Developer, and during the course of implementing this Agreement and developing the Project refinements and clarifications of this Agreement become appropriate and desired with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such a refinement is necessary or appropriate, City and Developer shall effectuate such refinement through a memorandum (the "**Operating Memorandum**") approved in writing by City and Developer, which, after execution, shall be attached hereto as an addendum and become a part hereof. Any Operating Memorandum may be further refined from time to time as necessary with future approval by City and Developer. No Operating Memorandum shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested refinement may be effectuated pursuant to this Section 9.1.2 or whether the requested refinement is of such a character to constitute an amendment hereof pursuant to Section 9.1.3 below. The City Manager shall be authorized to execute any Operating Memoranda hereunder on behalf of City.

(b) By way of illustration but not limitation of the above criteria for an Operating Memorandum, any refinement of this Agreement which does not substantially affect (i) the Term; (ii) permitted uses of the Property; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for Subsequent Approvals; (v) increases in the density or intensity of the use of the Property or the maximum height or size of proposed buildings; (vi) monetary contributions by Developer; or (vii) the provision of public benefits described in ARTICLE 6, shall be deemed suitable for an Operating Memorandum and the City Manager, except to the extent otherwise required by Applicable Law, may approve the Operating Memorandum without notice and public hearing.

9.1.3 Agreement Amendments. Any revision to this Agreement which is determined not to qualify for an Operating Memorandum as set forth in Section 9.1.2 shall be deemed an "**Agreement Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The City Manager shall have the authority in her or her reasonable discretion to determine if a proposed revision is an Agreement Amendment subject to this Section 9.1.3 or qualifies for an Operating Memorandum subject to Section 9.1.2.

9.1.4 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in writing which refers expressly to this Agreement and is signed by duly authorized representatives of each Party or their successors.

9.2 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those

provisions existed as of the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

9.3 Amendments to Project Approvals.

9.3.1 Generally. Project Approvals (except for this Agreement the amendment process for which is set forth in this ARTICLE 9) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Laws. City shall not request or process any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent.

9.3.2 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any Project Approvals (except for this Agreement the amendment process for which is set forth in this ARTICLE 9), the City Manager or his or her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Laws and may be processed administratively. If the City Manager or his or her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Laws, the amendment or modification shall be determined to be an "**Administrative Project Amendment**," and the City Manager or his or her designee may approve the Administrative Project Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to a subdivision map or the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Project Amendment as set forth above

shall be subject to review, consideration and action pursuant to the Applicable Laws and this Agreement.

9.4 Reliance on GPEIR and MND. The GPEIR and MND, which have been certified by City as being in compliance with CEQA, address the potential environmental impacts of the entire Project as it is described in the Project Approvals as described in the Environmental Consistency Checklist and MMRP. It is agreed that, in acting on any discretionary Subsequent Project Approvals for the Project, City will rely on the GPEIR, MND, and Environmental Consistency Checklist to satisfy the requirements of CEQA to the fullest extent permissible by CEQA, and City will not require a new initial study, negative declaration or subsequent or supplemental EIR unless City determines that such additional analysis and processing are required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP or specifically required by the Applicable Laws.

9.5 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Project Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Project Approval, and City, at Developer's expense, shall conduct such CEQA review as expeditiously as possible.

ARTICLE 10

COOPERATION AND IMPLEMENTATION

10.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Project Approvals**"). The Subsequent Project Approvals may include, without limitation, the following: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and subdivision maps, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement. Further, except as expressly provided herein, City shall not exercise discretion in determining whether or how to grant Subsequent Project Approvals in a manner that would prevent development of the Project for the uses and to the maximum intensity of development set forth in the Existing Approvals.

10.2 Scope of Review of Subsequent Project Approvals. By approving the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals or otherwise to prevent or delay development of the Project as set forth in the Existing Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions.

10.3 Processing Applications for Subsequent Project Approvals.

10.3.1 Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Laws. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

10.3.2 Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the full extent allowed by Applicable Laws, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Project Approval applications including: (i) if legally required, providing notice and holding public hearings; and (ii) acting on any such pending Subsequent Project Approval application. Upon Developer's request and prior approval, when City deems it necessary or desirable, City will endeavor to retain consultants to assist in reviewing and processing Developer's applications, at Developer's expense including any added expense for City staff to retain and supervise such consultants. City similarly will consider Developer's request to arrange overtime staff assistance; provided, Developer acknowledges that City will have other development applications and planning work in process or waiting to be processed from time to time, and Developer's Subsequent Project Approval applications are not entitled to priority treatment to the disadvantage of such other applications and work; and provided further, Developer acknowledges there are practical constraints on City's ability to arrange staff overtime.

10.3.3 The City agrees to provide an expedited plan check process for the approval of Project drawings consistent with its existing practices for expedited plan checks. Developer agrees to pay the City's established fees for City's Building Division to provide expedited plan check services and to pay City's reasonable charges for any plan check services required by other City staff and departments. The City shall use reasonable efforts to provide such plan checks within three (3) weeks of a submittal that meets the requirements of Section 10.3.2. The City acknowledges the City's timing processing of Subsequent Project Approvals and plan checks/inspections is essential to the Developer's ability to achieve the Schedule of Performance.

10.4 Other Agency Subsequent Project Approvals; Authority of City. City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals. Notwithstanding the issuance to Developer of Other Agency Subsequent Project Approvals, Developer agrees that City shall have the right to review, modify, approve and/or reject any and all submissions subject to the Other Agency Subsequent Project Approvals which, but for the authority of the other governmental or quasi-governmental entities issuing the Other Agency Subsequent Project Approvals, would otherwise require City approval. Developer agrees that City may review, modify, approve and/or reject any such materials or applications to ensure

consistency with this Agreement and the Project Approvals and Developer shall incorporate any and all changes required by City prior to submitting such materials and applications to the other governmental or quasi-governmental entities for review and/or approval.

10.5 Implementation of Necessary Mitigation Measures and Conditions. Developer shall, at its sole cost and expense, comply with the MMRP requirements and conditions of approval included with the Project Approvals as applicable to the Property and Project.

10.6 Cooperation in the Event of Legal Challenge. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the City's approval of this Agreement or any of the Project Approvals (each, a "**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. Developer's monetary obligations under this Section 10.6 shall survive expiration or earlier termination of this Agreement. The provisions of this Section 10.6 shall not apply to any challenges that may arise concerning the City Easement and Public Use Agreement separately from challenges to initial approval of this Agreement, as described in Section 3 of the City Easement and Public Use Agreement, and such challenges instead shall be governed by Sections 3 and 4 of the City Easement and Public Use Agreement.

10.6.1 Meet and Confer. If a Litigation Challenge is filed, upon receipt of the petition, the Parties will have twenty (20) days to meet and confer regarding the merits of such Litigation Challenge and to determine whether to defend against the Litigation Challenge, which period may be extended by the Parties' mutual agreement so long as it does not impact any litigation deadlines. The City and Developer mutually commit to meet all required litigation timelines and deadlines. The Parties shall expeditiously enter a joint defense agreement, which will include among other things, provisions regarding confidentiality. The City Manager is authorized to negotiate and enter such joint defense agreement in a form acceptable to the City Attorney. Such joint defense agreement shall also provide that any proposed settlement of a Litigation Challenge shall be subject to City's and Developer's approval, each in its reasonable discretion. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by Developer, and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto.

10.6.2 Defense Election. If, after meeting and conferring, the Parties mutually agree (each in its sole discretion) to defend against the Litigation Challenge, then the following shall apply:

(a) Joint Representation. For the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developer (each in its sole discretion), at the Developer's sole cost and expense.

(b) If the Parties cannot reach timely and mutual agreement on a joint counsel, and Developer continues to elect (in its sole discretion) to defend against the Litigation Challenge, then:

(i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

(ii) City may, in its sole discretion, elect to be separately represented by the outside legal counsel of its choice in any such action or proceeding with the reasonable costs of such representation to be paid by Developer;

(iii) Developer shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all necessary and reasonable costs incurred by City in connection with the Litigation Challenge, including City's administrative, outside legal fees and costs, and court costs;

(iv) The Parties intend that the City's role under subsection (b)(ii) shall be primarily oversight although the City reserves its right to protect the City's interests, and the City shall make good faith efforts to maximize coordination and minimize its outside legal costs (for example, minimizing filing separate briefs, and duplication of effort to the extent feasible).

(v) For any Litigation Challenge which the Developer has elected to defend under this Section 10.6.2(b), Developer shall indemnify, defend, and hold harmless the City and the City Parties from any liability, damages, claim, action, cause of action, judgment (including City costs to effectuate such judgment, including any attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation), loss (direct or indirect), obligation, order, fine, penalty or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, staff time, expenses or costs) related to such Litigation Challenge. Notwithstanding the foregoing, the Developer shall not be responsible for any reimbursement to the City for the time of the City Attorney related to the Litigation Challenge if the City is represented by outside legal counsel.

10.6.3 Developer Election Not To Defend. If Developer elects, in its sole and absolute discretion, not to defend against the Litigation Challenge, it shall deliver written notice to the City regarding such decision. If Developer elects not to defend, the City has the right, but not the obligation, to proceed to defend against the Litigation Challenge and shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice, at its sole cost and expense. If Developer elects not to defend, the City has the right, but not the obligation, to terminate this Agreement and any Project Approvals then in effect, and to consider the Developer's application for any Subsequent Project Approvals withdrawn. In the event the City does not terminate this Agreement, then if the terms of a proposed settlement would constitute an amendment or modification of this Agreement, the settlement shall not become effective unless such amendment or modification is approved by

Developer, and by City in accordance with Applicable Laws, and City reserves its full legislative discretion with respect thereto. In the event the Developer does not approve such amendment or modification, the City retains the right, but not the obligation, to terminate this Agreement and any Project Approvals then in effect, and to consider the Developer's application for any Subsequent Project Approvals withdrawn. If Developer elects pursuant to this Section 10.6.3 not to defend against the Litigation Challenge and so notifies City, and City thereafter elects not to defend against the Litigation Challenge, Developer shall be liable for and shall promptly reimburse City for (i) any costs, fees or payments owed as a result of the Litigation Challenge that may be City's obligation, whether by judgment, settlement or otherwise, and (ii) all necessary and reasonable costs incurred by City in connection with the Litigation Challenge, including City's administrative, outside legal fees and costs, and court costs.

10.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

10.8 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

10.9 Indemnity and Hold Harmless. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless the City, including its elected and appointed officers, officials, employees, contractors, representatives and authorized agents (each a "**City Party**" and collectively "**City Parties**") from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project and, if applicable from compliance with the terms of this Agreement, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees; provided that Developer's obligation to indemnify and hold harmless (but not Developer's duty to defend) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 10.9 includes any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' obligations to comply with any applicable State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "**Prevailing Wage Laws**"), including all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781. Developer's obligations under this Section 10.9 shall survive expiration or earlier termination of this Agreement.

10.10 Sales Tax Point of Sale Designation.

10.10.1 The Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing materials to be used in connection with the construction and development of, or incorporated into, the Project, including by way of illustration but not limitation bulk lumber, concrete, structural steel, roof trusses and other pre-fabricated building components, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and shall cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible and to the extent allowed by law. This Section 10.10 shall not apply to tenants who perform their own tenant improvement work.

10.10.2 To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or as frequently as quarterly upon City's request, provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City. Notwithstanding the foregoing, the failure of any general contractor(s) or subcontractor(s) to allocate sales and use tax revenues as provided herein or to comply with this Section 10.10 shall not constitute a breach by Developer under this Agreement.

ARTICLE 11

ASSIGNMENT

11.1 Transfers. Prior to the issuance of a final Certificate of Occupancy for the Project, neither City nor Developer may assign its rights or delegate its duties under this Agreement, except for Developer Permitted Transfers as defined below, without the express written consent of the other Party, which consent will not be unreasonably withheld or delayed. City may refuse to give consent to a proposed transfer only if, in light of the proposed transferee's reputation, experience with similar projects, and/or financial resources, such transferee would not, in City's reasonable opinion, be able to perform the obligations proposed to be assumed by such transferee, and such determinations will be made by the City Council. Prior to any transfer, the Developer and assignee shall enter into an assignment and assumption agreement subject to prior approval, which shall not be unreasonably withheld or delayed, of the City Manager and the City Attorney. Developer acknowledges that satisfying the terms of this Agreement will achieve certain goals, objectives and public benefits for City which provide material consideration and incentive for City agreeing to enter into this Agreement and agreeing to grant the Existing Approvals, and justify certain restrictions on the right of Developer to assign or transfer its interest under this Agreement in order to assure achievement of such goals,

objectives, and public benefits, and therefore Developer agrees to and accepts the restrictions set forth in this Section 11.1 as reasonable and as a material inducement for City to enter into this Agreement. Developer shall pay the reasonable costs borne by City in connection with its review of the proposed assignment, including costs of attorney review and City staff time.

Notwithstanding any other provision of this Agreement to the contrary, each of following transfers are permitted and shall not require City consent under this Section 11.1 (each a "**Developer Permitted Transfer**"):

(a) Any transfer for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project;

(b) An assignment of this Agreement to an Affiliate of Developer;

(c) Dedications and grants of easements and rights of way required in accordance with the Project Approvals; or

(d) Any leasing activity.

ARTICLE 12

DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to extensions of time under Section 3.2.2 or by mutual consent in writing, failure by a Party to perform any action or covenant or satisfy any obligation required by this Agreement within thirty (30) days following receipt of written notice from another Party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform is non-monetary and cannot reasonably be cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion at the earliest practicable date. Notwithstanding the above notice and cure provisions, if such failure to perform by Developer or a circumstance regarding the Project in City's reasonable opinion creates a public health or welfare emergency, City may but is not obligated to implement a cure and Developer thereafter shall promptly reimburse City its costs and expenses, including attorney's fees. The City shall provide Developer with reasonable notice appropriate for the circumstances of its determination of and nature of the emergency. If notice cannot be given prior to commencement of the cure, the City shall provide the Developer with its explanation of the emergency and a reasonable explanation for why prior notice could not be given.

12.2 Withholding of Permits. In the event of a Default by Developer, or following notice of breach to Developer pursuant to Section 12.1 above and during the cure period provided therein, upon a finding by the City Manager or his or her designee that Developer is in breach, City shall have the right to refuse to issue any permit or other Subsequent Project Approvals to which Developer would otherwise have been entitled pursuant to this Agreement until such Default or breach is cured. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3 Termination. In the event of a Default by a Party, the non-defaulting Party or Parties shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868 and any regulations of City implementing such section. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and any City regulations implementing said section. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by another Party may give written notice of termination of this Agreement to the other Parties. Termination of this Agreement shall be subject to the provisions of Section 12.8 hereof.

12.4 Specific Performance for Violation of a Condition. If City issues a Project Approval pursuant to this Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

12.5 Resolution of Disputes.

12.5.1 Resolution Prior to Legal Action. With regard to any dispute involving the Project or this Agreement, the resolution of which is not provided for by this Agreement or Applicable Laws, prior to instituting legal action pursuant to Section 12.5.2, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request, which meeting may be continued by mutual consent. The parties to any such meetings shall attempt in good faith to resolve any such disputes, and by mutual consent may arrange a third party to mediate the dispute. In the event the Parties are not able to resolve the dispute and reach an agreement within fourteen (14) days of the request, either Party may initiate legal action or take such other actions available under this Agreement or the law. Nothing in this Section 12.5.1 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings, and the fact of participation in such meetings and any information provided or oral or written statements made by a Party shall not be admissible or otherwise used against the Party in any subsequent legal action.. Nothing in this Section 12.8 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 12.5.1 if it believes in good faith that such postponement will cause irreparable harm to such Party.

12.5.2 Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for San Mateo County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.5.3 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal

service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon W-K Ventures, Inc., a California corporation, Developer's registered agent for service of process in California, at 901 Mariner's Island Boulevard, 7th Floor, San Mateo, CA 94404 or in such other manner as may be provided by law.

12.6 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another Party, except as otherwise expressly provided herein.

12.7 Limitation on Damages. Notwithstanding anything to the contrary herein, neither Party shall have the right to recover any consequential, special, or punitive damages in the event of a Default by the other Party. In no event shall City or the Indemnified Parties be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available Developer for a Default by City shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement, or to terminate this Agreement. City shall have all remedies available in law or equity, including but not limited to an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement, or to terminate this Agreement. In addition, City shall have the right to seek actual damages from Developer, including but not limited to enforcing payment of money or the performance of obligations requiring payment of money by Developer under the terms of this Agreement, including but not limited to Sections 6.3.1, 6.3.2, 6.3.3, 7.4, 10.6.2, 10.6.3, 11.1, 12.1 and 13.12. As part of recovering such damages, City shall be entitled to interest thereon at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, compounded annually, from the date of expenditure. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by another Party.

12.8 Surviving Provisions. In the event this Agreement is terminated, no Party shall have any further rights or obligations hereunder, except for those obligations of Developer which by their terms survive expiration or termination, or which are set forth in Section 10.6 (Cooperation in the Event of Legal Challenge).

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties

13.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "**shall**," "**will**," or "agrees" are mandatory, and "**may**" is permissive; (iv) "or" is not exclusive; and (v) "**include**," "**includes**" and "**including**" are not limiting and shall be construed as if followed by the words "without limitation."

13.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code Section 65868.5.

13.5 Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Notices and

communications may be sent by email to expedite transmittal of information and responses, but shall not be deemed given unless and until followed by transmittal by one of the other processes described in this Section 13.5. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:	City of Burlingame 501 Primrose Road Burlingame, CA 94010 Attention: Director of Community Development
With a copy to:	City of Burlingame 501 Primrose Road Burlingame, CA 94010 Attention: City Attorney
and:	Burke, Williams & Sorensen, LLP 1901 Harrison Street, 9th floor Oakland, CA 94612 Attention: Edward Shaffer or Gerald Ramiza
To Developer:	220 Park-Burlingame, LLC c/o Sares-Regis Group of Northern California 901 Mariner's Island Boulevard, 7th Floor San Mateo, CA 94404 Attention: Mark Kroll
and:	220 Park-Burlingame, LLC c/o Dostart Development Company, LLC 145 Addison Avenue Palo Alto, CA 94301 Attention: Steve Dostart
With a copy to:	Holland & Knight 50 California Street, Suite 2800 San Francisco, CA 94111 Attention: Tamsen Plume

13.6 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the Existing Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk and Developer shall place this fully executed Agreement with First American Title Company under Escrow Number NCS-982741-SC ("**Escrow Officer**") to be held in the same escrow as the PSA, with instructions to record in the Official Records of the County of San Mateo at Closing or to return the original signatures of each Party to each Party upon termination of this Agreement pursuant to Section 2.1(a).

13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Laws; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by another Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by another Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

13.10 California Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo or the US District Court, Northern California District.

13.11 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.12 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written notice to another Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii)

the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from which such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within fourteen (14) days following the receipt thereof. The failure of either Party to provide the requested certificate within such fourteen (14) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The Director of Community Development, the Planning Director or the City Manager, or their authorized designee, shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

13.13 No Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

13.14 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City, and that the Delaware limited liability companies comprising Developer each has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

13.15 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

13.16 Days. The word "days" as used in this Agreement refers to calendar days unless specifically provided otherwise. In the event that any period to perform an obligation or notice period under this Agreement starts or ends on a Saturday, Sunday, or state or national holiday, the applicable time period shall be extended to the next regular City business day.

[Signatures begin on next page.]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

City of Burlingame, a municipal corporation organized and existing under the laws of the State of California

By: _____

Name:_____

Title:_____

[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Scott Spansail, Interim City Attorney

ATTEST:

By: _____
_____, City Clerk

DEVELOPER:

220 PARK-BURLINGAME, LLC, a Delaware limited liability company

By: SRGNC MF Park Road, LLC
a Delaware limited liability company
Its: Manager

By: SRGNC MF, LLC,
a Delaware limited liability company
Its: Manager

By: _____

Name: _____

Its: _____

By: DDC 220 Park Road Associates, LLC,
a Delaware limited liability company
Its: Member

By: _____
Name: _____
Its: _____

[signatures must be notarized]

[*Insert notary pages*]

EXHIBIT A-1

Property Legal Description

Real property in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL ONE:

LOTS 4, 5, 6, 12, 13 AND 14, IN BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PARK ROAD, DISTANT THEREON 250 FEET SOUTHEASTERLY FROM ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, SAID POINT OF BEGINNING ALSO BEING THE INTERSECTION OF SAID NORTHEASTERLY LINE OF PARK ROAD WITH THE LINE DIVIDING LOT 11 AND 12 IN SAID BLOCK; RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF PARK ROAD 150 FEET TO THE MOST SOUTHERLY CORNER OF LOT 14, WHICH SOUTHERLY CORNER IS 150 FEET NORTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF PARK ROAD FROM ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF HOWARD AVENUE (AS WIDENED); THENCE DEFLECTING 89° 58' 30" TO THE LEFT AND RUNNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF LOTS 14 AND 4, AND PARALLEL TO THE NORTHWESTERLY LINE OF HOWARD AVENUE, 300 FEET TO THE SOUTHWESTERLY LINE OF LORTON AVENUE (FORMERLY KNOWN AS MIDDLEFIELD AVENUE); THENCE DEFLECTING 90° 01' 30" TO THE LEFT AND RUNNING NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF LORTON AVENUE 150 FEET TO THE MOST NORTHERLY CORNER OF LOT 6, WHICH NORTHERLY CORNER IS 250 FEET SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF LORTON AVENUE FROM ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE; THENCE DEFLECTING 89° 58' 30" TO THE LEFT AND RUNNING SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF LOTS 6 AND 12 AND PARALLEL TO THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE 300 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF BLOCK 6 AND PORTION OF MIDDLEFIELD ROAD (NOW LORTON AVENUE), AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF MIDDLEFIELD ROAD (NOW LORTON AVENUE) AS SHOWN ON THE MAP ABOVE REFERRED TO, DISTANT THEREON 180 FEET SOUTHEASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF MIDDLEFIELD ROAD WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE; THENCE RUNNING SOUTHWESTERLY AND PARALLEL WITH SAID LINE OF BURLINGAME AVENUE, 135 FEET; THENCE AT RIGHT ANGLES, SOUTHEASTERLY 20 FEET; THENCE AT RIGHT ANGLES, NORTHEASTERLY 150 FEET TO THE SOUTHWESTERLY LINE OF THE PRESENT MIDDLEFIELD ROAD, NOW KNOWN AS LORTON AVENUE; THENCE AT RIGHT ANGLES NORTHWESTERLY 20 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 15 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

PORTION OF BLOCK 6 AND PORTION OF MIDDLEFIELD ROAD (NOW LORTON AVENUE), AS

DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF LORTON AVENUE, FORMERLY MIDDLEFIELD ROAD, AT THE MOST EASTERLY CORNER OF LOT 7 IN SAID BLOCK; THENCE SOUTHWESTERLY, ALONG THE SOUTHEASTERLY LINE OF SAID LOT 7, 150 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT, THENCE NORTHWESTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID LOT, 50 FEET; THENCE NORTHEASTERLY, ALONG THE NORTHWESTERLY LINE OF SAID LOT AND THE PROLONGATION OF SAID LINE, 150 FEET AND THENCE, AT A RIGHT ANGLE, SOUTHEASTERLY 50 FEET TO THE POINT OF BEGINNING.

For reference purposes only:
APN: 029-204-250

JPN: 029-020-204-25A

EXHIBIT A-2

CITY PROPERTY LEGAL DESCRIPTION

[*Insert*]

EXHIBIT B

IMPACT FEES

Public Impact Fees (Chapter 25.80)

- Public Impact Fees are charged per 1,000 SF of for both commercial (retail) and office uses. New development that, through demolition or conversion, will eliminate existing development is entitled to a fee credit / offset if the existing development is a lawful use under this title, including a nonconforming use.

50% of the fee shall be submitted prior to issuance of building permit
50% of the fee due before final framing inspection

	Impact Fee Based on Use
Proposed	140,000 SF office 7,075 SF retail (net new)
Existing Use Credit (commercial)	PO bldg. 13,293 SF + 1,275 SF garage = 14,568 SF

	Office			
2		Fee per 1,000 sq. ft. of building	Multiplier	Subtotal
3	General	$930.00	140	$130,200.00
4	Library	$695.00	140	$97,300.00
5	Police	$147.00	140	$20,580.00
6	Parks	$172.00	140	$24,080.00
7	Traffic/Streets	$7,285.00	140	$1,019,900.00
8	Fire	$360.00	140	$50,400.00
9	Storm Drainage	$717.00	140	$100,380.00
10	Total Impact Fee	$10,306.00		$1,442,840.00

Commercial Linkage Fees (Chapter 25.81)

- Commercial Linkage Fees are based on the square footage for new commercial development projects. Fees shall be based on the calculation of gross square feet of floor area, excluding enclosed parking areas, and shall include a credit for existing uses. The commercial linkage fee shall be paid in full prior to the issuance of the first building permit for the commercial development project. These fees, with the credit applied, are **estimated to be $3,447,549.00**.

COMMERCIAL LINKAGE FEE				
TYPE		Fee per sq. ft. of building	Multiplier	Subtotal
Retail	w/ prevailing wages	$5.00		$0.00
	w/o prevailing wages	$7.00	7,075	$49,525.00
Office - 50, 001 SF or more	w/ prevailing wages	$20.00		$0.00
	w/o prevailing wages	$25.00	140,000	$3,500,000.00
Total Linkage Fee:				$3,549,525.00

COMMERCIAL LINKAGE FEE -CREDIT				
TYPE		Fee per sq. ft. of building	Multiplier	Subtotal
Retail	w/ prevailing wages	$5.00		$0.00
	w/o prevailing wages	$7.00	14,568	$101,976.00
Total Linkage Fee:				$101,976.00

		Commercial Linkage Fee	New	3,549,525.00
		Commercial Linkage Fee	Credit	$101,976.00
			TOTAL	**$3,447,549.00**

*Estimates based on design; to be finalized at issuance of permits.

EXHIBIT C

SCHEDULE OF PERFORMANCE

It is both Parties' intention and desire to expedite planning, permitting, construction, and occupancy of the Project so that what has been a vacant property in the heart of downtown can be activated and will once again be a hive of activity for the community. The schedule milestones provided below are intended to help facilitate coordination between the City and the Developer to advance the Project in a timely manner and to ensure that all opportunities for synergy and efficiency with the future Town Square are able to be realized. The schedule milestones provided are presented as outside dates, and the Developer anticipates proceeding as quickly as reasonably feasible given market conditions.

The provisions of the Schedule of Performance are intended as a convenient guideline for the Parties and are not intended to supersede or amend the referenced operative sections listed therein. In the event of any conflict between this Schedule of Performance and the Development Agreement to which this Exhibit C is attached ("DA"), the DA shall control. Capitalized terms used below shall have the meaning ascribed to such terms in the DA. All of the dates and deadlines described herein shall be subject to extension by the City Manager or "Force Majeure Delay" (except for specified exclusions) in accordance with Section 3.2.1 of the DA.

#	MILESTONE	TIMING REQUIREMENT
	Pre-Closing/General	
1	DA executed and transmitted to 220 Park Property Escrow Officer (§2.1 and §13.7).	Within 10 days of Effective Date.
2	Developer submits the Terrace Improvements concept design to City (§6.5.2).	Within 10 days of Effective Date.
3	City approves the Terrace Improvements concept design (§6.5.2).	Within 120 days of submittal by Developer.
4	Developer and City provide regular updates on Project and City Town Square Project status and construction timing (§6.6.5).	On a regular, as-as needed basis as the circumstances warrant.
5	Developer to comply with interim use and maintenance obligations (§6.1).	As often as the circumstances warrant or in the times provided in any City permits or approvals of work.
6	Developer to submit applications for the Demolition, Foundation and Grading, Superstructure and encroachment building permits for the Project (§6.2).	Within twenty-four (24) months of the Effective Date of DA.
7	City to provide Developer a written notice of its preliminary intent for Developer to construct any, all, or none of the City Town Square Improvements, pending cost estimates (§6.6.3).	Within sixty (60) days after Developer's submission of an application for the first building permit for the Project.
8	Developer to provide written notice to City enumerating the projected costs of the	Within ninety (90) days of City providing notice of its intent for Developer to construct

	selected City Town Square Improvements. Developer and City to clarify design details and provide accurate market pricing (§6.6.3).	any or all of the City Town Square Improvements.
9	City to provide written notice confirming whether it would like Developer to build any or all of the selected City Town Square Improvements at stated cost estimates (§6.6.3).	Within ninety (90) days of receiving written notice of the cost of said improvements from Developer.
10	City and Developer enter agreement specifying financial arrangement (e.g., Guaranteed Maximum Pricing commitment, contingency fund, assumption of overrun risk) for any City Town Square Improvements, if any (§6.6.3).	Prior to initiation of any work on the City Town Square Improvements by Developer.
11	City and Developer execute and deliver to escrow the City Easement and Public Use Agreement to the Escrow Officer (§6.5).	Prior to issuance of any building permit that would include work on the City Easement Area. Recording shall be coordinated by the Escrow Officer through the same escrow as closing and any construction loans.
12	Developer submits to City Community Development Director evidence of financing commitments sufficient to acquire the Property and construct the Project (§6.5.4).	Prior to recordation of the City Easement and Public Use Agreement.
13	Developer Closes on Property (§2.1).	Five (5) years from the Effective Date ("**Outside Closing Date**")
Post-Closing		
14	City and Developer enter agreement for Developer's use of the Temporary Use Areas and record City Easement and Public Use Agreement (§6.4 and §6.5).	Prior to initiation of any use of the City Temporary Use Areas or Easement Area.
15	Developer shall provide notice to the community regarding removal of public parking and commencement of construction activities (§6.4).	At least sixty (60) days prior to removal of existing public parking.
16	Developer makes Town Square Contribution (§6.6.1).	Prior to issuance of Superstructure building permit for the Project.
17	Developer Commences Construction of Project. For the purposes of this Schedule of Performance, "**Commences Construction**" means that the following have occurred as to the Project: (i) Developer has closed and owns fee title to the Property, (ii) the Development Agreement and City Easement and Public Use Agreement have been recorded, (iii) City has issued to Developer the four major Project permits (demolition,	Prior to termination of the Development Agreement pursuant to Section 3.2.

	foundation and grading, Superstructure, and encroachment), (iv) Developer has signed contracts with a general contractor for the demolition and/or foundation and grading work, and (v) Developer has given the general contractor a notice to proceed and has caused the general contractor to physically commence demolition and/or foundation and grading of the Property and City Easement Area (§3.2). And, for the purposes of this Schedule of Performance, "**Caused the general contractor to physically commence**" work means that actual demolition or excavation has occurred and is continuing.	
18	Developer continues construction, without unreasonable delay or interruption, pursuant to and within the times set forth in City's building permits, as may be extended by City in the normal course (§4.4.2 and §6.2).	Pursuant to the terms, conditions and expiration dates of the building permits issued by City for the Project.
19	City to confirm to Developer whether it intends to construct its City Town Square Project immediately following the Project's completion, or if it would prefer for Developer to restore the City Property as a surface parking lot (§6.3.3).	Twelve (12) months before the projected completion of the Project, as Developer may update the completion date during Project construction.
20	Developer completes construction of any City Town Square Improvements, and restores the Temporary Use Areas as directed by City, including a reasonable schedule for completion (§6.3.2 and §6.6.3).	As agreed with City when the designs for the City Town Square Improvements are approved by the City Council, pending building permit approval by the Building Division.
21	Developer submits final accounting and reconciliation for any City Town Square Improvements, subject to terms in the improvement agreement (§6.6.3).	City and Developer to meet within thirty (30) days following submittal of final accounting and request for reimbursement, if needed to discuss request. Reimbursement by City to follow confirmation of amount due.

EXHIBIT D

[FORM OF] CITY EASEMENT AND PUBLIC USE AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attention: City Manager

Space Above This Line Reserved for Recorder's Use
Exempt from Recording Fee Per Government Code Section 27383

CITY EASEMENT AND PUBLIC USE AGREEMENT

220 Park Road

This City Easement and Public Use Agreement (this "Agreement"), dated as of _____, 20__ (the "Effective Date"), is entered into by and between the CITY OF BURLINGAME, a municipal corporation organized and existing under the laws of the State of California (the "City") and 220 PARK – BURLINGAME, LLC, a Delaware limited liability company (the "Developer").

Recitals

A. Developer owns approximately 1.28 acres of real property located at 220 Park Road, Burlingame, California (APN 029-204-250), as more fully described on Exhibit A-1 attached hereto and depicted on Exhibit A-2 attached hereto (the "220 Park Property").

B. City owns approximately 0.65 acres of real property known as "Lot E," which is immediately adjacent to the 220 Park Property, as more fully described on Exhibit B-1 attached hereto and depicted on Exhibit B-2 attached hereto (the "City Property").

C. City and Developer are parties to that certain Development Agreement dated as of _____, 2021, recorded in the Official Records of San Mateo County concurrently with this Agreement (the "Development Agreement"), for the improvement of the 220 Park Property and portions of the City Property. The improvements to and on the 220 Park Property and portions of the City Property, consisting generally of restoration and reuse of the historic Post Office Building on the 220 Park Property together with construction of upper stories for office use and construction of an underground parking garage, are referred to collectively in this Agreement as the "Project," as that term is defined in the Development Agreement.)

D. Developer proposes to build as part of the Project an underground parking garage beneath the 220 Park Property and extending under a portion of the City Property (the "Parking Improvements"), as described further below. Under the terms of the Development Agreement, City has agreed to grant Developer an exclusive easement beneath a portion of the City Property described more particularly below as the "Parking Easement Area," for the construction, installation, use, repair and maintenance of the Parking Improvements. In return, Developer has

agreed to make the Parking Improvements available for public use on nights and weekends, as described further below.

E. As requested by the City, the Developer has agreed to build, as part of the Project, certain outdoor surface improvements consisting of a multi-level terrace and related improvements on the City Property (the "Terrace Improvements") that connect to the 220 Park Property, all as described further below. Under the terms of the Development Agreement, City has agreed to grant Developer an exclusive easement over a portion of the City Property described more particularly below as the "Terrace Improvements Easement Area," for the construction, installation, use, repair, maintenance and management of the Terrace Improvements, while reserving certain rights of the City to authorize public use of a substantial portion of the Terrace Improvements. As required by the Development Agreement, Developer has demonstrated to City that Developer has obtained debt and equity commitments sufficient to pay the full estimated cost, including reasonable contingencies, to construct the Project, including the Parking Improvements and Terrace Improvements described in this Agreement, and to satisfy Developer's other financial obligations specified in the Development Agreement.

F. The Development Agreement has a defined term and will expire or terminate by its terms. This Agreement is intended to implement the intent of the Parties in the Development Agreement in a separate agreement that will survive the expiration or termination of the Development Agreement.

G. This Agreement, including the easements and public use rights granted herein, is being executed and delivered by City and Developer to accommodate the development of the Project while preserving the historic elements of the historic Post Office as well as ensuring rights of the public to (i) night and weekend parking in the Parking Improvements in a key location in downtown and (ii) access to and use of the Terrace Improvements. The Parties acknowledge that any and all costs related to the design, construction and future use, repair and maintenance of the improvements authorized by this Agreement are required to be funded entirely by the Developer, and that City shall have no obligation whatsoever with respect to operation, maintenance or other expenses related to the Parking Improvements or Terrace Improvements. City has determined that the value of the public parking provided to the City, the Town Square Contribution by Developer as described in the Development Agreement, and the preservation of the historic Post Office exceeds the value of the easement rights granted to the Developer by the City.

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

AGREEMENT

1. Grant of Easements.

1.1 Parking Easement. Pursuant to the Development Agreement, Developer intends to construct an approximately 280-space two-level underground parking garage as part of the Project to meet both the City's parking requirements as modified by the historic variance, and the City's historic preservation requirements for the historic Post Office building on the 220 Park

Property (the "Parking Improvements"). A portion of the Parking Improvements, consisting of approximately 32 parking spaces and related drive lanes (the "Parking Easement Improvements"), will be situated under that portion of the City Property described on Exhibit C-1 attached hereto and depicted on Exhibit C-2 attached hereto (the "City Easement Area"). Accordingly, subject to the provisions of this Agreement, City hereby grants to Developer (a) an exclusive easement (the "Parking Easement") for the initial construction, installation, repair, reconstruction, reinstallation, maintenance and operation and management of the Parking Easement Improvements, all in accordance with this Agreement. The term "Parking Easement Area" shall include any and all portions of the City Easement Area incidental and necessary to effectuate the Parking Easement.

1.2 Terrace Improvements Easement.

1.2.1 Terrace Improvements. Developer intends to construct certain exterior surface improvements consisting of a multi-level terrace or patio with stairs and ramps and related landscaping on a portion of the City Property concurrently with the Project, as further described and depicted in Exhibit E attached hereto (the "Terrace Improvements"). To provide a mutually attractive transition between the Project and the City Property, as requested by the City, Developer will design, construct, maintain and operate the Terrace Improvements on the surface of the City Easement Area (the "Terrace Improvements Easement Area"). Accordingly, subject to certain reserved rights of the City and in accordance with this Agreement, City hereby grants to Developer an exclusive easement (the "Terrace Improvements Easement") on, over, and upon the Terrace Improvements Easement Area for the construction, installation, repair, reconstruction, reinstallation, maintenance, operation and management of the Terrace Improvements on the Terrace Improvements Easement Area.

1.2.2 Developer Exclusive Areas. The Terrace Improvements will include an upper level terrace on the City Property (the "Top Terrace"), as shown on Exhibit D. The Top Terrace is level with and directly adjacent to the 220 Park Property, and the Developer plans to use space on the ground floor of the Project as a restaurant or café, with the Top Terrace available for outdoor seating or similar use. City hereby grants Developer the exclusive right to use the approximately 2,303 sf portion of the Top Terrace designated on Exhibit D for purposes ancillary to uses of the adjacent ground floor portion of the Project (the "Top Terrace Exclusive Area") and the approximately 403 sf portion of the Terrace Improvements Easement Area for the purposes of an ADA-compliant ramp to access the Top Terrace Exclusive Area and 220 Park Property as shown on Exhibit D ("ADA Ramp Exclusive Area"). The Top Terrace Exclusive Area and ADA Ramp Exclusive Area are collectively the "Developer Exclusive Areas."

[*Execution note: Exhibit D and this section should be revised to identify the specific locations and areas per the final design and building permits prior to recordation.*]

1.3 Easements. The Parking Easement and Terrace Improvements Easement (including the Developer Exclusive Areas) are sometimes referred to in this Agreement collectively as the "Easements.") The Parking Easement Area and the Terrace Improvements Easement Area (including the Developer Exclusive Areas) are sometimes referred to in this Agreement collectively as the "Easement Areas."

1.4 Condition of the Easement Areas. Developer accepts the Easement Areas in their existing AS-IS condition, with all faults and without warranty as to their suitability for Developer's purposes.

1.5 Term of Easements and Agreement.

1.5.1 Each Easement granted under this Agreement shall commence on the Effective Date and shall remain in effect from the Effective Date until the end of the "Life of the Building" (as defined below) unless sooner terminated as provided herein. Notwithstanding the above, this Agreement and the Easements shall terminate and be of no further force or effect if Developer does not complete the Project within the time period allowed for construction of the Project as provided in the Development Agreement (the "Completion Deadline").

(a) The "Life of the Building" means the period beginning on issuance of a temporary certificate of occupancy for the Project by City and ending on such date as (a) the building to be constructed by Developer on the 220 Park Property is substantially demolished in connection with construction and development of a new development project, or (b) a "Major Casualty" (as defined below) occurs, provided, if a Major Casualty occurs within the first fifty (50) years following the Effective Date, and if Developer and/or its Mortgagees elect to reconstruct the Project or any portion thereof (at their expense) and such reconstruction occurs within five (5) years following the date of such Major Casualty, the Easements shall remain in effect. As used herein "Major Casualty" means the Project is damaged or destroyed such that the cost of restoration or reconstruction exceeds fifty percent (50%) of the fair market value of the Project immediately prior to the Major Casualty.

(b) In the event of any Major Casualty within the first fifty (50) years following the Effective Date, if Developer elects to restore the Project or any portion thereof, Developer also shall restore the Parking Easement Improvements and the Terrace Improvements pursuant to this Agreement, and shall retain use of the Easements for the remainder of the Life of the Building.

1.5.2 Upon the expiration or termination of the Easements, whether as a result of the end of the Life of the Building, a Major Casualty, Developer's election not to rebuild the Project after a qualifying Major Casualty, Developer's failure to complete construction of the Project, or any other qualifying cause under this Agreement, Developer at its expense shall as soon as practicable after receiving City's written request, apply for any required City approvals and after receiving such approvals shall commence and diligently continue to completion the excavation, demolition and removal of the Parking Easement Improvements and the Terrace Improvements and restore the Parking Easement Area and the Terrace Improvements Easement Area to substantially their condition existing as of the Effective Date; provided, however, the City may elect to require the Developer to leave some or all of such improvements in place, with no obligation on the Developer's part to renovate, improve or otherwise modify such improvements). In the event Developer fails to perform all of its obligations under this Section 1.5.2, after notice and opportunity to cure, in addition to any other available remedies City may elect (but is not obligated) to perform such work at Developer's expense and thereafter collect from Developer all commercially reasonable costs incurred, including but not limited to any related reasonable attorneys' fees, and City may impose, record and enforce a lien on the 220

Park Property for such costs. If City conducts any such work, City shall not be liable for any damage to the 220 Park Property or any improvements thereon that may result except for liability resulting from the gross negligence or willful misconduct of City or any Indemnified Parties.

1.5.3 Following termination or expiration of the Easements, Developer, within thirty (30) days following City's request therefor, shall execute, acknowledge and deliver to City for recordation in the Official Records of San Mateo County a quitclaim deed in form reasonably acceptable to the City Attorney evidencing the expiration or termination of such Easements. If circumstances result in one of the Easements being terminated earlier than the other, this Section 1.5.3 shall be implemented separately as to each Easement. Upon termination or expiration of all the Easements, this Agreement shall be deemed terminated.

2. City Rights.

2.1 Parking.

2.1.1 Shared Parking. Developer hereby grants to the City an irrevocable license, effective following completion of construction of the Parking Improvements (including the City's final inspection for such improvements) and readiness for use and occupancy of the Project by tenants, for the City to require that the Developer make available two hundred and seventy-five (275) parking spaces in the Parking Improvements during "Public Parking Hours" (as defined below) to the general public for the specific and limited purpose of vehicular parking, including vehicular and pedestrian ingress and egress through the 220 Park Property as shown on Exhibit C-2 ("Public Parking"). [***Execution note: Exhibit C-2 should be revised to identify the specific locations and areas per the final design and building permits prior to recordation***.] The remaining five (5) spaces shall be exclusive to the Developer. Developer shall be responsible for providing commercially reasonable security for the Public Parking. The term "Public Parking Hours" shall mean 5:00 p.m. to 11:00 p.m. Monday through Friday, and 8:00 a.m. to 11:00 p.m. on Saturday, Sunday and any day on which the office of the Secretary of State of California is closed as a legal holiday. Developer may, in its sole and absolute discretion, make parking available to the public on weekdays between 8:00 a.m. and 5:00 p.m. and on all days between 11:00 p.m. and 8:00 a.m. Except as expressly specified in this Agreement, Public Parking shall not be terminated, prevented or interrupted except with the prior written approval of the City as provided herein; provided, Developer has the right to temporarily close the Parking Improvements from time to time as reasonably needed by Developer for necessary maintenance or repairs, subject to giving City at least two (2) days' prior written notice which may be sent by email to City's Community Development Director and Public Works Director or designees at email addresses provided by City, provided if such notice is not received by City by 5:00 p.m. on a regular City working day it shall be deemed received on the next regular City working day. If Developer in its reasonable discretion determines that maintenance or repairs require immediate action and cannot reasonably be delayed for the notification period, it may proceed with such work giving City as much notice as possible given the circumstances. If notice cannot be given prior to commencement of the work, Developer shall provide City its explanation of the emergency and why prior notice could not be given.

2.1.2 Parking Rates. During the Public Parking Hours, for visitors not eligible for free or validated parking, the parking rates for the Public Parking shall not be less

than the parking rates charged by the City at the Highland Garage on Highland Street, and no more than one hundred twenty-five percent (125%) of such parking rates; provided, during Public Parking hours when City does not charge any fee for parking at the Highland Garage, Developer may base its parking rate on the fee City charges at 5:00 p.m. Developer retains the right and full discretion to set different parking rates during weekdays between 8:00 a.m. and 5:00 p.m., and on all days between 11:00 p.m. and 8:00 a.m. If the Highland Garage no longer is operated by City, City may designate another comparable City-operated parking facility to set rates for the Public Parking.

2.1.3 Reasonable Rules and Restrictions on Public Parking. Developer shall have the right to establish and enforce reasonable rules and regulations relating to Public Parking, subject to review and approval by City in its reasonable discretion and so long as not discriminatory or otherwise in violation of applicable law, which may include hours of operation (but without shortening the minimum Public Parking Hours specified in Section 2.1.1). Developer's rules and regulations may be enforced by Developer and Project management as to the Parking Improvements.

2.1.4 No Public Dedication. The rights hereunder are not intended to and shall not be construed as a granting or conveyance of an express or implied offer of dedication of any part of the 220 Park Property for public use, but solely as an irrevocable license to the City to provide for and permit public parking and related ingress and egress as provided herein. The Developer at all times shall retain full control and management of the 220 Park Property.

2.2 Terrace Improvements.

2.2.1 City Reserved Use Rights. In its grant of the Terrace Improvements Easement, the City hereby reserves the right to require the Developer to allow general public access to the Terrace Improvements (except the Developer Exclusive Areas) following completion of construction of the Terrace Improvements (including the City's final inspection for such improvements) and their readiness for use by the public. Developer shall have the right to temporarily close portions of the Terrace Improvements from time to time as reasonably necessary to perform repairs or maintenance, subject to giving City at least two (2) days' prior written notice which may be sent by email to City's Community Development Director and Public Works Director or designees at email addresses provided by City, provided if such notice is not received by City by 5:00 p.m. on a regular City working day it shall be deemed received on the next regular City working day.

2.2.2 Reasonable Rules and Restrictions on Terrace Improvements. Developer shall have the right to establish and enforce reasonable rules and regulations relating to use of the Terrace Improvements, so long as not discriminatory or otherwise in violation of applicable law. All rules and regulations are subject to review and approval by City, in its reasonable discretion. It is the Parties' intent that the rules and regulations of the Terrace Improvements would be similar to/no more restrictive than the City's rules and regulations applicable to similarly situated City public parks. Following approval by City, Developer's rules and regulations may be enforced by Developer and Project management, and City's police department will exercise its inherent authority over activities on the Terrace Improvements

Easement Area as public property. The Parties acknowledge that because the Developer is obligated to maintain, repair and replace the Terrace Improvements, the Developer has a particular interest in ensuring such reasonable rules and regulations are enforced to minimize and avoid unnecessary damage or destruction to the Terrace Improvements beyond normal wear and tear.

2.2.3 No Public Dedication. The Parties agree that the Terrace Improvements are exclusively on the City Property and the Developer's commitments and covenants hereunder related to the Terrace Improvements are intended to and shall not be construed as a granting or conveyance of an express or implied offer of dedication of any part of the 220 Park Property or City Property for general public use. All public use of the Terrace Improvements shall be pursuant to the City's reserved rights under Section 2.2.1 which shall be implemented and administered by the City (including the right by the City, in its discretion as the owner of the City Property and licensee hereunder, to limit or close the Terrace Improvements to the general public on a temporary or permanent basis).

2.3 Maintenance and Repair.

2.3.1 Developer shall maintain the Parking Improvements and the Terrace Improvements (collectively, the "Maintenance Areas") in a good, safe, functional, and attractive condition, and to repair such improvements from time to time to restore them to their original condition, or as City in its reasonable discretion may direct, all at Developer's sole cost, subject to and in accordance with the terms and conditions set forth in this Section 2.4. Developer shall have the right to temporarily close the Maintenance Areas to the public from time to time as needed to maintain and clean such areas, subject to the provisions in Section 2.1.1 as to the Public Parking.

2.3.2 Landscape Maintenance. Landscape maintenance shall include: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; staking for support of trees; and repair and replacement of irrigation system components, as needed.

2.3.3 Clean-Up Maintenance. Clean-up maintenance shall include: maintenance of all sidewalks, parking areas, drive lanes, and other paved areas, benches, tables and other improvements, in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, waste, debris or other matter which is unsafe or unsightly; the removal of graffiti or other forms of vandalism; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; and clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

2.3.4 Hardscape and Improvements Maintenance. Hardscape and improvements maintenance shall include: the upkeep, repair and replacement of all lighting fixtures, bulbs, ballasts and wiring; benches; tables; utilities systems; concrete work; parking

area and drive lane pavements; striping of parking areas; and all other improvements comprising the Maintenance Areas and any replacements thereof.

2.3.5 General. All maintenance work shall conform to all applicable federal and state Occupational Safety and Health Act standards and regulations for the performance of maintenance. Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.

2.3.6 Failure to Maintain.

(a) In the event City reasonably determines that Developer has failed to perform necessary maintenance as described in this Section 2.4, City may send written notice to Developer notifying it of the specific work required. If Developer so requests, City and Developer shall participate in a good faith meet and confer process not to exceed seven (7) days from the date of City's notice. Thereafter, if Developer fails to commence the specified work (as City may agree to modify as a result of the meet and confer) within thirty (30) days after receipt of City's original notice, or other period City agrees is reasonably necessary based on the nature of the maintenance work, and thereafter diligently prosecute such work to completion, the City has the right (but not the obligation) to declare a Default under and pursuant to Section 22.

(b) As to the Terrace Improvements only, following Developer's failure to satisfy its maintenance obligations pursuant to Section 2.3.6(a), City shall have the right (but not obligation) to give Developer notice and thereafter perform all maintenance City deems necessary, and City shall be permitted to recover the commercially reasonable costs thereof, including reasonable attorneys' fees and costs.

(c) In the case of a public health or welfare emergency and with respect to the Terrace Improvements only, City shall have the right (but not obligation) to perform all maintenance necessary to address the emergency situation without providing Developer with prior notice and shall be permitted to recover the commercially reasonable costs thereof, including reasonable attorneys' fees and costs. The City shall provide Developer with reasonable notice appropriate for the circumstances of its determination of and nature of the emergency. If notice cannot be given prior to commencement of the cure, the City shall provide the Developer with its explanation of the emergency and a reasonable explanation for why prior notice could not be given.

2.4 Developer's Insurance.

2.4.1 Ongoing Insurance. Developer shall procure and maintain for the duration of this Agreement insurance against claims for injuries to or death of persons or damages to property which may occur in the Maintenance Areas and the Easement Areas, or which may occur outside of the Maintenance Areas or Easement Areas that arise from or in connection with the performance of the maintenance work under Section 2.3 by the Developer, its agents, representatives, or employees, which insurance shall have the following minimum scope and limits of insurance. The insurance requirements under this Agreement may be

adjusted by City (in consultation with its insurance advisors) not more often than once every five (5) years for the purpose of increasing the minimum limits of such insurance from time to time, which increased limits shall be reasonable and customary for similar agreements in accordance with generally accepted insurance industry standards.

(a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of $5,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of $2,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation insurance as required by the State of California, and Employers' Liability insurance in the amount of $1,000,000 per accident for bodily injury or disease.

(d) Property insurance insuring the Project in sufficient amounts to fund restoration or reconstruction of the Parking Improvements and Terrace Improvements. This coverage will not be required during construction, and will only be required following issuance of a temporary certificate of occupancy for the Project.

(e) Garage Liability insurance (Form CA 00 05 or its equivalent) for the Parking Improvements, including contractual liability and liability for bodily injury or property damage in the minimum amount of $1,000,000 per occurrence. This coverage will not be required during construction and will only be required following issuance of a temporary certificate of occupancy for the Project. If Developer chooses to hire a third party to manage the Parking Improvements, this coverage may be satisfied by that third party vendor's policy so long as the Indemnified Parties are listed as additional insureds on the policy.

(f) Umbrella or Excess Liability Insurance policies, if utilized, must "follow form" and afford no less coverage than the primary policy.

2.4.2 Construction-Period Insurance. In addition to the insurance coverage described in Section 2.6.1, during any construction, reconstruction or repair work on the Project, Developer also shall procure and maintain during the period of such work a Builder's Risk policy with respect to such improvements, or maintain comparable coverage through a property policy. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the improvements on the construction site.

2.4.3 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnified Parties; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

2.4.4 Other Requirements. All required insurance policies shall contain, or be endorsed to contain, the following provisions, to the extent applicable to each policy:

(a) The Indemnified Parties are to be covered as Additional Insureds as respects: liability arising out of work or operations performed by or on behalf of the Developer; products and completed operations of the Developer; premises or Easement Areas owned, occupied or used by the Developer; and automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnified Parties.

(b) For any claims related to the Project, the Developer's insurance coverage shall be primary insurance as respects the Indemnified Parties. Any insurance or self-insured maintained by the Indemnified Parties shall be excess of the Developer's insurance and shall not contribute with it.

(c) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Indemnified Parties.

(d) The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Developer's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

2.4.5 Acceptability of Insurer. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by the City.

2.4.6 Verification of Coverage. Developer shall furnish the City with original endorsements effecting coverage required by this Section 2.6. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City or on forms equivalent to CG 20 10 11 85 subject to City approval. All insurance certificates and endorsements are to be received and approved by the City before work commences. At the request of the City, Developer shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications. Failure on the part of Developer to procure or maintain required insurance shall constitute a material breach of this Agreement, and if Developer does not provide evidence of such insurance with ten (10) business days after

receipt of notice from City, City, at its option, may but is not required to procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by City shall be repaid by Developer within thirty (30) days after receipt of demand from City with supporting documentation.

2.4.7 Vendors. Developer shall require each contractor, subcontractor and vendor providing services pursuant to Section 2.4 above (collectively, "Vendors") to procure and maintain insurance policies subject to the requirements of this Section 2.6. Failure of Developer to verify existence of Vendor's insurance shall not relieve Developer from any claim arising from Vendor's work on behalf of Developer.

2.5 Assumption of Risk, Waiver, Release and Indemnity.

2.5.1 Developer irrevocably assumes all risks and waives and releases any and all claims against City resulting or arising directly or indirectly from Developer's or its employees, contractors, subcontractors, agents or invitees' (including members of the public) access to or use of the City Property in connection with construction and development of the Project, use and enjoyment of the Parking Improvements, Terrace Improvements (including the Top Terrace), or performance of any of Developer's obligations under this Agreement, except to the extent such claims are caused by the gross negligence or willful misconduct of City or its elected or appointed officials, officers, employees, agents, contractors, representatives, volunteers, successors or assigns (collectively including City, the "Indemnified Parties") or City's breach of its obligations under this Agreement. Developer shall indemnify, defend and hold the Indemnified Parties harmless from any damages, claims, liabilities or losses (including attorneys' fees and costs) arising directly or indirectly from Developer's acts, omissions, negligence or willful misconduct, including claims for damage to property or injury to or death of any persons, whether upon the Easement Areas, the City Property, the 220 Park Property, the "Maintenance Areas" (defined below) or elsewhere under or related to this Agreement, whether such acts or omissions to act be by Developer, or by any of Developer's contractors, subcontractors, or invitees or by any one or more persons employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors, including but not limited to claims arising from use of the Parking Improvements, Terrace Improvements or Top Terrace by any person, including but not limited to any member of the public or any tenants or occupants or visitors of the Project; provided that Developer's obligation to indemnify and hold harmless (but not Developer's duty to defend) shall be limited (and shall not apply) to the extent such claims are found to arise from the gross negligence or willful misconduct of any of the Indemnified Parties.

2.5.2 If Developer is obligated to defend an Indemnified Party pursuant to this Section 2.5, Developer's counsel shall be subject to approval by City in its reasonable discretion. If Developer is obligated to defend an Indemnified Party under this Section 2.5, Developer shall cause its counsel to coordinate and cooperate with the City Attorney and any City outside counsel in the defense of any such claim and shall keep the City Attorney fully informed of all developments relevant to such defense and indemnity, with Developer paying all fees and costs in connection with such claim, including any attorney's fees City may reasonably incur.

2.6 Ownership; Responsibility. Developer acknowledges that the Parking Easement Improvements and Terrace Improvements constructed by Developer on the City Property shall be solely the property of City, and neither such improvements nor the Easement Areas or any other portion of the City Property shall be encumbered or pledged by Developer as security for any Developer financing. Notwithstanding the above, until such time as this Agreement expires or is terminated, Developer shall have the same responsibility and liability for such improvements as though they were owned by Developer, including but not limited to the indemnity and insurance obligations specified herein.

3. Legal Challenges; Cooperation. In the event of any legal action instituted by a third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation, the City and Developer agree to affirmatively cooperate in defending said action and, if necessary, execute a joint defense and confidentiality agreement to share and protect information under the joint defense privilege recognized under applicable law. As part of their cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer's obligations to indemnify, defend and hold harmless the Indemnified Parties as specified in Section 1.6 shall apply as to any legal action described in this Section 3, and shall include without limitation any awards, judgments, penalties or other monetary payments required from the Indemnified Parties and any costs or fees, including reasonable attorneys' fees, incurred by the Indemnified Parties.

4. Attorney's Fees and Costs. Developer agrees to pay for the costs and reasonable attorneys' fees of City and any outside counsel retained by City to defend it in any court action, administrative action or other proceeding brought by any third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation. If City elects to select and employ independent defense counsel, Developer may jointly participate in and reasonably approve such selection.

5. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by City and Developer, or the successors and assigns of each.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to choice of law provisions.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the sane agreement.

8. Notice. Any notice given under this Agreement shall be in writing and given by (i) delivering the notice in person, (ii) sent by first class, postage prepaid, certified mail (return receipt requested), or (iii) by Federal Express or other similar courier promising overnight delivery, addressed shown below in this Section 8. All notices required by this Agreement shall be deemed given, received, made or communicated (i) if by personal service, on the date personal receipt actually occurs or, (ii) if mailed or sent by Federal Express or other courier, on the delivery date or attempted delivery date shown on a return receipt. Notices and

communications may be sent by email to expedite transmittal of information and responses, but shall not be deemed given unless and until followed by transmittal by one of the other processes described in this Section 18. Any party may change the address stated herein by giving notice thereof to the other party at least ten (10) days prior to the effective date of the address change, and thereafter notices shall be addressed and transmitted to the new address. Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate. The parties' addresses for notices are:

City:	City of Burlingame Attn: Director of Community Development 501 Primrose Road Burlingame, CA 94010
With a copy to:	City Attorney City of Burlingame 501 Primrose Road Burlingame, CA 94010
Developer:	220 Park-Burlingame, LLC c/o Sares-Regis Group of Northern California 901 Mariner's Island Boulevard, 7th Floor San Mateo, CA 94404 Attention: Mark Kroll
and:	220 Park-Burlingame, LLC c/o Dostart Development Company, LLC 145 Addison Avenue Palo Alto, CA 94301 Attention: Steve Dostart
With a copy to:	Holland & Knight 50 California Street, Suite 2800 San Francisco, CA 94111 Attention: Tamsen Plume

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and be binding upon and inure to the benefit of the parties' respective successors and assigns, including without limitation all grantees and other successors-in-interest of City in any of the Easement Areas and of Developer in the 220 Park Property.

10. Representations and Warranties.

10.1 City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

10.1.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

10.1.2 The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

10.1.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 10.1 not to be true, immediately give written notice of such fact or condition to Developer.

10.2 Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

10.2.1 Developer and each of the Delaware limited liability companies comprising Developer is duly organized and validly existing under the laws of the State of Delaware, and is in good standing and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

10.2.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary company action by Developer and each of the Delaware limited liability companies comprising Developer, and all necessary member approvals have been obtained.

10.2.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

10.2.4 Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 10.2 not to be true, immediately give written notice of such fact or condition to City.

11. No Third Party Beneficiary. No obligation of a party under this Agreement is enforceable by, or is for the benefit of, any other third parties. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

12. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

13. Entire Agreement. This Agreement, together with the Development Agreement and any attachments hereto or inclusions by reference, constitute the entire agreement between the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easements, licenses and grants of right which are the subject matter of this Agreement, except for the Development Agreement to the extent it remains in effect. The provisions in this Agreement shall govern in the event of a conflict with the Development Agreement.

14. Easements and Covenants to Run with the Land. The conditions set forth in this Agreement are covenants running with the land and the title to the City Property and the 220 Park Property, and any portions thereof. The Easement Areas shall be burdened by the Easements created by this Agreement, which burden shall run with the land and shall be binding on any future owners and encumbrancers of the Easement Areas or any part thereof and their successors and assigns. In addition, the license to provide public parking as provided in Sections 2.1 above is a covenant running with the land, burdening the 220 Park Property. The Parties shall have all rights and remedies available at law or equity to protect and enforce the terms of this Agreement against successors and assigns.

15. Survival. All representations, warranties, waivers, indemnities, duties to defend, rights of enforcement and rights of compensation or reimbursement given or made hereunder shall survive expiration or termination of this Agreement.

16. Prevailing Party Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of a breach or default in connection with this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, including any appeal, in addition to any other relief to which it or they may be entitled, and each party stipulates to entry of a judgment therefor and inclusion thereof. The provisions of this Section 16 shall survive the entry of any judgment and shall not merge or be deemed to have merged into any judgment.

17. No Liens. Developer has no right under any provision of this Agreement to have or record any lien against any Easement Areas or any other portion of the City Property, and shall not allow any such lien. Developer shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered, and shall keep the City Property and all portions thereof free of all mechanics', materialmen's or other liens in connection therewith. If

any lien is filed, Developer shall cause such lien to be released and removed within ten (10) business days after the date of filing, and if Developer fails to do so, City may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it, and Developer shall promptly reimburse City such amounts as are expended by City to remove the lien and City's costs and expenses, including attorneys' fees, Without limiting the foregoing, the provisions of this Section 17 shall apply to any lien or other financial encumbrance that may be recorded or imposed by or arising from use or development of the Project by any tenant or occupant of the Project, and Developer shall indemnify and defend City regarding any such lien or encumbrance.

18. Compliance with Laws. Developer at its expense shall fully, diligently and in a timely manner comply with all applicable laws and regulations now or hereafter in force.

19. Time; Days. Time is of the essence of this Agreement and each and every term and condition hereof. The word "days" as used in this Agreement refers to calendar days unless specifically provided otherwise. In the event that any period to perform an obligation or notice period under this Agreement starts or ends on a Saturday, Sunday, or state or national holiday, the applicable time period shall be extended to the next regular City business day.

20. Recovery of and Interest on Expenditures. In all situations in which City incurs expenses as described in this Agreement due to Developer's failure to perform or failure to pay or reimburse City, City may impose and enforce a lien on the 222 Park Property and the Project to recover such expenses, including attorneys' fees and other costs incurred in that action or proceeding, including any appeal costs. As part of City recovering such expenses, whether through such liens, other collection methods or voluntary reimbursement by Developer, City shall receive interest thereon at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, compounded annually, from the date of expenditure.

21. Subordination of Financial Encumbrances. All deeds of trust, liens and other financial encumbrances of any kind on title to the 220 Park Property (collectively "Financial Encumbrances") shall be subordinate to the Public Parking and Terrace Improvements access rights provided by Developer under this Agreement. Developer represents and warrants that as of the Effective Date of this Agreement, there are no such Financial Encumbrances or all such prior Financial Encumbrances have been subordinated to this Agreement by a recorded document in form reasonably acceptable to the City Attorney. As a condition to Developer agreeing to any such future Financial Encumbrance, Developer shall require the lender to enter into a subordination agreement in form reasonably acceptable to the City Attorney. Developer shall not agree to nor permit any Financial Encumbrance without such subordination. City's fee interest in the City Property and City's residual interest in the improvements built by Developer on the City Property shall not be encumbered or subordinated.

22. Defaults and Remedies.

22.1 Breach and Default. Subject to extensions of time by mutual consent in writing, failure by a Party to perform any action or covenant or satisfy any obligation required by this Agreement within thirty (30) days following receipt of written notice from another Party specifying the failure shall constitute a "Default" under this Agreement; provided, however, that

if the failure to perform is non-monetary and cannot reasonably be cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently and continuously prosecutes the cure to completion at the earliest practicable date. Notwithstanding the above notice and cure provisions, if such failure to perform by Developer or a circumstance regarding the Project in City's reasonable opinion creates an emergency, City may but is not obligated to implement a cure and Developer thereafter shall promptly reimburse City its costs and expenses, including attorney's fees. In the event of a Default by Developer, City may at any time during the continuance of such Default give Developer notice of termination of this Agreement, and upon the date five (5) days after service of such notice this Agreement shall terminate and thereafter neither party shall have any further rights or obligations hereunder other than those obligations of Developer which survive such expiration or termination.

22.2 Resolution of Disputes.

22.2.1 Resolution Prior to Legal Action. With regard to any dispute involving the Project or this Agreement, the resolution of which is not provided for by this Agreement or Applicable Laws, prior to instituting legal action a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request, which meeting may be continued by mutual consent. The parties to any such meetings shall attempt in good faith to resolve any such disputes, and by mutual consent may arrange a third party to mediate the dispute. In the event the Parties are not able to resolve the dispute and reach an agreement within fourteen (14) days of the request, either Party may initiate legal action or take such other actions available under this Agreement or the law. Nothing in this Section 22.2.1 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings, and the fact of participation in such meetings and any information provided or oral or written statements made by a Party shall not be admissible or otherwise used against the Party in any subsequent legal action.. Nothing in this Section 22.2.1 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 22.2.1 if it believes in good faith that such postponement will cause irreparable harm to such Party.

22.2.2 Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the purpose of this Agreement. Any such legal action shall be brought in the Superior Court for San Mateo County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

22.2.3 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon any person at the location identified as the address for delivery of tax notices for the 220 Park Property as such address may change from time to time or in such other manner as may be provided by law.

22.3 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another Party, except as otherwise expressly provided herein.

22.4 Limitation on Damages. Notwithstanding anything to the contrary herein, neither Party shall have the right to recover any consequential, special or punitive damages in the event of a Default by the other Party. In no event shall City or the Indemnified Parties be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to Developer for a Default by City shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement, or to terminate this Agreement. City shall have all remedies available in law or equity, including but not limited to an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement, or to terminate this Agreement if and only when no other remedies are available. In addition, City shall have the right to seek actual damages from Developer, including but not limited to enforcing payment of money or the performance of obligations requiring payment of money by Developer under the terms of this Agreement, including but not limited to Sections 1.5.2, 1.6, 2.4.6, 2.4, 2.6.6, 3, 4, 16, 17, and 20. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by another Party.

22.5 No Waiver. Failure of a Party to enforce a breach or Default by the other Party, or to complain of any act or omission, no matter how long the same may continue, shall not be deemed a waiver by said Party of any of its rights hereunder. No waiver by a Party at any time, express or implied, of any breach or Default of any provision of this Agreement shall be deemed a waiver of a breach or Default of any other provision of this Agreement or a consent to any subsequent breach or Default of the same or any other provision. No acceptance of any partial payment shall constitute an accord or satisfaction but such payment shall only be deemed a partial payment on account. Subject to any limitations expressly provided herein, a Party's exercise of any right or remedy under this Agreement or under applicable law is not exclusive and shall not preclude such Party from exercising any other right or remedy that may be available to it by law or equity. The provisions of this Section 22 and the rights and obligations of the Parties herein shall survive expiration or termination of this Agreement.

23. Mortgagee Protection.

23.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of its recording, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise, subject to the provisions in Section 2.1 of the Development Agreement limiting the benefits of the Development Agreement and this Agreement to Developer and its successors but not a separate owner of the Property.

23.2 Mortgagee Not Obligated.

23.2.1 Notwithstanding the provisions of Section 23.1 above, except as specified in Section 23.2.2, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

23.2.2 Any Mortgagee or successor in interest to a Mortgagee that is not proceeding to construct or complete construction of the Project pursuant to the Project Approvals and this Agreement, must comply with all federal and state law and permit conditions applicable to the Project construction and shall not allow or permit a nuisance. The Parties agree that this Agreement is not intended to allow or authorize a Mortgagee to remain on the City Property for any longer than would otherwise be allowed by the terms of this Agreement.

23.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

23.3.1 City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

23.3.2 In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 23.3.1 above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such

Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 23.3.2 and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

23.3.3 Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 8, addressed to the Mortgagee at the address provided by Mortgagee to City. Any notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 8, or at such other address as shall be designated by City by notice in writing given to the Mortgagee in like manner.

23.4 No Supersedure. Nothing in this Section 23 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement, the Development Agreement, temporary access agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Section 23 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 23.3.

23.5 Technical Amendments to this Section 23. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith with Developer at Developer's expense to facilitate Developer's negotiations with lenders.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first stated above.

CITY:

AUTHORIZED SIGNATURE OF CITY TO AGREEMENT:

CITY OF BURLINGAME, a municipal corporation organized and existing under the laws of the State of California

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Its: City Attorney

DEVELOPER:

220 PARK-BURLINGAME, LLC, a Delaware limited liability company
By: SRGNC MF Park Road, LLC
a Delaware limited liability company
Its: Manager

By: SRGNC MF, LLC,
a Delaware limited liability company
Its: Manager

By: _____

Its: _____

By: DDC 220 Park Road Associates, LLC,
a Delaware limited liability company
Its: Member

By: _____
Name: _____
Its: _____
[signatures must be notarized]

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 _____)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

Commission Expiration Date _____ [SEAL]

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

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 20__, before me, _____,
a Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____
Notary Public

Commission Expiration Date _____ [SEAL]

EXHIBIT A-1

LEGAL DESCRIPTION OF THE 220 PARK PROPERTY

Real property in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL ONE:

LOTS 4, 5, 6, 12, 13 AND 14, IN BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PARK ROAD, DISTANT THEREON 250 FEET SOUTHEASTERLY FROM ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, SAID POINT OF BEGINNING ALSO BEING THE INTERSECTION OF SAID NORTHEASTERLY LINE OF PARK ROAD WITH THE LINE DIVIDING LOT 11 AND 12 IN SAID BLOCK; RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF PARK ROAD 150 FEET TO THE MOST SOUTHERLY CORNER OF LOT 14, WHICH SOUTHERLY CORNER IS 150 FEET NORTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF PARK ROAD FROM ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF HOWARD AVENUE (AS WIDENED); THENCE DEFLECTING 89° 58' 30" TO THE LEFT AND RUNNING NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF LOTS 14 AND 4, AND PARALLEL TO THE NORTHWESTERLY LINE OF HOWARD AVENUE, 300 FEET TO THE SOUTHWESTERLY LINE OF LORTON AVENUE (FORMERLY KNOWN AS MIDDLEFIELD AVENUE); THENCE DEFLECTING 90° 01' 30" TO THE LEFT AND RUNNING NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF LORTON AVENUE 150 FEET TO THE MOST NORTHERLY CORNER OF LOT 6, WHICH NORTHERLY CORNER IS 250 FEET SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF LORTON AVENUE FROM ITS INTERSECTION WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE; THENCE DEFLECTING 89° 58' 30" TO THE LEFT AND RUNNING SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF LOTS 6 AND 12 AND PARALLEL TO THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE 300 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

PORTION OF BLOCK 6 AND PORTION OF MIDDLEFIELD ROAD (NOW LORTON AVENUE), AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF MIDDLEFIELD ROAD (NOW LORTON AVENUE) AS SHOWN ON THE MAP ABOVE REFERRED TO, DISTANT THEREON 180 FEET SOUTHEASTERLY FROM THE POINT OF INTERSECTION OF SAID LINE OF MIDDLEFIELD ROAD WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE; THENCE RUNNING SOUTHWESTERLY AND PARALLEL WITH SAID LINE OF BURLINGAME AVENUE, 135 FEET; THENCE AT RIGHT ANGLES, SOUTHEASTERLY 20 FEET; THENCE AT RIGHT ANGLES, NORTHEASTERLY 150 FEET TO THE SOUTHWESTERLY LINE OF THE PRESENT MIDDLEFIELD ROAD, NOW KNOWN AS LORTON AVENUE; THENCE AT RIGHT ANGLES NORTHWESTERLY 20 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 15 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

PORTION OF BLOCK 6 AND PORTION OF MIDDLEFIELD ROAD (NOW LORTON AVENUE), AS

DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF LORTON AVENUE, FORMERLY MIDDLEFIELD ROAD, AT THE MOST EASTERLY CORNER OF LOT 7 IN SAID BLOCK; THENCE SOUTHWESTERLY, ALONG THE SOUTHEASTERLY LINE OF SAID LOT 7, 150 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT, THENCE NORTHWESTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID LOT, 50 FEET; THENCE NORTHEASTERLY, ALONG THE NORTHWESTERLY LINE OF SAID LOT AND THE PROLONGATION OF SAID LINE, 150 FEET AND THENCE, AT A RIGHT ANGLE, SOUTHEASTERLY 50 FEET TO THE POINT OF BEGINNING.

For reference purposes only:
APN: 029-204-250

JPN: 029-020-204-25A

EXHIBIT A-2

DEPICTION OF THE 220 PARK PROPERTY

[*Insert prior to execution*]

EXHIBIT B-1

LEGAL DESCRIPTION OF THE CITY PROPERTY

LEGAL DESCRIPTION

Real property in the City of Burlingame, County of San Mateo, State of California, described as follows:

PARCEL ONE:

PORTION OF LOTS 8 AND 9, BLOCK 6 AND PORTION OF MIDDLEFIELD ROAD (NOW LORTON AVENUE), AC DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1. OF THE TOWN OF BURLINGAME SAN MATEO COUNTY CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF LORTON AVENUE (FORMERLY MIDDLEFIELD ROAD), AS SAME NOW EXISTS, DISTANT THEREON 100 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, SAID POINT OF BEGINNING BEING THE MOST NORTHERLY CORNER OF THAT STRIP OF LAND DESCRIBED IN THE QUITCLAIM DEED FROM CITY OF BURLINGAME, A MUNICIPAL CORPORATION TO CHARLES E. SMALRIDGE, RECORDED MAY 19, 1914 IN BOOK 238 OF DEEDS AT PAGE 60, RECORDS OF SAN MATEO COUNTY; RUNNING THENCE SOUTHWESTERLY AND PARALLEL WITH BURLINGAME AVENUE, A DISTANCE OF 150 FEET; THENCE AT RIGHT ANGLES SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF A 20 FOOT ALLEY; THENCE AT RIGHT ANGLES NORTHEASTERLY ALONG SAID LINE OF SAID ALLEY 150 FEET TO THE SOUTHWESTERLY LINE OF LORTON AVENUE, AS SAME NOW EXISTS, BEING THE MOST EASTERLY CORNER OF THE PROPERTY DESCRIBED IN DEED HEREINABOVE MENTIONED AND THENCE NORTHWESTERLY ALONG LAST MENTIONED LINE 80 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL THEIR RIGHT, TITLE AND INTEREST, IF ANY, IN AND TO AN ALLEY 10 FEET IN WIDTH, MORE OR LESS, ADJOINING SAID LAND ON THE NORTHWESTERLY BOUNDARY THEREOF.

PARCEL TWO:

LOT 11 IN BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 TOWN OF BURLINGAME SAN MATED COUNTY, CALIFORNIA, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71.

PARCEL THREE:

PORTION OF BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO, 1 TOWN OF BURLINGAME SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28, AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHEASTERLY LINE OF PARK ROAD, DISTANT THEREON 180 FEET SOUTHEASTERLY FROM THE INTERSECTION OF SAID LINE OF PARK ROAD WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, RUNNING THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF PARK ROAD, 20 FEET; RUNNING THENCE AT RIGHT ANGLES NORTHEASTERLY AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, 150 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY, 20 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE 150 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR:

PORTION OF LOTS 9 AND 10 IN BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "SUPPLEMENTARY MAP TO MAP NO. 1 TOWN OF BURLINGAME SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON AUGUST 10, 1905 IN BOOK "B" OF MAPS AT PAGE 28 AND A COPY ENTERED IN BOOK 3 OF MAPS AT PAGE 71, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF PARK ROAD, DISTANT THEREON 140 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, AS SAID ROAD AND AVENUE APPEAR ON THE MAP ABOVE MENTIONED; THENCE SOUTHEASTERLY, ALONG SAID NORTHEASTERLY LINE OF PARK ROAD, 40 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 10; THENCE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF LOT 10 ARID THE SOUTHEASTERLY LINE OF LOT 9, 150 FEET: THENCE AT RIGHT ANGLES NORTHWESTERLY AND PARALLEL WITH THE NORTHEASTERLY LINE OF PARK ROAD, 40 FEET; THENCE AT RIGHT ANGLES SOUTHWESTERLY AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, 150 FEET TO THE POINT OF BEGINNING.

PARCEL FIVE:

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY:

A PORTION OF LOT 9 IN BLOCK 6, AS DESIGNATED ON THE MAP ENTITLED "MAP NO. 1 OF THE TOWN OF BURLINGAME", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 15, 1897 IN BOOK "B" OF MAPS AT PAGE 18 AND A COPY ENTERED IN BOOK 2 OF MAPS AT PAGE 87, DESCRIBED AS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM NONA A. SMALRIDGE, ET AL TO ABRAHAM M, HELLER AND WIFE, RECORDED SEPTEMBER 29, 1945 UNDER RECORDER'S SERIAL NO. 66318F, WHICH IS ALSO A POINT ON THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN THE DEED FROM CELESTINE S. FLOBEN AND HUSBAND TO ROBERT STEWART HOWARD, RECORDED OCTOBER 19, 1938 IN BOOK 810 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 204; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE 40 FEET TO THE MOST WESTERLY CORNER OR THE LAST MENTIONED PARCEL OF LAND; THENCE SOUTHWESTERLY AT RIGHT ANGLES AND PARALLEL TO THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE, 5 FEET TO THE MOST EASTERLY CORNER OF THE LAND DESCRIBED AS PARCEL B IN THE DEED FROM KENNETH P, ANDERSON AND WIFE, TO CHARLES N. KIRKBRIDE, RECORDED JANUARY 11, 1933 IN BOOK 582 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PATE 362; THENCE CONTINUING SOUTHWESTERLY, PARALLEL TO THE SOUTHEASTERLY LINE OF BURLINGAME AVENUE AND ALONG THE SOUTHEASTERLY LINE OF THE LAST MENTIONED PARCEL OF LAND, SOUTH FEET; THENCE SOUTHEASTERLY, PARALLEL TO THE SOUTHWESTERLY LINE OF THE ABOVE MENTIONED PARCEL OF LAND NOW OR FORMERLY OWNED BY ROBERT STEWART HOWARD, 40 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE HEREINABOVE MENTIONED PARCEL OF LAND NOW OR FORMERLY OWNED BY ABRAHAM M. HELLER AND WIFE, THENCE NORTHEASTERLY, ALONG SAID NORTHWESTERLY LINE, 10 FEET TO THE POINT OF BEGINNING.

APN: 029-204-230

NOTICE I

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

NOTICE II

As of January 1, 1991, if the transaction which is the subject of this report will be a sale, you as a party to the transaction, may have certain tax reporting and withholding obligations pursuant to the state law referred to below:

In accordance with Sections 18662 and 18668 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to three and one-third percent of the sales price in the case of the disposition of California real property interest by either:

1. A seller who is an individual with a last known street address outside of California or when the disbursement instructions authorize the proceeds be sent to a financial intermediary of the seller, OR
2. A corporate seller which has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR
2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a resident of California, or if a corporation, has a permanent place of business in California, OR
3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, that the California real property being conveyed is the seller's principal residence (as defined in Section 1034 of the Internal Revenue Code).

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis.

The parties to this transaction should seek an attorney's, accountant's, or other tax specialist's opinion concerning the effect of this law on this transaction and should not act on any statements made or omitted by the escrow or closing officer.

The Seller May Request a Waiver by Contacting:
Franchise Tax Board
Withhold at Source Unit
P.O. Box 651
Sacramento, CA 95812-0651
(916) 845-4900

EXHIBIT B-2

DEPICTION OF THE CITY PROPERTY

[*Insert prior to execution*]

EXHIBIT C-1

LEGAL DESCRIPTION OF THE CITY EASEMENT AREA

January 27, 2021
BKF No 20191769

LEGAL DESCRIPTION
CITY EASEMENT AREA

All that certain real property situate in the City of Burlingame, County of San Mateo, State of California, described as follows:

Being a portion of Block 6, Lot 11 as shown on that certain map entitled "Supplementary Map to Map No.1 of the Town of Burlingame" recorded August 10, 1905 in Volume 3 of Maps at pages 71, San Mateo County Records, being more particularly described as follows:

Beginning at the common corner of Lot 11 and Lot 12 as shown on said map, also being on the northerly right of way line of Park Road, and the **TRUE POINT OF BEGINNING** of this description;

Thence along said right of way line, North 40º07'25" West, 46.22 feet;

Thence leaving said right of way line, North 49º51'18" East, 149.99 feet to the common line of Lot 7 and Lot 11 as shown on said map;

Thence along said common line, South 40º09'22" East, 46.33 feet to the common corner of Lot 6, Lot 7, Lot 11 and Lot 12 as shown on said map;

Thence along the common line of said Lot 11 and Lot 12 as shown on said map, South 49º53'43" West, 150.02 feet to the **TRUE POINT OF BEGINNING.**

Containing 6,942 square feet more or less.

A plat showing the above described parcel is attached hereto and made a part hereof.

This legal description was prepared by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act.

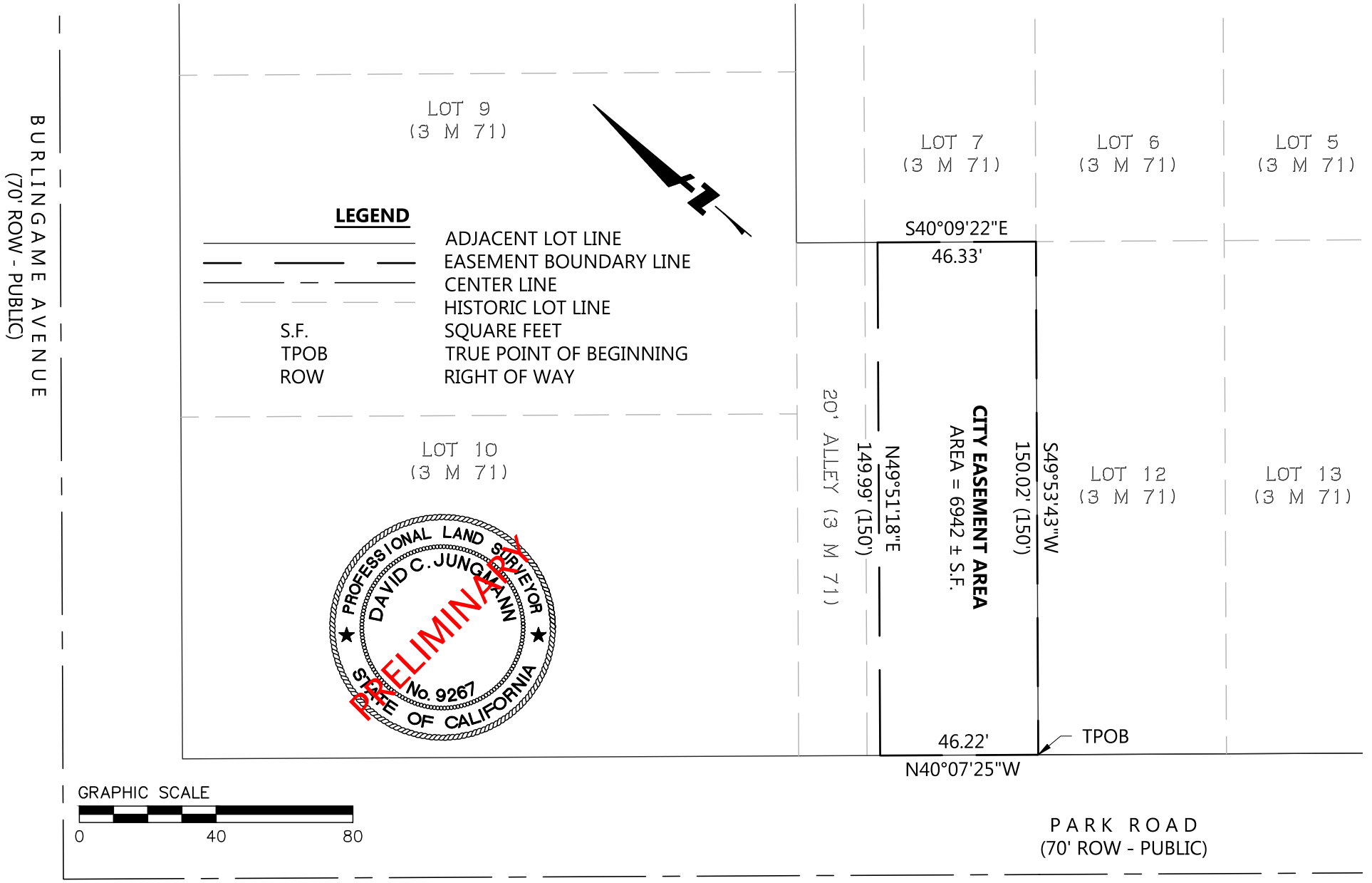
Preliminary
01/27/2021 12:59:54 PM

David C. Jungmann, PLS 9267

1/27/2021
Dated

END OF DESCRIPTION

BKF ENGINEERS
255 Shoreline Drive, Suite 200, Redwood City, CA 94065 | 650.482.6300



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REDWOOD CITY, CA 94065
(650) 482-6300
www.bkf.com

Subject PLAT TO ACCOMPANY
LEGAL DESCRIPTION
Job No. 20191769
By MJD Chkd. DCJ Date 01/27/2021
2 OF 2

DRAWING NAME: J:\2019\191769_220_Park_Rd_Post_Office\SUR\Mapping\Plats & Legals\2021-01-27_Easements Revisions\2021-01-19_PLAT_IMPROVEMENT_MJD.dwg
PLOT DATE: 01-27-21
PLOTTED BY: dorm

CITY EASEMENT AREA CLOSURE

Segment #1 : Line

Course: N40°07'25"W Length: 46.22'

Segment #2 : Line

Course: N49°51'18"E Length: 149.99'

Segment #3 : Line

Course: S40°09'22"E Length: 46.33'

Segment #4 : Line

Course: S49°53'43"W Length: 150.02'

Perimeter: 392.56' Area: 6942 Sq. Ft.
Error Closure: 0.006 Course: S0°47'29"E

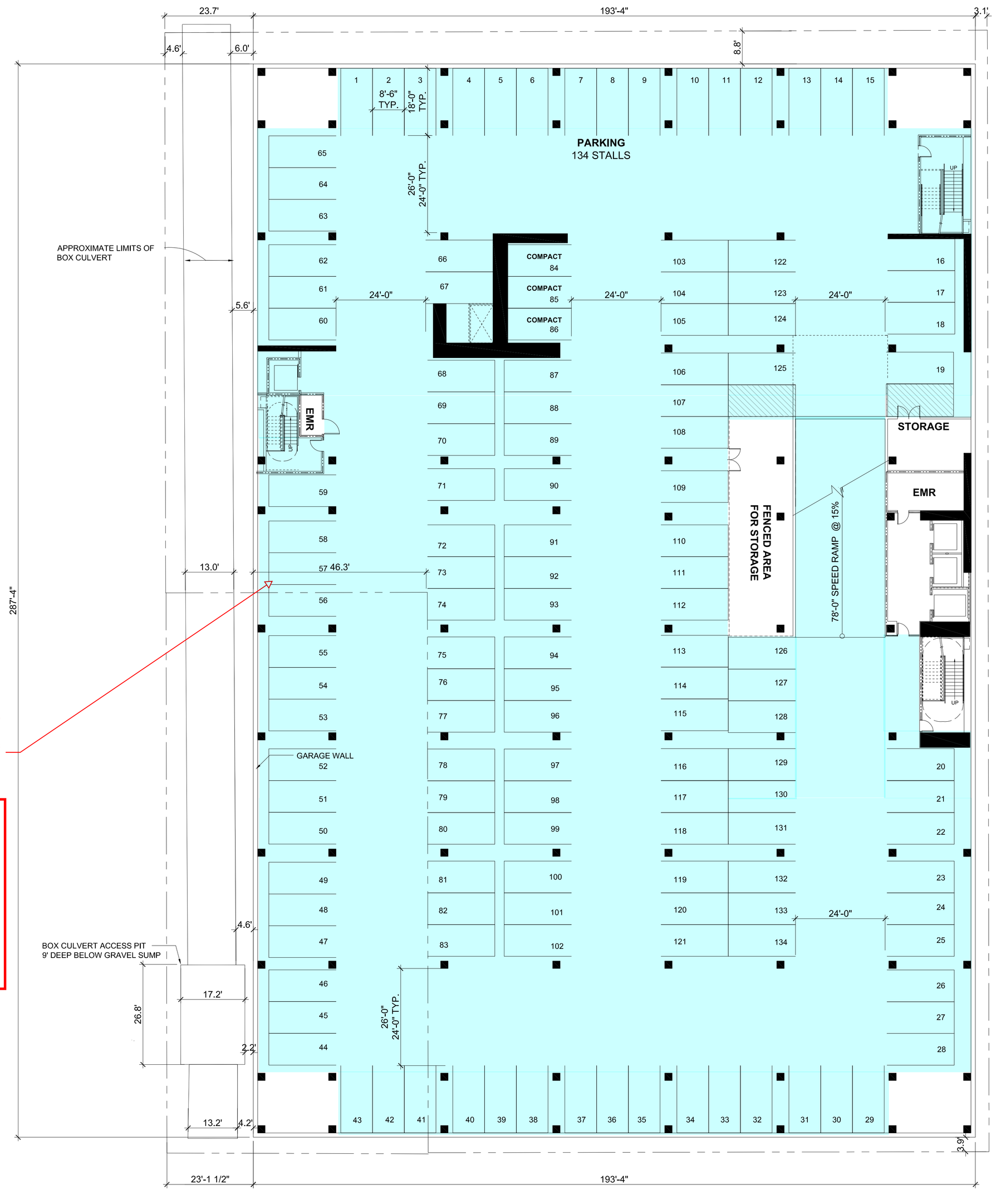
Precision 1: 65426.67

EXHIBIT C-2

DEPICTION OF THE PARKING IMPROVEMENTS AND INGRESS/EGRESS AREAS

[*Draft; review and update prior to execution*]

Exhibit C-2 Depiction of Parking Improvements and Ingress/Egress Areas



Public access areas of garage and supporting circulation

Public access area boundaries are approximations and are subject to further design refinements in coordination between the City and the 220 Park project

FLOOR GROSS SQUARE FOOTAGE:
55,551 SF

220 PARK ROAD

SARES REGIS
DOSTART DEVELOPMENT COMPANY, LLC

220 PARK - BURLINGAME, LLC
220 PARK ROAD
BURLINGAME, CA

KSH ARCHITECTS
KORTH SUNSERI HAGEY

349 SUTTER STREET
SAN FRANCISCO, CA 94108
TEL: 415.954.1960 FAX: 415.954.1970

ISSUES AND REVISIONS

NO.	DATE	DESCRIPTION
	03.30.2020	PLANNING SUBMITTAL
A	06.22.2020	PLANNING RESUBMITTAL #1
B	08.17.2020	PLANNING RESUBMITTAL #2
C	10.14.2020	PLANNING RESUBMITTAL #3

PROJECT NUMBER
19034

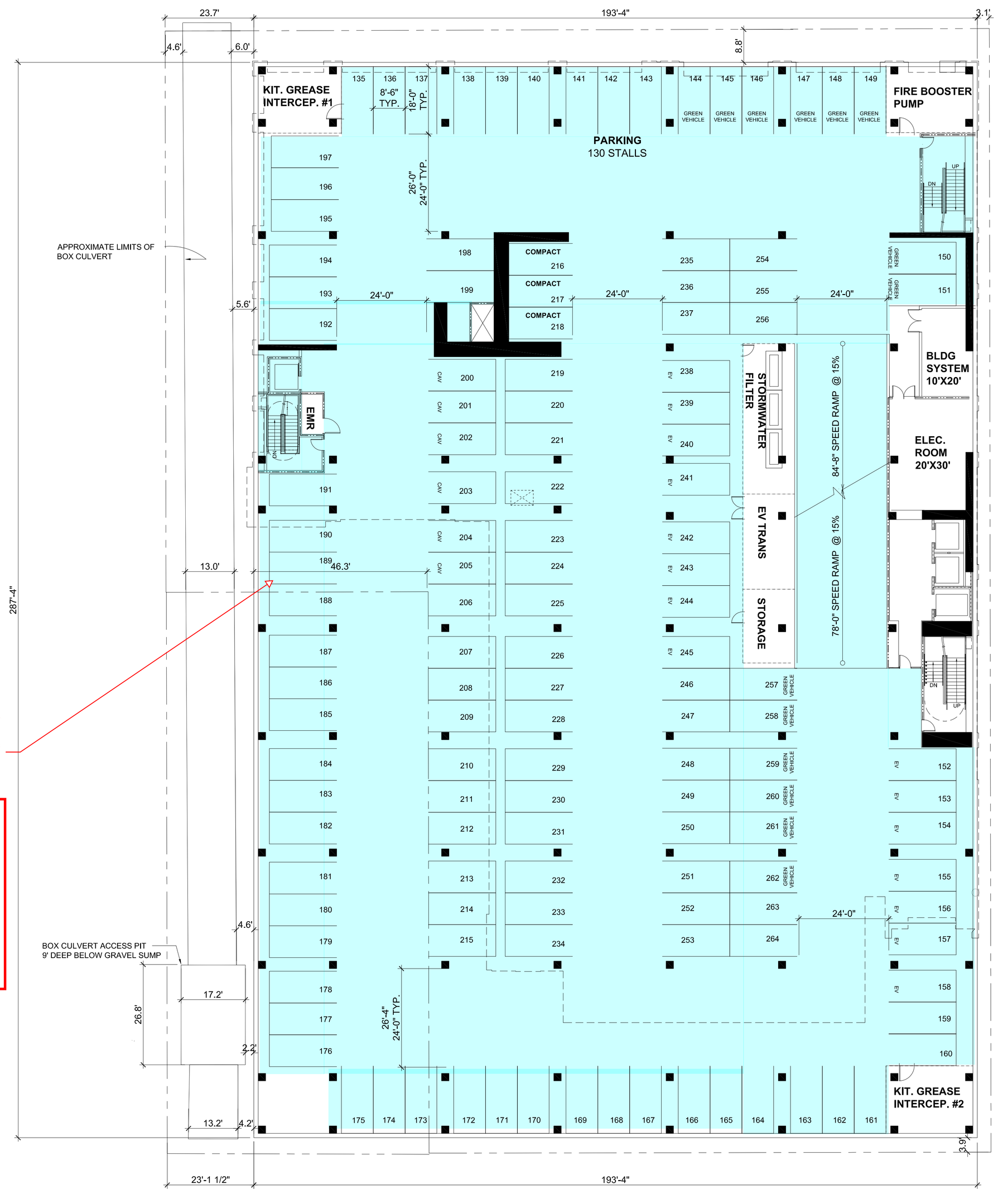
SHEET TITLE
BELOW GRADE PARKING LEVEL 2

SCALE
1/16"=1'-0"

N
0' 16' 32'

SHEET NUMBER
A2.1

Exhibit C-2 Depiction of Parking Improvements and Ingress/Egress Areas



Public access areas of garage and supporting circulation

Public access area boundaries are approximations and are subject to further design refinements in coordination between the City and the 220 Park project

FLOOR GROSS SQUARE FOOTAGE:
55,551 SF

220 PARK ROAD

SARES REGIS
DOSTART DEVELOPMENT COMPANY, LLC

220 PARK - BURLINGAME, LLC
220 PARK ROAD
BURLINGAME, CA

KSH ARCHITECTS
KORTH SUNSERI HAGEY

349 SUTTER STREET
SAN FRANCISCO, CA 94108
TEL: 415.954.1960 FAX: 415.954.1970

ISSUES AND REVISIONS

NO.	DATE	DESCRIPTION
	03.30.2020	PLANNING SUBMITTAL
A	06.22.2020	PLANNING RESUBMITTAL #1
B	08.17.2020	PLANNING RESUBMITTAL #2
C	10.14.2020	PLANNING RESUBMITTAL #3

PROJECT NUMBER
19034

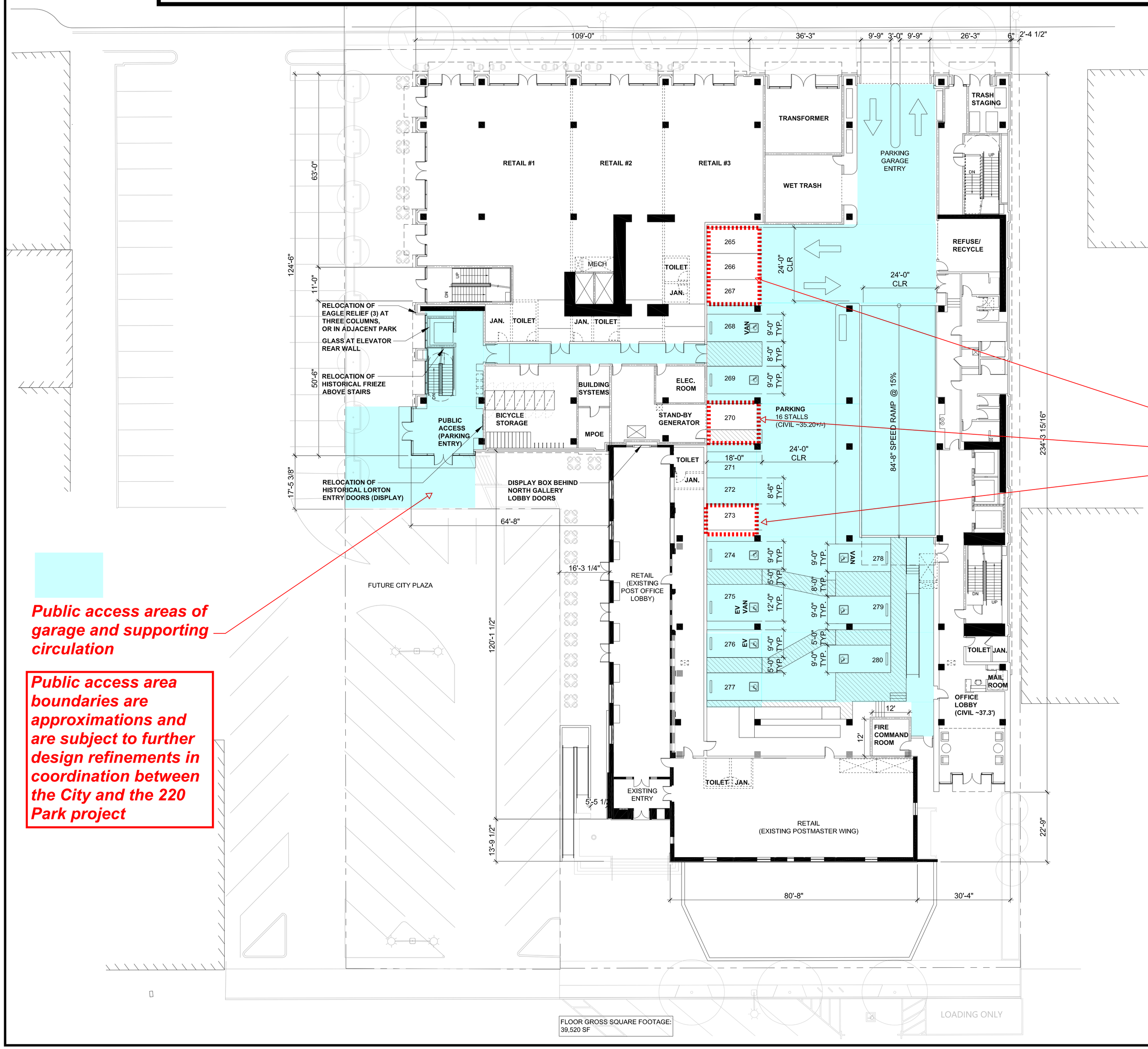
SHEET TITLE
BELOW GRADE PARKING LEVEL 1

SCALE
1/16"=1'-0"

N
0' 16' 32'

SHEET NUMBER
A2.2

Exhibit C-2 Depiction of Parking Improvements and Ingress/Egress Areas



Public access areas of garage and supporting circulation

Public access area boundaries are approximations and are subject to further design refinements in coordination between the City and the 220 Park project

Tentative stalls selected for exclusive office use Finalized location of exclusive office stalls still to be finalized and subject to modification.

FLOOR GROSS SQUARE FOOTAGE:
39,520 SF

220 PARK ROAD

SARES REGIS
DOSTART DEVELOPMENT COMPANY, LLC

220 PARK - BURLINGAME, LLC
220 PARK ROAD
BURLINGAME, CA

KSH ARCHITECTS
KORTH SUNSERI HAGEY

349 SUTTER STREET
SAN FRANCISCO, CA 94108
TEL: 415.954.1960 FAX: 415.954.1970

ISSUES AND REVISIONS

NO.	DATE	DESCRIPTION
	03.30.2020	PLANNING SUBMITTAL
A	06.22.2020	PLANNING RESUBMITTAL #1
B	08.17.2020	PLANNING RESUBMITTAL #2
C	10.14.2020	PLANNING RESUBMITTAL #3

PROJECT NUMBER
19034

SHEET TITLE
GROUND FLOOR PLAN

SCALE
1/16"=1'-0"

N
0' 16' 32'

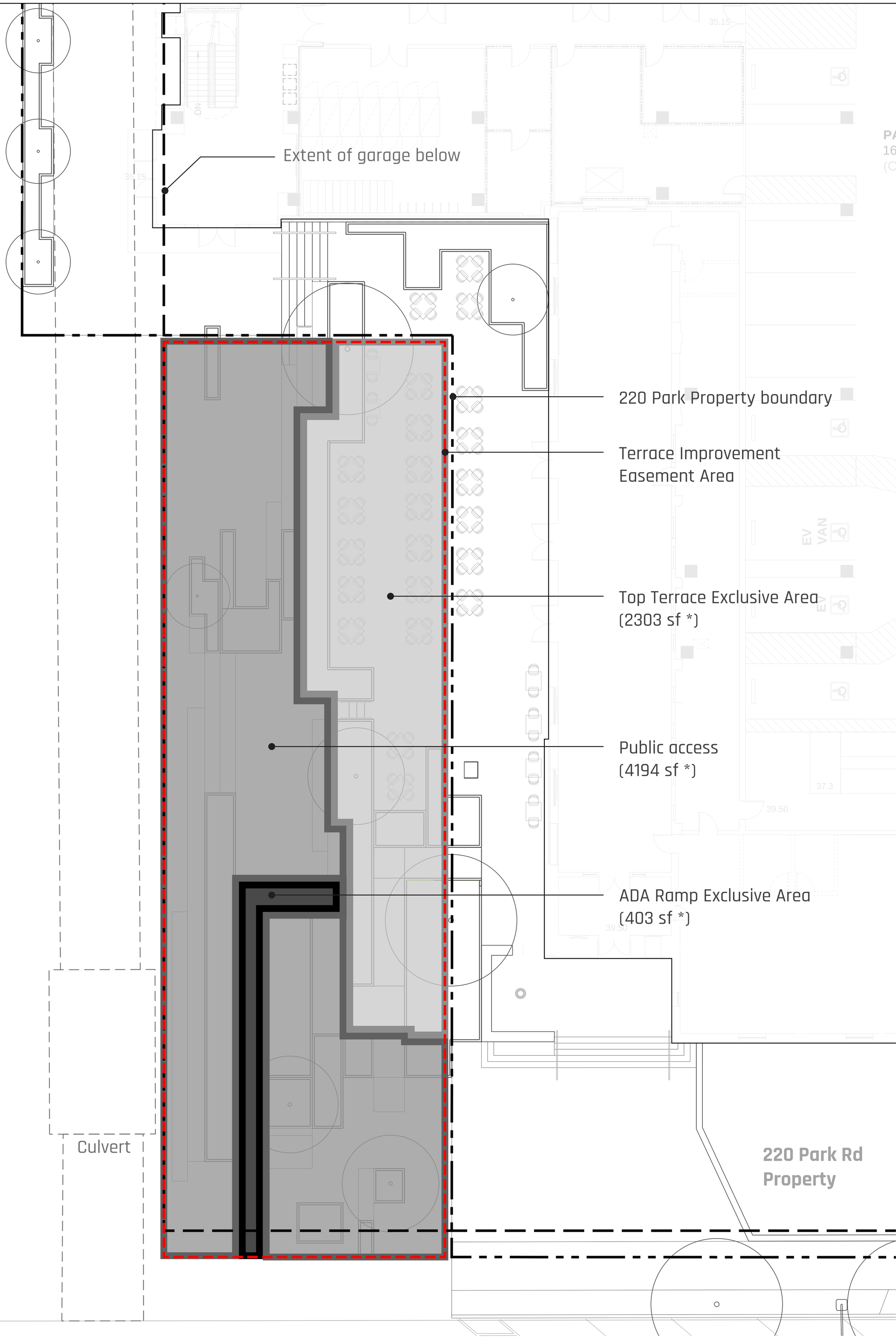
SHEET NUMBER
A2.3

EXHIBIT D

DEPICTION OF THE TERRACE IMPROVEMENTS EASEMENT AREA AND DEVELOPER EXCLUSIVE AREAS

[*Draft; review and update prior to execution*]

Exhibit D – City Easement Area Terrace Improvements



bionic

Exhibit D – City Easement Area
Terrace Improvements 01.27.2021

*Boundaries and square footages are approximations and are subject to further design refinements from ongoing design coordination and development between the City and 220 Park project.

0 5' 10'

EXHIBIT E

TERRACE IMPROVEMENTS CONCEPT DESIGN

[Insert concept design when approved prior to execution and recordation.]