

2025-015518

11:49 am 04/03/2025 AG DR Fee: NO FEE

Count of Pages 65

Recorded in Official Records

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City of South San Francisco

400 Grand Avenue

South San Francisco, CA 94080

Attn: ~~City Manager~~ *City Clerk's Office*

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Space above this line for Recorder's use.

**AFFORDABLE HOUSING AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**7 South Linden Avenue**

**by and between**

**THE CITY OF SOUTH SAN FRANCISCO**

**and**

**ESSEX PORTFOLIO, L.P.**

**REC'D CITY CLERK  
2025 APR 23 PM 2:38:47**

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This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of March 11, 202~~5~~ ("**Effective Date**") by and between the City of South San Francisco, a municipal corporation ("**City**") and Essex Portfolio, L.P., a California limited partnership ("**Owner**"). City and Owner are hereinafter collectively referred to as the "**Parties**."

#### RECITALS

A. Owner is, or will become, the fee simple owner of that certain real property located in the City of South San Francisco referred to as 7. S Linden Avenue, and more particularly described in **Exhibit A** attached hereto (the "**Property**"); and

B. The City has approved Project No. P22-0024 ("**CUP**") on March 16, 2023 for the construction of Five Hundred Forty-Three (543) residential rental units at the Property ("**Project**"); and

C. As a condition of developing the Project, Owner is required to comply with South San Francisco Municipal Code ("**SSF Code**") Chapter 20.380 and, as a result, the Project includes an approved Inclusionary Housing Plan developed in accordance with South San Francisco Municipal Code Sections 20.380.004 ("**Plan**"). Such Plan is attached hereto and incorporated herein as **Exhibit B**. In particular, Owner has elected to provide fifteen percent (15%) of the Project's "**Dwelling Units**" as "**Inclusionary Units**" as those terms are defined in Chapter 20.380 and payment of an in lieu fee as a method to comply with Chapter 20.380 (any reference to "Chapter" or "Section" shall refer to the Municipal Code of South San Francisco unless otherwise noted); and

D. In particular, Owner has elected to provide Eighty-One (81) Inclusionary Units within the Project at the square footage, number of bedrooms and specific location as indicated the Plan and pursuant to the schedule set forth in the Plan. Owner has further elected to provide Fifty-Four (54) Inclusionary Units to "**Lower Income Households**" as defined in California Health and Safety Code Section 50079.5(a) ("**Lower Income Units**") and Twenty-Seven (27) Inclusionary Units to "**Very Low Income Households**" as defined in California Health and Safety Code Section 50105 which shall include extremely low income households as defined in California Health and Safety Code Section 50106 ("**Very Low Income Units**") for the full term of the Agreement and Owner agrees to produce the Inclusionary Units pursuant to the schedule; and

E. In compliance with Section 20.380.014, the Parties intend to set forth in greater detail and specificity within this Agreement the terms and conditions applied to the Project as a condition to City's approval; and

F. In the event of a default under this Agreement Owner has agreed to pay City the following: 1) rental proceeds resulting from Owner's renting or leasing an Inclusionary Unit (or any of them) in whole or in part in violation of this Agreement ("**Excess Rental Proceeds**"); and 2) the in lieu fee otherwise applicable to the Project calculated under Chapter 20.380 of the Inclusionary Housing Regulations ("**Fee**") which it avoided in consideration for its agreement to rent the Inclusionary Units at an Affordable Rent defined in Section 2.1 as well as ten percent (10%) interest on the Fee which interest shall be compounded annually for the period

commencing on the Effective Date and ending on the date of the Event of Default resulting from Owner's failure to rent the Inclusionary Units (or any of them) to income-qualifying households at an Affordable Rent pursuant to this Agreement; and

G. Such obligations are evidenced by a promissory note executed by Owner in favor of City and dated as of the Effective Date ("**Note**") substantially in the form attached hereto as **Exhibit D**. The Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the Effective Date executed by Owner as Trustor for the benefit of City ("**Deed of Trust**") substantially in the form attached hereto as **Exhibit E**. The Deed of Trust also secures Owner's performance under this Agreement; and

H. Owner has agreed to execute and comply with this Agreement and has agreed to comply with the City's Procedures and Guidelines for the Inclusionary Housing Units ("**City Guidelines**") in consideration of the City's approval of the Project. The Parties intend that this Agreement ensures Owner's compliance with the terms of the Note, Deed of Trust as well as the Municipal Code and Use Permit; and

I. The Parties have further agreed to execute a "Notice of Affordability Restrictions on Transfer" and a "Request for Notice of Default" substantially in the form attached hereto as **Exhibit F and G** respectively, and shall cause such notices to be recorded substantially concurrently with the recordation of this Agreement; and

J. As required by the Municipal Code, Owner shall record this Agreement against the Property. The execution of this Agreement shall take place prior to final map approval and shall be recorded upon final map recordation or, where a map is not being processed, prior to the issuance of building permits for the Project. The Parties further intend that this Agreement will run with the land and will be binding on all parties that have or will acquire any right, title, or interest in the Project for the full term of this Agreement; and

K. The Inclusionary Units constitute a valuable community resource by providing and housing opportunities to Lower and Very Low Income Households who would otherwise be unable to afford such housing. It is necessary, proper and in the public interest for the City to protect and preserve this resource by administering occupancy controls by means of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing and the public purposes to be achieved by the City's affordable housing program, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## **AGREEMENT**

### **1. Definitions.**

All terms not defined herein shall have the meanings attributed to them in South San Francisco Municipal Code Chapters 20.380 and 20.390 and the City Guidelines wherever used in this Agreement or the attached exhibits.

## 2. Use and Affordability Restrictions.

Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property and Project shall be used solely in compliance with the requirements set forth herein and the CUP. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written prior consent of City.

### 2.1 Affordability Requirements.

For the “**Term**” of this Agreement as defined in Section 4 below, Owner shall rent:

2.1.1 the 54 Lower Income Units at an “**Affordable Rent**”, as that term is defined in Chapter 20.380 (i.e. monthly allowable housing expenses do not exceed 1/12 of 30% x 60% of AMI for a household size appropriate to the unit) to and occupied by or, if vacant, available for occupancy by Lower Income Households; and

2.1.2 the 27 Very Low Income Units at an Affordable Rent (i.e. monthly allowable housing expenses do not exceed 1/12 of 30% x 50% of AMI for a household size appropriate to the unit) to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

As defined in Chapter 20.380, “**Allowable Housing Expenses**” include rent and a reasonable allowance for utilities, as well as all monthly payments made by the tenant to the lessor in connection with use and occupancy of a housing unit and land and facilities associated therewith, including any separately charged fees, utility charges, or service charges assessed by the lessor and payable by the tenant; “**Reasonable Allowance for Utilities**” is the utility allowance published by the Housing Authority of the County of San Mateo from time to time and “**Utilities**” are garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels for a dwelling unit. Utilities do not include telephone, cable or internet service. “**AMI**” or “**Area Median Income**” shall mean the annual median income for San Mateo County, adjusted for household size, as published by California Department of Housing and Community Development (“**HCD**”) pursuant to Section 6932 of Title 25 of the California Code of Regulations. In the event HCD no longer publishes AMI, the City will establish the updated AMI on an annual basis.

As further defined in Chapter 20.380, “**Household Size Appropriate for the Unit**” means one person for a zero bedroom dwelling unit, two persons for a one bedroom dwelling unit, three persons for a two-bedroom dwelling unit, four persons for a three-bedroom dwelling unit, and five persons for a four-bedroom dwelling unit.

### 2.2 Maximum Rent.

Notwithstanding anything to the contrary in this Agreement, no Inclusionary Unit shall be rented for an amount which exceeds 90 percent of the actual rent charged for a comparable

**Market-Rate Unit**, as that term is defined in Chapters 20.380 and 20.390, in the same residential portion of the Project, if any.

## 2.3 Unit Design, Location, and Size.

### 2.3.1 Materials and Architectural Design.

The Project's Dwelling Units shall not be distinguished by exterior design, appearance, construction, materials or finish quality and shall be consistent with the General Plan and affordable housing development standards prepared by the Department of Economic and Community Development as adopted by the City Council. The exterior materials and exterior architectural design of the Lower Income Units and Very Low Income Units (collectively "**Affordable Units**") shall be consistent with the Market-Rate Units within the Project. Interior features and finishes in the Affordable Units shall be durable, of good quality and consistent with contemporary standards for new housing.

### 2.3.2 Unit Location and Schedule of Construction.

The Affordable Units shall be dispersed throughout the residential portion of the Project as it is constructed. Owner shall construct the Affordable Units in the locations and pursuant to the schedule identified in Exhibit B. If the Project is developed in phases, the rate of building permit issuance, construction and final inspection of Affordable Units shall be proportional to the rate of building permit issuance, construction and final inspection of the Market-Rate Units within the Project.

If Owner wishes to designate other units as Affordable Units, it shall first notify the City in writing of such designation, by registered mail, within sixty (60) business days prior to the effective date of such change. The City may, at its discretion, reject such change, but in all cases shall respond to the Owner within ten (10) business days of receipt of notice from the Owner or such change shall be deemed approved.

### 2.3.3 Unit Bedrooms and Size.

The Affordable Units reflect the range of numbers of bedrooms and sizes of Dwelling Units provided in the Project as a whole.

### 2.3.4 Amenities.

Occupants of the Affordable Units shall be entitled to use all of the same amenities and facilities of the Project as occupants of the Market-Rate Units.

### 2.3.5 Preferences; Non-Discrimination; Compliance with Laws.

#### 2.3.5.1 Preferences.

In order to ensure that there is an adequate supply of affordable housing within the City for City residents and employees of businesses located within the City, to the extent permitted by fair housing laws and other applicable laws, and consistent with the program regulations for

funding sources used for development of the Project, at initial lease up, Owner shall give a preference in the Project to households that include at least one member who lives or works in the City of South San Francisco. Owner will implement any preferences in the rental of Affordable Units in the Project pursuant to a preference plan approved by the City Manager.

#### 2.3.5.2 Section 8 Assistance.

Owner shall comply with state and federal fair housing laws in the marketing and rental of the Dwelling Units. Owner shall accept as tenants, on the same basis as all other prospective households, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto. Owner shall not apply selection criteria to Section 8 certificate or voucher holders that is more burdensome than criteria applied to all other prospective tenants, nor shall Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of units by such prospective tenants.

#### 2.3.6 Non-Discrimination.

Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or Project, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, Project or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in, of, or for the Property, Project or part thereof.

All deeds made or entered into by Owner, its successors or assigns, as to any portion of the Property or Project shall contain the following language, and all leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Property or Project, shall reference this Section, and shall enforce the same diligently and in good faith:

“(a) Owner herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the Owner or any person claiming under or

through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

“(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (d) of Section 12955 of the Government Code shall apply to paragraph (a).”

#### 2.3.7 Compliance with Laws.

Owner shall carry out the construction, development and operation of the Project in conformity with all governmental requirements, including without limitation all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City’s Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11 135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

#### 2.3.8 Compliance with Prevailing Wage Laws.

2.3.8.1 Owner shall carry out the construction through completion of the Project and the overall development of the Property in conformity with all applicable governmental requirements relating to the payment of prevailing wages and compliance with prevailing wage rules, including, without limitation, if applicable, the requirements to pay prevailing wages under federal law (the Davis-Bacon Act, 40 U.S.C. Section 3141, *et seq.*, and the regulations promulgated thereunder set forth at 29 CFR Part 1 (collectively, “**Davis-Bacon**”) and California law (Labor Code Section 1720, *et seq.*) (“**California Prevailing Wage Law**”). The Parties acknowledge that a financing structure utilizing certain federal and/or state funding sources and financing scenarios may require compliance with applicable state and federal prevailing wage laws and regulations. Owner shall determine the applicability of federal, state, and local prevailing wage laws based upon the final financing structure and sources of funding of the Project.

2.3.8.2 Owner shall be solely responsible, expressly or impliedly and legally and financially, for determining and effectuating compliance with all applicable federal, state, and local public works requirements, prevailing wage laws, and labor laws and standards, and City makes no representation, either legally and/or financially, as to the applicability or non-applicability of any federal, state, and local laws to the construction of the Project. Owner expressly, knowingly, and voluntarily acknowledges and agrees that City has previously represented to Owner or to any representative, agent, or affiliate of Owner, or any contractor(s) or any subcontractor(s) for the demolition

work, construction, or development of the Project, in writing or otherwise, in a call for bids or otherwise, that the work and construction of the Project is (or is not) a “public work,” as defined in Section 1720 of the Labor Code or under Davis-Bacon.

2.3.8.3 Owner knowingly and voluntarily agrees that Owner shall have the obligation to provide any and all disclosures or identifications as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation. Owner shall indemnify, protect, pay for, defend, and hold harmless the **Indemnitees** as defined in Section 10, with legal counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (i) the noncompliance by Owner or its contractor with any applicable local, state, and/or federal law or regulation, including, without limitation, any applicable federal and/or state labor laws or regulations (including, without limitation, if applicable, the requirement to pay state and/or federal prevailing wages and hire apprentices); (ii) implementation of Section 1781 of the Labor Code and/or of Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation; and/or (iii) failure by Owner to provide any required disclosure or identification as required by Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, or any other similar law or regulation. It is agreed by the Parties that, in connection with the demolition work, development, and construction (as defined by applicable law or regulation) of the Project, including, without limitation, any and all public works (as defined by applicable law or regulation), Owner shall bear all risks of payment or non-payment of prevailing wages under applicable federal, state, and local law or regulation and/or the implementation of Labor Code Section 1781 and/or by Davis-Bacon, as the same may be amended from time to time, and/or any other similar law or regulation. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Project by Owner.

2.3.8.4 “**Increased costs**,” as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time.

Should Owner fail to comply with this Section 2, it shall constitute an Event of Default hereunder entitling the City to exercise any of its remedies set forth herein.

### 3. Reporting Requirements.

#### 3.1 Household Certification.

Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each Affordable Unit, and on every anniversary thereafter, a written certificate

containing all of the following in such format and with such supporting documentation as City may reasonably require:

3.1.1 The identity of each household member; and

3.1.2 The “**Gross Household Income**” as that term is defined by City Guidelines.

Owner shall retain such certificates for not less than three (3) years, and upon City’s request, shall make the certificates available for City inspection.

3.2 Annual Report; Inspections.

By not later than April 30th of each year during the term of this Agreement, Owner shall submit an annual report (“**Annual Report**”) to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement (as of December 31 of the prior year). The Annual Report shall, at a minimum, include the following information for each Affordable Unit: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) Gross Household Income of residents; (vii) documentation of source of household income; and (viii) the information required by the City.

Should Owner fail to comply with this Section 3.2, it shall constitute an Event of Default hereunder entitling the City to exercise any of its remedies set forth herein.

3.3 On-site Inspection.

Subject to the rights of tenants in possession, Owner shall permit representatives of City to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

3.4 Additional Information.

Owner shall provide any additional information reasonably requested by City. The City shall have the right to audit, examine and make copies of all books, records, or other documents of the Owner which pertain to the Project, at City’s sole cost and expense.

3.5 Records.

The Owner shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of the residents of the Affordable Units. All resident lists, applications and waiting lists relating to the Affordable Units shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City, which may be accomplished through electronic record-keeping. The Owner shall retain copies of all materials obtained or produced with respect to

occupancy of the Affordable Units for a period of at least three (3) years, and for any period during which there is an audit undertaken by the City.

The City shall notify Owner of any records it deems insufficient. Owner shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Owner shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

### 3.6 Increased Income of Residents.

If, upon recertification of the income of a household occupying an Affordable Unit, the Owner determines that the household has an Income exceeding the maximum qualifying income for the Affordable Unit, then:

Where the Project consists of at least twenty-five (25) Dwelling Units:

1. The Owner shall have three (3) months to propose designation of another similarly-sized unit in the Project as an Affordable Unit in which the over-income household resides and provide sufficient written evidence to the City demonstrating that such unit is being rented to a household whose Income does not exceed the original qualifying level as the household whose income has been determined to be over-income (“**Substitute Affordable Unit**”). The City may request further assurances and evidence as it deems appropriate to ensure the Substitute Affordable Unit complies with this Agreement and may reject Owner’s proposed designation.

2. If circumstances prevent the Owner’s designation of a Substitute Affordable Unit within three (3) months, an extension of up to nine (9) additional months may be granted to Owner at the reasonable discretion of the Director of the Department of Economic and Community Development, if it is determined by the Director that an extension is in the best interest of the over-income household.

3. If Owner cannot designate a Substitute Affordable Unit within twelve (12) months, then Owner shall provide the over-income household a written notice of their over-income status and notice to vacate the Affordable Unit Shall at least 60 days prior to the termination of the twelve month period; and

4. Owner shall bring the Project into conformance with this Agreement by renting the vacated Affordable Unit to an income-eligible household (either Lower or Very Low Income Household) based on the designation of the Affordable Unit before vacation.

### 3.7 Termination of Occupancy.

Upon termination of occupancy of an Affordable Unit by an income-qualifying household, Owner shall rent the Affordable Unit to a household whose income level does not exceed the income category (Lower or Very Low) for which the former resident household qualified at occupancy of such Affordable Unit within thirty (30) days of termination of occupancy by the former resident household.

Should Owner fail to comply with this Section 3.7 and fails to cure such failure within thirty (30) days of written notice from the City, it shall constitute an Event of Default hereunder entitling the City to exercise any of its remedies set forth herein.

### 3.8 Condominium Conversion.

Owner shall not convert the Affordable Units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Project or any part thereof unless Owner obtains the City's consent, which consent shall be conditioned upon Owner's agreement to ensure that the Affordable Units remain available as affordable housing. Prior to conveyance of any Affordable Unit(s), the buyer(s) of any for-sale Affordable Units shall enter into an affordable housing agreement, in a form approved by the City Manager and City Attorney, that maintains the affordability of the unit for the minimum term set forth in this Agreement or in California law whichever is greater.

## 4. Term of Agreement.

### 4.1 Term of Restrictions.

Unless extended by mutual agreement of the Parties, upon the 55<sup>th</sup> anniversary of issuance of the final certificate of occupancy for the Project, this Agreement shall automatically terminate and be of no further force or effect. The Owner shall provide all notices and rights to residents required to be given prior to and upon the expiration of affordability covenants if required by Government Code Section 65863.10 or a successor statute which shall contain, at a minimum (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to the City.

### 4.2 Effectiveness Succeeds Conveyance of Property.

This Agreement shall remain effective and fully binding for the full Term hereof, regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein.

### 4.3 Reconveyance.

Upon the expiration of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to evidence the expiration of this Agreement, or to evidence the release and discharge of this Agreement as a matter of title.

## 5. Binding Upon Successors; Covenants to Run with the Land.

Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Parties hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors

in interest, transferees, and assigns of the Parties, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein.

The covenants and restrictions implementing the affordability covenants set forth in this Agreement shall be enforceable against Owner (and each successor in interest) if found to be in violation of the covenants and restrictions herein, by any of the following: (A) City; (B) a resident of an Affordable Unit; (C) Reserved; (D) a former resident of an Affordable Unit who last resided in that Affordable Unit; (E) an applicant household seeking to enforce the covenants and restrictions for an Affordable Unit, if the household conforms to all of the following: (i) their Income qualifies for occupancy of the Affordable Unit, (ii) is able and willing to occupy the Affordable Unit, and (iii) was denied occupancy of that particular Affordable Unit due to an alleged breach of a covenant or restriction implementing this Agreement.

Pursuant thereto, the covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of the City and its successors and assigns, shall be binding upon Owner, and its successors and assigns; and may be enforced by City and its successors and assigns. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land and that the Owner's interest in the Property is rendered less valuable thereby.

Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by Lower Income Households and Very Low Income Households, and by furthering public purposes for City.

In amplification and not in restriction of the provisions hereinabove, it is further intended that this Agreement is designed to create equitable servitudes and covenants running with the Property, in accordance with the provisions of Civil Code Section 1468. Pursuant thereto, it is intended and agreed that City is deemed a beneficiary of the agreements and covenants provided herein both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate.

However, all such covenants and restrictions shall be deemed to run in favor of all real property owned by the City which real property shall be deemed the benefited property of such covenants. Furthermore, all of the covenants, conditions, and restrictions contained herein shall also constitute easements in gross running in favor of the City. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed,

delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

5.1 Constructive Notice and Acceptance.

Every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person or entity acquired an interest in the Project or the Property.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities.

Owner, or Owner's designee, shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of residents, certification and recertification of household size and income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Project. Owner shall not be relieved of its duty to perform of management duties in the event that it hires a management agent.

6.2 Repair, Maintenance and Security.

Throughout the term of this Agreement, Owner, or Owner's designee, shall at its own expense, maintain the Property and the Project in good physical condition, in good repair including all interior and exterior improvements, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the Units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair and abandoned vehicles/appliances, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project.

6.2.1 City's Right to Perform Maintenance.

The City places prime importance on quality maintenance to ensure that all affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance.

In the event that Owner breaches any of the covenants contained in Section 6.2, and such default continues for a period of ten (10) business days after written notice from City with respect to graffiti, debris, and waste material or forty-five (45) days after written notice from City with respect to landscaping, building improvements and general maintenance, then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property.

#### 6.2.2 Costs.

All costs expended by City in connection with the foregoing, constitute an indebtedness, and must be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor will bear interest at the rate of 8% per annum and may be collected by the City by imposing a special assessment on the Property which shall be collected at the same time and in the same manner as property taxes.

#### 6.3 Marketing and Management Plan.

Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Affordable Units to prospective Very Low and Lower Income Households in accordance with fair housing laws and this Agreement which shall, at a minimum, utilize a listing service designated by the City for such purposes, Owner's Resident selection criteria, and how Owner plans to certify the eligibility of residents.

The Marketing and Management Plan shall further set forth the manner in which Owner will encourage or incentivize households who no longer qualify as income-eligible for the Affordable Units to transition to market rate housing opportunities. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with residents. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement.

Should Owner fail to comply with this Section 6.3, it shall constitute an Event of Default hereunder entitling the City to exercise any of its remedies set forth herein.

#### 6.4 Approval of Amendments.

If City has not responded to any submission of the Marketing and Management Plan or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies.

Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage.

Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in **Exhibit H**. Should Owner fail to comply with this Section 6.6, it shall constitute an Event of Default hereunder entitling the City to exercise any of its remedies set forth herein.

6.7 Property Damage or Destruction.

If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

7. Recordation; Subordination.

The Deed of Trust, Notice of Affordability Restrictions on Transfer secures all performance obligations of Owner to City under this Agreement. This Agreement and the Deed of Trust shall be recorded in the Official Records of San Mateo County prior to issuance of any Building Permit. Notwithstanding the foregoing, the City agrees the City will not withhold consent to reasonable requests for subordination of this Agreement and Deed of Trust to deeds of trust provided for the benefit of lenders providing financing for the acquisition, development or rehabilitation of the Project (and their successors and assigns), provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights pursuant to Section 8.2.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a subordination under this Agreement within ten (10) days following City's delivery of an invoice detailing such costs.

8. Transfer and Encumbrance.

8.1 Transfer and Encumbrance.

Upon issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may transfer or assign all or any portion of its interests, rights or obligations in the Property, or under this Agreement, to any third party, and, as this Agreement “runs with the land” this Agreement shall be binding on Owner’s successors and assigns for the full term of this Agreement. Owner shall notify City of any such transfer or assignment.

8.2 Encumbrances.

Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender (“**Lender**”) shall contain each of the following provisions: (i) Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; and, (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 90 days, (iii) provided that City has cured any default under Lender’s deed of trust and other loan documents, City shall have the right to foreclose City’s Deed of Trust and take title to the Project without acceleration of Lender’s debt; and (iv) City shall have the right to transfer the Project without acceleration of Lender’s debt to another entity which shall own and operate the Property and Project in accordance with this Agreement, subject to the prior written consent of the Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Lender within thirty (30) business days following Owner’s receipt thereof.

Owner may encumber the Property for the purpose of securing financing related to the Project. However, such encumbrances may not in any way modify the permitted sale price of the Affordable Unit pursuant to this Agreement.

8.3 Foreclosures

The Owner covenants to and shall cause to be recorded in the Office of the Recorder for the County of San Mateo a request for any notice of default pursuant to Civil Code Section 2924b and/or Civil Code Section 2924f under any deed of trust or mortgage with power of sale encumbering the Project or Property. Such request shall specify that any notice shall be mailed to the City Manager of the City of South San Francisco 400 Grand Avenue, South San Francisco, CA 94080. Any such notice shall constitute a notice of intent to sell hereunder and City (or its assignee) may exercise its right of first refusal prior to any trustee’s sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure.

8.4 Mortgagee Protection.

No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Property, and the purchaser at any trustee’s sale or foreclosure sale shall not be

liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default.

The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

9.1.1 Any increase in rent for an Affordable Unit above that permitted by the Agreement; or

9.1.2 Reserved;

9.1.3 Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days of written notice from City;

9.1.4 Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within sixty (60) days of delinquency;

9.1.5 A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

9.1.6 Owner's default in the performance of any material term, provision or covenant under this Agreement, and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 60 days, Owner's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith.

9.2 Remedies.

The occurrence of an Event of Default following the expiration of any applicable notice and cure periods shall give the City the right to proceed with any and all remedies set forth in this Agreement and the Deed of Trust, including but not limited to the following:

9.2.1 In addition to any other remedy provided by law or equity or granted elsewhere under this Agreement, the City shall have the right to proceed with any suit, action, or proceeding at law or in equity to secure performance by Owner, its successors and assigns, of its commitments and obligations under this Agreement. In any such action, the City may seek monetary relief in an amount sufficient to allow the City to provide rental housing equivalent to that wrongfully denied under this Agreement.

9.2.2 The City shall be entitled to a penalty of \$1000 if Owner, its agents, successors and assigns fail to perform an annual certification, for each Inclusionary Unit whose residents were not subject to an annual certification and an additional \$1,000 for every 30-day period for each Inclusionary Unit whose residents have not been subject to an annual certification.

The City shall further be entitled to a penalty of \$2,500 per Inclusionary Unit, if Owner at any time fails to make available or to provide Inclusionary Units at the required Affordable Rent and an additional \$2,500 for every 30-day period each Inclusionary Unit is not provided in accordance with the Agreement.

If, after thirty (30) days, Owner fails to remit such penalties to the City pursuant to its demand therefor, City may impose these fines as a special assessment on either the Property or Project which shall be collected at the same time and in the same manner as property taxes.

#### 9.2.3 Payment of Fee to City

9.2.3.1 Except in circumstances where upon recertification, a household's income exceeds the maximum qualifying Income for the Affordable Unit the household occupies, and Owner is in compliance with Section 3.6 of this Agreement, if the Owner has breached its obligation to rent any Inclusionary Units to Lower Income or Very Low Income Households at an Affordable Rent pursuant to this Agreement, then an in-lieu fee in the amount of Four Hundred Twenty-Four Thousand, Eight Hundred and Forty Dollars and Eleven Cents (\$424,840.11) per unit together with 10% interest which interest shall be compounded annually for the period commencing on the Effective Date and ending on the date of the Event of Default (collectively "**Inclusionary Unit Fee**") shall be immediately deposited into an escrow account by Owner which shall be released by Owner to the City after continuation of such default for sixty (60) days following the date upon which City shall have given written notice of the default to Owner for every Inclusionary Unit subject to the breach.

9.2.3.2 If the City receives payment of an Inclusionary Unit Fee applicable to an Inclusionary Unit pursuant to Section 9.2.3.1, all Excess Rental Proceeds and reimbursement of all City costs incurred enforcing the terms of the Agreement, including any reasonable attorney's fees, from Owner in full within thirty (30) days from its demand therefor, then City shall release Owner from its obligation to provide the Inclusionary Unit(s) that was the subject of the breach an Affordable Rent to Lower and Very Low Income Households as applicable and as provided for in this Agreement.

9.2.3.3 If, after thirty (30) days, Owner fails to remit an Inclusionary Unit Fee to the City pursuant to its demand therefor, City may impose the Inclusionary Unit Fee as a special assessment on either the Property or Project which shall be collected at the same time and in the same manner as property taxes. This amount shall also be a debt of Owner payable to City, evidenced by the Note and secured by the Deed of Trust.

#### 9.2.4 Payment of Excess Rental Proceeds to City

If the Owner has breached its obligation to rent the Affordable Units (or any of them) to Very Low Income or Lower Income Households at an Affordable Rent pursuant to this Agreement, then the Excess Rental Proceeds resulting from Owner's renting or leasing any Affordable Unit in whole or in part in violation of this Agreement shall become immediately due and payable by the Owner to the City.

If, after thirty (30) days, Owner fails to remit the Excess Rental Proceeds to the City pursuant to its demand therefor, City may impose the Excess Rental Proceeds as a special assessment on either the Property or Project which shall be collected at the same time and in the same manner as property taxes. This amount shall also be a debt of Owner payable to City, evidenced by the Note and secured by the Deed of Trust.

#### 9.2.5 Resident Remedy For Violation of Rental Requirements.

9.2.5.1 In the event that Owner charges to or receives from a qualified Lower Income Household or Very Low Income Household higher rental amounts than the Affordable Rent for an Affordable Unit allowed pursuant to this Agreement, Owner shall be required to reimburse the affected resident that occupied said Affordable Unit at the time the excess rent was received for the entire amount of such excess rent received, provided that such resident can be found following reasonable inquiry, and to pay to such resident interest on said excess amount, at the rate of six percent (6%) per annum, for the period commencing on the date the first excess rent was received from said resident and ending on the date reimbursement is made to the resident. For purposes of this Section, "reasonable inquiry" shall include Owner's review of information provided by the resident as part of the resident's application, and forwarding information provided by the resident, and Owner's reasonable attempts to contact the resident and any other persons listed in either of such documents. If, after such reasonable inquiry, Owner is unable to locate the resident, Owner shall pay all of such amounts otherwise to be paid to the resident to City.

9.2.5.2 In the event Owner knowingly rents an Affordable Unit in violation of the preference requirements, in addition to any other equitable remedy City shall have for such default, Owner, for each separate violation, shall be required to pay City a penalty in an amount equal to two (2) months of rental charges for the noncompliant unit. If, after thirty (30) days, Owner fails to remit such fine to the City pursuant to its demand therefor, City may impose the fine as a special assessment on either the Property or Project which shall be collected at the same time and in the same manner as property taxes.

#### 9.2.6 Remedies Cumulative

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

#### 9.3 Attorney's Fees and Costs.

In any judicial proceeding, arbitration, or mediation between the City and Owner seeking enforcement of any of the terms and provisions of this Agreement (collectively, "**Action**"), the prevailing Party in such Action shall recover all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or Civil Code Section 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

#### 10. Indemnity.

To the fullest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold City and its respective elected and appointed officers, officials, employees, agents, volunteers and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

#### 11. Miscellaneous.

##### 11.1 Amendments.

Pursuant to South San Francisco Municipal Code Section 20.380.015, any amendment to this Agreement shall be processed in the same manner as an original application for approval, except as authorized in Section 20.380.004(C).

##### 11.2 No Waiver.

Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default

hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election. Consent by the City to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

#### 11.3 Notices.

Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

11.3.1 personal delivery, in which case notice is effective upon delivery;

11.3.2 certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or

11.3.3 nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

If to City, to:	City of South San Francisco 400 Grand Avenue Attn: City Manager South San Francisco, CA 94080 Phone: (650) 877-8500 Email: <a href="mailto:sharon.ranals@ssf.net">sharon.ranals@ssf.net</a>
With a Copy to:	City of South San Francisco 400 Grand Avenue Attn: ECD Director South San Francisco, CA 94080 Phone: (650) 829-6622 Email: <a href="mailto:nell.selander@ssf.net">nell.selander@ssf.net</a>
With a Copy to:	Redwood Public Law Attn: Sky Woodruff 409 13th Street, Suite 600 Oakland, California 94612 Phone: (510) 721-3210 Email: <a href="mailto:sky.woodruff@redwoodpubliclaw.com">sky.woodruff@redwoodpubliclaw.com</a>
If to Owner:	[Essex Portfolio, L.P.] Attn: Legal Department 1100 Park Place, Suite 200 San Mateo, CA 94403 Phone: 650-655-7800 Email: <a href="mailto:legalops@essex.com">legalops@essex.com</a>
With a Copy to:	[Essex Portfolio, L.P.] Attn: Affordable Housing 17461 Derian Avenue, Suite 100 Irvine, CA 92614 Phone: 949-863-4200 Email: <a href="mailto:affordablehousing@essex.com">affordablehousing@essex.com</a>

#### 11.4 Further Assurances.

The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

#### 11.5 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

#### 11.6 Third Party Beneficiaries

Certified income-eligible residents of the Affordable Units are “Third Party Beneficiaries” of this Agreement and shall have the right to proceed with any suit, action, or proceeding at law or in equity to require the Owner to perform its obligations as set forth herein.

#### 11.7 Authority to Execute.

Owner represents and warrants that (i) it is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Owner is formally bound to the provisions of this Agreement, (iv) Owner’s entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other agreement to which Owner is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Owner is aware that could prevent Owner from entering into or performing its obligations set forth in this Agreement. Owner further represents and warrants that the person(s) executing this Agreement on behalf of Owner has the authority to execute this Agreement.

#### 11.8 Interpretation of Agreement

This Agreement shall be interpreted to ensure that the rental of all Affordable Units remain affordable to Lower Income and Very Low Income Households as described in this Agreement. The terms of South San Francisco Municipal Code Chapters 20.380 , including documented legislative intent associated with enactment shall apply to interpretation of this Agreement, and its Deed of Trust.

#### 11.9 Superiority of Declarations

The Owner warrants that it has not executed, and agrees that it will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions of this Agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the City, and their respective successors.

#### 11.10 Action by the City.

Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.11 Administrative Fee.

Owner shall pay all applicable fees to City pursuant to the City's Master Fee Schedule.

11.12 Non-Liability of City Officials, Employees and Agents.

No member, official, employee, volunteer or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.13 Headings; Construction.

The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.14 Time is of the Essence.

Time is of the essence in the performance of this Agreement.

11.15 Governing Law.

This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.16 Severability.

If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.17 Entire Agreement; Exhibits.

This Agreement contains the entire agreement of Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements between the Parties with respect thereto. **Exhibits A through H**, attached hereto are incorporated herein by this reference.

11.18 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURES ON FOLLOWING PAGE.**

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**CITY:**

THE CITY OF SOUTH SAN FRANCISCO, a municipal corporation

By: Sharon K. Ranals

Sharon K. Ranals, City Manager

**ATTEST:**

By: Rosa Govea Acosta 3/28/2015

Rosa Govea Acosta, City Clerk

**APPROVED AS TO FORM:**

By: Sky Woodruff

Sky Woodruff, City Attorney

**OWNER:** Essex Portfolio, L.P.

By: SEE ATTACHED SIGNATURE PAGE

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 CALIFORNIA )


COUNTY OF SAN MATEO )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, (here insert name and title of the officer), 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

[SIGNATURE PAGE FOR ESSEX PORTFOLIO, L.P.]

**ESSEX PORTFOLIO, L.P.,**  
a California limited partnership

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By:   
Name: Rylan Burns  
Title: EVP and Chief Investment Officer

**CALIFORNIA ACKNOWLEDGMENT**

CIVIL CODE § 1189

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

State of California

County of Orange }On March 11, 2025 before me, Jeanette Henley, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Rylan Burns  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature

Jeanette Henley  
Signature of Notary Public**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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

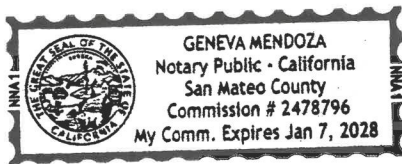
State of California

County of San Mateo }

On March 27, 2025 before me, Geneva Mendoza, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Sharon K. Ranals  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature [Signature]  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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Signer's Name: \_\_\_\_\_

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☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer – Title(s): \_\_\_\_\_

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN MATEO )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A – Legal Description**

## **7 SOUTH LINDEN**

### **Legal Description**

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

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF LINDEN AVENUE PRODUCED WITH THE SOUTHERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC COMPANY'S BADEN BRANCH; RUNNING THENCE ALONG THE EASTERLY LINE OF LINDEN AVENUE, PRODUCED SOUTH 15° 33' WEST 640.49 FEET; THENCE SOUTH 74° 27' EAST 308.1 FEET TO THE WESTERLY LINE OF THE SOUTHERN PACIFIC COMPANY'S RIGHT OF WAY LINE; RUNNING THENCE ALONG SAID RIGHT OF WAY LINE NORTH 31° 18' EAST 100 FEET; THENCE CONTINUING ALONG THE SAID RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC COMPANY ON A CURVE TO THE LEFT WHOSE RADIUS IS 434.276 FEET, AN ARC DISTANCE OF 718.64 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

**Exhibit B – Inclusionary Housing Plan**

## 7 S. Linden Affordable Requirements

**7 S. Linden Affordable Units Provided**

**Exhibit [D] – Promissory Note**

## PROMISSORY NOTE SECURED BY DEED OF TRUST

### CITY OF SOUTH SAN FRANCISCO AFFORDABLE HOUSING PROGRAM

EXCESS RENTAL PROCEEDS AND IN LIEU FEE

South San Francisco, California

\_\_\_\_\_, 202\_\_

### THIS NOTE MAY NOT BE PREPAID

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (together with its successors and assigns, "**Debtor**," ) promises to pay to the City of South San Francisco, a municipal corporation, ("**Holder**" or "**City**"), at 400 Grand Avenue, South San Francisco, California 94080, or any other place designated in writing by Holder to Debtor, the Excess Rental Proceeds and Fee and other sums as described below. Capitalized terms used in this Promissory Note Secured by Deed of Trust (this "**Note**") without definition shall have the meanings set forth in the Agreement (defined below).

1. Purpose of Note. In connection with Debtor's development and ownership of the property located at 7 S. Linden Avenue (the "**Property**"), Debtor and Holder executed an Affordable Housing Agreement and Declaration of Restrictive Covenants (the "**Agreement**"), dated the same date as this Note. Among other provisions, the Agreement establishes the rights and obligations of the Debtor and Holder in the event Debtor desires to Transfer the Property. "**Transfer**" means any voluntary or involuntary sale, assignment, encumbrance, hypothecation, or transfer of any interest in the Property or part thereof. Pursuant to the City's affordable housing program, the City waived the otherwise applicable In Lieu Fee ("**Fee**") in exchange for Debtor's agreement to rent Inclusionary Units at an Affordable Rent ("**Affordable Units**") to income-qualifying households, and the purpose of the Agreement is to ensure the rental of the Affordable Units is in accordance with the City's affordable housing program.
2. This Note evidences Debtor's obligation to pay Excess Rental Proceeds and the Inclusionary Unit Fee plus ten percent (10%) interest to the City pursuant to Sections 9.2.3 and 9.2.4 of the Agreement.
3. Security. This Note is secured by a Deed of Trust, Assignment of Rents, Fixture Filing and Security Agreement dated the same date as this Note, executed by Debtor in favor of Holder, with Chicago Title Company as Trustee (the "**City Deed of Trust**"). The City Deed of Trust secures the Debtor's performance under the Agreement and the payment of the debt evidenced by this Note, and all renewals, extensions and modifications of the Note.
4. No Payments Due Prior to Default or Transfer of Property. Provided that Debtor is not in

default under the Agreement and no Transfer of the Property or rental of the Units in violation of the Agreement has occurred, no interest shall accrue on the outstanding principal balance of this Note and no payments shall be due hereunder. As more particularly described in the Agreement, upon the termination of the Agreement, this Note shall be cancelled.

5. Payment Upon Default. Upon the occurrence of an Event of Default under the Agreement Debtor shall pay to Holder all of the sums described in the following clauses (A), (B) and (C) in accordance with the Agreement:
  - (A) Any Excess Rental Proceeds as defined in Section 9.2.4 of the Agreement; and
  - (B) The Inclusionary Unit Fee as defined in Section 9.2.3 of the Agreement plus ten percent (10%) interest which interest shall be compounded annually for the period commencing on the Effective Date and ending on the date of the Event of Default; and
  - (C) All amounts disbursed by Holder pursuant to the City Deed of Trust to protect Holder's rights in the Property and Affordable Units.
6. Attorneys' Fees. Debtor agrees to pay on demand, together with interest at the rate specified above in Section 5(B) from the date of such demand until paid, all reasonable attorneys' fees, costs of collection, costs, and expenses incurred by Holder in connection with the defense or enforcement of this Note and the City Deed of Trust, whether or not a legal action or proceeding is filed.
7. No Waiver; Amendments in Writing. No previous waiver and no failure or forbearance by Holder in acting with respect to the terms of this Note or the City Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the City Deed of Trust, or the Agreement. A waiver of any term of this Note, the City Deed of Trust, or the Agreement must be made in writing, signed by both parties, and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the debt evidenced by this Note, the terms of this Note shall prevail. No modification or amendment of this Note shall be effective unless in a writing signed by Debtor and Holder.
8. Joint and Several Obligation. If this Note is executed by more than one person as Debtor, the obligations of each such person shall be joint and several, and each shall be primarily and directly liable hereunder.
9. No Offset; Debtor's Waivers. Debtor hereby waives any rights of offset Debtor now has or may hereafter have against Holder, its successors and assigns. Debtor waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interest in or to

properties securing payment of this Note. Debtor further waives any right to plead any and all statutes of limitation as a defense to any demand on this Note.

10. Time of the Essence; Governing Law; Severability. Time is of the essence with respect to every provision in this Note. This Note shall be construed and enforced in accordance with the substantive and procedural laws of the State of California, except to the extent that federal laws preempt the laws of the State of California, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law. If any provision of this Note shall be found to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected or impaired thereby.
11. Notices. Notices pertaining to this Note shall be delivered in accordance with Section 11.3 of the Agreement.
12. Assignment. City may assign its right to receive the proceeds of this Note in accordance with the Agreement to any person or entity, and upon City's delivery of written notice to Debtor of such assignment, all payments shall be made to the assignee. Debtor may assign its obligations under this Note in connection with a Transfer of the Property, in furtherance of Section 5 of the Agreement. Such assignment of obligations under the Note will be effective immediately upon the sale of the Property, subject to (i) Debtor's delivery of written notice to City five (5) Business Day's prior to such Transfer and assignment and (ii) and allonge reflecting such assignment.

**DEBTOR**

Signature: \_\_\_\_\_

**Exhibit [E] – Deed of Trust**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City of South San Francisco  
400 Grand Avenue  
San Francisco, CA 94080  
Attn: City Clerk

EXCEPTION FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(Space Above This Line for Recorder's Use)

**DEED OF TRUST, ASSIGNMENT OF RENTS, FIXTURE FILING AND SECURITY  
AGREEMENT**

CITY OF SOUTH SAN FRANCISCO  
AFFORDABLE HOUSING PROGRAM

**THERE ARE RESTRICTIONS ON THE USE OF THE PROPERTY ENCUMBERED BY THIS DEED OF TRUST. THE RENTAL OF EIGHTY- ONE (81) UNITS AT THIS PROPERTY IS LIMITED TO INCOME-ELIGIBLE HOUSEHOLDS AT A RESTRICTED RENT PURSUANT TO THE CITY OF SOUTH SAN FRANCISCO'S AFFORDABLE HOUSING PROGRAM.**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, FIXTURE FILING AND SECURITY AGREEMENT ("**Deed of Trust**") is made as of \_\_\_\_\_, 202\_\_ ("**Effective Date**") by Essex Portfolio, L.P., (together with its successors and assigns, "**Trustor**") to \_\_\_\_\_ (the "**Trustee**") whose business address is \_\_\_\_\_ for the benefit of THE CITY OF SOUTH SAN FRANCISCO, a municipal corporation ("**Beneficiary**"). Capitalized terms used in this Deed of Trust without definition shall have the meanings set forth in the Agreement (as hereinafter defined).

**WHEREAS**, Trustor is the owner of the real property located at 7 S. Linden Avenue in the City of South San Francisco, San Mateo County, California, and more particularly described in Exhibit A attached hereto and incorporated herein;

**WHEREAS**, Beneficiary has assisted Trustor in the development of the Property by waiving the otherwise applicable Fee due to the City pursuant to the City's Affordable Housing Program in exchange for Trustor's agreement to rent the Affordable Units at the Property to income-qualifying households;

**WHEREAS**, in accordance with Program requirements, Trustor and Beneficiary entered into an Affordable Housing Agreement and Declaration of Restrictive Covenants dated as of the Effective Date and recorded in the Official Records of San Mateo County substantially concurrently herewith (the “**Agreement**”), and Trustor executed and delivered to Beneficiary the Promissory Note Secured by Deed of Trust dated as of the Effective Date (the “**Note**”);

**WHEREAS**, the rental restrictions set forth in this Deed of Trust and in the Agreement are intended to effectuate the requirements of the [Program] [NTD: this is not defined];

**WHEREAS**, among other provisions, the Agreement provides that (i) the Affordable Units may be rented only to income-qualifying households at an Affordable Rent (as such terms are defined in the Agreement) and (ii) there are restrictions on the ability of Trustor to encumber and refinance the Property (as defined in the Agreement);

**NOW THEREFORE**, to secure the full and timely performance of Trustor’s obligations under the Note and the Agreement, it is agreed as follows.

1. Grant in Trust. Trustor, in consideration of the indebtedness herein recited and the trust herein created, hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor’s right, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property located at 7 S. Linden Avenue in South San Francisco, California in the County of San Mateo, State of California, which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the “**Land**”); (b) all buildings, improvements and fixtures now or hereafter erected on the Property and all replacements and additions thereto (“**Improvements**”); (c) all easements, rights of way, appurtenances and other rights used in connection with the Property or as a means of access thereto (“**Appurtenances**”); (d) all fixtures now or hereafter attached to or used in and about the Property or the Improvements or hereafter located or constructed on the Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Improvements in any manner (“**Fixtures and Equipment**”); and (e) all leases, subleases, licenses and other agreements relating to use or occupancy of the Property (“**Leases**”) and all rents or other payments which may now or hereafter accrue or otherwise become payable to or for the benefit of Trustor (“**Rents**”) (whether or not such Leases and Rents are permitted pursuant to the Agreement).

All of the above-referenced Property, Improvements, Appurtenances, Fixtures and Equipment, Leases and Rents are herein referred to collectively as the “**Property**.”

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of all of the following (the “**Secured Obligations**”): (i) all

present and future indebtedness evidenced by the Note and all amendments, modifications, extensions, assignments and renewals of the Note; (ii) all present and future obligations of Trustor set forth in this Deed of Trust or in the Agreement; (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all modifications, supplements, amendments, renewals, and extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust. Certain obligations set forth in the Agreement survive the repayment of the Note, and this Deed of Trust secures such surviving obligations, which include, without limitation: the restrictions upon rent for the Affordable Units as set forth in the Agreement.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of the lessor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and unless due solely to the willful misconduct or gross negligence of Beneficiary, shall not be responsible for any dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property.

4. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the Uniform Commercial Code ("UCC") with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of San Mateo County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC. The full name of Trustor and the mailing address of Trustor are set forth in Section 8.7 of this Deed of Trust.

5. Trustor Representations, Warranties And Covenants

5.1. Trustor's Estate. Trustor represents and warrants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property. Trustor agrees to warrant and defend generally the title to the Property against all claims and demands subject to any declarations, easements, or restrictions listed in the schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.

5.2 Repayment of Sums Owed under Note and Agreement. Trustor will promptly pay to Beneficiary when due all sums payable under the Note and the Agreement.

5.3 Performance of Covenants. Trustor will observe and perform all of Trustor's covenants and agreements set forth in the Agreement, the Note and this Deed of Trust.

5.4 Maintenance of the Property. Trustor agrees: (a) to keep the Property in good repair and in decent, safe, sanitary, habitable condition and permit no waste thereof; (b) to repair, restore or rebuild promptly any Improvements that may be damaged or destroyed while subject to the lien of this Deed of Trust; (d) to comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property; and (e) not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Beneficiary's written consent. If there arises a condition in contravention of this Section, and if the Trustor has not cured such condition within thirty (30) days after receiving a notice from Beneficiary of such a condition, then in addition to any other rights available to Beneficiary, Beneficiary shall have the right (but not the

obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Property to recover its cost of cure.

5.5 Appear and Defend. Trustor shall appear in and defend any action or proceeding purporting to affect the Property or the rights or powers of the Beneficiary or Trustee, and shall pay all reasonable, actual, out-of-pocket costs and expenses, including cost of evidence of title and attorney's fees in any suit brought by the Beneficiary to foreclose or enforce this Deed of Trust.

5.6 Charges; Liens. Trustor shall pay prior to delinquency all taxes, assessments, and other charges, fines, and impositions affecting the Property directly to the payee thereof. Upon an Event of Default under the Agreement, and upon request of Beneficiary, Trustor shall promptly furnish to Beneficiary copies of all notices of such amounts due and shall promptly furnish to Beneficiary receipts evidencing all such payments made. Trustor shall pay when due each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest therein, whether or not such lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust. Trustor shall not be required to pay any tax, charge or assessment so long as Trustor is actively contesting its validity in good faith and by appropriate legal proceedings which will operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof. Trustor shall post security for the payment of such contested claims as may be requested by the Beneficiary.

5.7 Insurance. Trustor shall keep the Land and the Improvements insured by a standard all-risk property insurance policy in an amount equal to the replacement value of the Property with loss payable to the Beneficiary. The insurance carrier providing such insurance shall be licensed to do business in the State of California and may be chosen by Trustor. All insurance policies and renewals thereof will be in a form acceptable to the Beneficiary, and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of any senior lien and the Beneficiary as their interests may appear and in a form acceptable to the Beneficiary. The Beneficiary shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Trustor shall promptly furnish to the Beneficiary, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Trustor will give prompt notice to the insurance carrier and the Beneficiary or its designated agent. The Beneficiary, or its designated agent, may make proof of loss if not made promptly by Trustor. The Beneficiary shall receive thirty (30) days advance written notice of the cancellation, expiration or termination or any material change in the coverage afforded by any of the insurance policies required under this Section.

Unless otherwise permitted by the Beneficiary in writing, insurance proceeds, subject to the rights of the holder of any senior lien, will be applied to restoration or repair of the Property damaged. If the Property is abandoned by Trustor, or if Trustor fails to respond to the Beneficiary, or its designated agent, within thirty (30) days from

the date notice is mailed by either of them to Trustor that the insurance carrier offers to settle a claim for insurance benefits, the Beneficiary, or its designated agent, is authorized to collect and apply the insurance proceeds at the Beneficiary's option either to restoration or repair of the Property or to pay amounts due under the Agreement and the Note.

If the Property is acquired by the Beneficiary, all right, title and interest of Trustor in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition will pass to the Beneficiary to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition, subject to the rights of the holder of any senior lien.

Renewal policies and any replacement policies, together with premium receipts satisfactory to the Beneficiary, shall be delivered to the Beneficiary at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the Beneficiary shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

6. IT IS MUTUALLY AGREED THAT:

6.1. Protection of Beneficiary's Security. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, but not limited to, an Event of Default under any senior lienholder document, eminent domain, insolvency, code enforcement, arrangements or proceedings involving a bankrupt or decedent, foreclosure of any mortgage secured by the Property or sale of the Property under a power of sale of any instrument secured by the Property, and Beneficiary has given Trustor notice of such failure to perform and Trustor has been given thirty (30) days to cure but has failed to cure, then Beneficiary, at Beneficiary's option, without releasing Trustor from any obligation hereunder, may upon notice to Trustor, make such appearance, disburse such sums and take such action as is necessary to protect Beneficiary's interest, including, but not limited to, the purchase of insurance, disbursement of reasonable attorneys' fees and entry upon the Property to make repairs. Any amounts disbursed by Beneficiary pursuant to this Section, with interest thereon, shall become additional indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder.

6.2 Inspection. Beneficiary or its agent may make or cause to be made reasonable entries upon and inspections of the Property. Beneficiary shall give Trustor reasonable notice prior to any such inspection.

6.3 Awards and Damages. If an Event of Default has occurred and is continuing, subject to the rights of senior lienholders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (b) any damage to or destruction of the Property or any part thereof by insured casualty, and (c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the amounts collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. If the Property is abandoned by Trustor, or if, after notice by Beneficiary to Trustor that the condemnor offers to make an award or settle a claim for damages, Trustor fails to respond to Beneficiary within sixty (60) days after the date such notice is mailed, Beneficiary is authorized to collect and apply the proceeds, at Beneficiary's option, either to restoration or repair of the Property or to the sum secured by this Deed of Trust.

6.4 Intentionally Omitted.

6.5 Sale or Forbearance. No sale of the Property, forbearance on the part of Beneficiary or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Trustor either in whole or in part. Notwithstanding any other provision to the contrary, upon the assignment of this Deed of Trust or the entering into a new Deed of Trust with the new owner of the Property upon such sale, Trustor shall be released and discharged from any liability that arises on the date of such sale and thereafter.

6.6 Beneficiary's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) Beneficiary may in its sole discretion: (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of the Beneficiary, may reconvey all or any part of the Property, consent to the making of any map or plot of the Land, join in granting any assessment thereon, or join in any such agreement of extension or subordination.

6.7 Reconveyance. Upon payment of all sums and satisfaction of all obligations secured by this Deed of Trust (including without limitation, the satisfaction of all obligations set forth in the Agreement), Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in the reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Beneficiary shall request Trustee to reconvey the Property and otherwise cooperate with Trustor to facilitate any sale of the Property by Trustor.

## 7. **EVENTS OF DEFAULT**

7.1 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust:

- (a) The sale, conveyance, encumbrance or other transfer of the Property in violation of the Agreement.
- (b) An event of default arises under any other loan secured by the Property and such default remains uncured following the expiration of any applicable cure period.
- (c) Trustor encumbers or refinances the Property in violation of the Agreement.
- (d) Trustor fails to pay real estate taxes, assessments or homeowner's association dues, when due, or Owner fails to maintain insurance in such amounts as required under this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written notice of default from Beneficiary.
- (e) Trustor fails to observe or perform any other covenant, condition, or agreement to be observed or performed by Trustor pursuant to this Deed of Trust, and Trustor fails to cure such default within 60 days following the date of written notice of default from Beneficiary.
- (g) An event of default arises under the Note or the Agreement.
- (h) Trustor declares bankruptcy or makes an assignment of assets for the benefit of creditors.

### 7.2 Acceleration and Sale.

(a) Default; Remedies. Upon Trustor's breach of any covenant or agreement of Trustor under the Note, the Agreement or this Deed of Trust, Beneficiary shall mail notice to Trustor as provided in Section 8.7 hereof specifying: (i) the nature of the breach; (ii) the action required to cure such breach; (iii) a date no less than thirty (30) days from the date the notice is mailed to Trustor by which such breach must be cured; and (iv) that failure to cure such breach on or before the date specified in the notice may result in acceleration of any indebtedness due to Beneficiary pursuant to the Agreement or Note and the sale of the Property. The notice shall further inform Trustor of Trustor's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Beneficiary at Beneficiary's option may: (a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and invoke the power of sale; (b) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants set forth herein; (d) deliver to the Trustee a written declaration of default and demand for sale pursuant to the provisions for notice of sale found at California Civil Code Sections 2924 *et seq.*, and (c) pursue any other remedy permitted under California law. Beneficiary shall be entitled to collect from the Trustor, or from the proceeds of the sale of the Property, all reasonable, actual and out-of-pocket costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys' fees.

(b) Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor will have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of the judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, including, but not limited to, reasonable attorneys' fees; (c) Trustor cures all breaches of any other covenants or agreements of Trustor set forth in the Agreement, and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums and perform the obligations secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

(c) Sale. After delivery to Trustee of a Notice of Default and Demand for Sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Trustor, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter

may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Trustor, Trustee or the Beneficiary, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee and after deducting all costs, expenses and fees of Trustee, Trustee shall apply the proceeds of sale to the payment of the indebtedness hereby secured, including without limitation the indebtedness evidenced by the Note, any advances made or costs or expenses paid or incurred by Beneficiary under this Deed of Trust, any indebtedness evidenced by any other instrument hereby secured, and all other sums then secured hereby, including without limitation, payment of interest, Excess Sale Proceeds, Rental Proceeds, the Fee and an equity share as provided in the Agreement and the Note, in such order as the Beneficiary shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

(d) Assignment of Rents; Appointment of Receiver; Beneficiary in Possession. Upon acceleration under Section 7.2(a) or abandonment of the Property, Beneficiary (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property (if any) including those past due. All rents collected by Beneficiary or the Receiver shall be applied first to payment of the costs of management of the Property and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Beneficiary and the receiver shall be liable to account only for those rents actually received. The provisions of this paragraph and Section 7.2(a) shall operate subject to the claims of prior lien holders.

7.3 Remedies Cumulative; No Waiver. No exercise of any right or remedy by the Beneficiary or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay or forbearance by the Beneficiary or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof in any continued or subsequent default hereunder. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

7.4 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Beneficiary, to be exercised at any time hereafter, without specifying any reason therefore, by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Beneficiary deems advisable. The exercise of said power of appointment, no matter how often, shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so

appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

## 8. MISCELLANEOUS PROVISIONS

8.1 Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall bind, and the benefit and advantages hereunder shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties; provided however, nothing in this Section is intended to or shall modify any restrictions on assignment set forth herein or in the Note or Agreement. As used herein, the words "the Beneficiary" means the present Beneficiary or any future owner or holder, including a pledgee of the indebtedness secured hereby. Trustor may assign its obligations under this Deed of Trust in connection with the sale of the Property, in furtherance of Section 5 of the Agreement. Such assignment of obligations under the Deed of Trust will be effective immediately upon the sale of the Property, subject to (i) Debtor's delivery of written notice to City five (5) Business Day's prior to such Transfer and assignment and (ii) and a recorded assignment of Deed of Trust reflecting such assignment.

8.2 Headings; Gender, Number. The captions and headings used in this Deed of Trust are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

8.3 Approvals in Writing. Except as otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by the Beneficiary is required or permitted under this Deed of Trust, such action shall be in writing.

8.4 Joint and Several Obligations. If more than one person has executed this Deed of Trust as Trustor, the obligations of all such persons hereunder shall be joint and several.

8.5 Severability. If any provision of this Deed of Trust shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

8.6 Indemnification. Trustor agrees to indemnify, defend (with counsel approved by Beneficiary) and hold the Beneficiary, its elected and appointed officers, officials, agents and employees ("**Indemnitees**") harmless from and against any and all losses, damages, claims, actions, demands, judgments, penalties, costs and

expenses (including reasonable, actual, out-of-pocket attorneys' fees) and liabilities (all of the foregoing, collectively "**Claims**") which the Indemnitees may sustain or suffer directly or indirectly as a result of or arising in connection with (i) Trustor's failure to perform any material obligations as and when required by the Note, the Agreement, or this Deed of Trust, (ii) the failure at any time of any of Trustor's material representations and warranties made in connection with the Loan to be true and correct, or (iii) any action or omission by Indemnitees in connection with this Deed of Trust, except to the extent any such Claim arises due to the gross negligence or willful misconduct of Indemnitees.

8.7 Notices. Except for any notice required under applicable law to be given in another manner (a) any notice to Trustor provided for in this Deed of Trust shall be given by mailing such notice by certified mail directed to the Property address or any other address Trustor designates by notice to Beneficiary as provided herein; and, (b) any notice to Beneficiary shall be given by certified mail, return receipt requested, to Beneficiary's mailing address stated herein or to such other address as Beneficiary may designate by notice to Trustor as provided herein. In addition to providing notice by mail, any notice should also be sent via electronic mail. Any notice provided for in this Deed of Trust shall deem to have been given to Trustor or Beneficiary when given in the manner designated herein.

Beneficiary: City of South San Francisco  
400 Grand Avenue  
South San Francisco CA 94080  
Attention: City Manager  
Email: Sharon.ranals@ssf.net

Trustor: Essex Portfolio, L.P.  
1100 Park Place, Suite 200  
San Mateo, CA 94403  
Attention: Legal Department  
Email: Legal2@essex.com

8.8 Beneficiary Statement. Beneficiary may collect a fee for furnishing the beneficiary statement in an amount not to exceed the amount as provided by Section 2943 of the Civil Code of California.

8.9 Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

***SIGNATURES ON FOLLOWING PAGE.***

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR

Signature: 

**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.

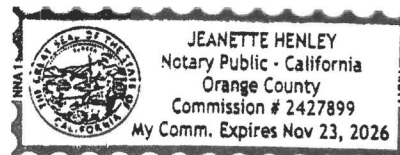
State of California  
County of Orange

On March 11, 2025 before me, Jeanette Henley, Notary Public (insert name and title of the officer), personally appeared Ryan Burns, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jeanette Henley (Seal)



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

State of California  
County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit A

LAND

(Attach legal description.)

**Exhibit F – Notice of Affordability Restrictions**

**Recording requested by and when  
recorded mail to:**

City of South San Francisco  
400 Grand Avenue  
South San Francisco, California 94080  
Attn: Community Development Director

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

(Space Above This Line For Recorder's Use Only)

## **NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY**

This Notice of Affordability Restrictions (this "**Notice**") is dated as of \_\_\_\_\_, **202** with reference to that certain real property located at \_\_\_\_\_, South San Francisco, CA 94080 in South San Francisco, California, known as San Mateo County Assessor's Parcel No. **XXX-XXX-XXX**, and more particularly described in Exhibit A attached hereto (the "**Property**");

1. The City of South San Francisco (the "**City**") and \_\_\_\_\_ (the "**Owner**") has entered into that certain "Affordable Housing Agreement and Declaration of Restrictive Covenants" (the "**Agreement**") dated \_\_\_\_\_, **202** and recorded against title to the Property in the official records of San Mateo County (the "**Official Records**") substantially concurrently herewith as Instrument No. \_\_\_\_\_.
2. As more particularly set forth in the Agreement, the Agreement requires the Affordable Units at the Property to be rented only to income-qualifying households at an Affordable Rent.
3. The restrictions set forth in the Agreement will be in effect for a period of 55 years, commencing on \_\_\_\_\_, **202**, and terminating on \_\_\_\_\_, **20**.

This Notice is intended to provide notice of documents that affect title to the Property. Reference should be made to the Agreement for a more detailed description of all matters contained in this Notice. In the event of a conflict between the terms of this Notice and the Agreement, the Agreement shall prevail.

This Notice shall be indexed by the City and the Owner.

Dated: \_\_\_\_\_

City of South San Francisco

By: \_\_\_\_\_

Sharon K. Ranals  
City Manager

Owner

By:  \_\_\_\_\_  
Owner Name

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

State of California

County of Orange

On March 11, 2025 before me, Jeanette Henley, Notary Public (insert name and title of the officer), personally appeared Rylan Burks, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jeanette Henley (Seal)



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

State of California

County of \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Property**

(attach legal description.)

3718469.1

**Exhibit [G] – Request for Notice of Default**

**Recording Requested by:**  
City of South San Francisco

**When recorded, mail to:**  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, California 94080  
Attn: City Clerk

EXCEPTION FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

APN: **XXX-XXX-XXX**

SPACE

ABOVE THIS LINE FOR RECORDER'S

### REQUEST FOR COPY OF NOTICE OF DEFAULT

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_, in the Official Records of San Mateo County, California, executed by **NAME** as Trustor, to **TITLE COMPANY** as Trustee, in which the **CITY OF SOUTH SAN FRANCISCO** is named as Beneficiary, be mailed to:

City of South San Francisco  
400 Grand Avenue  
South San Francisco, California 94080  
Attn: City Clerk

NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request will be recorded.

DATED: \_\_\_\_\_

City of South San Francisco

By: \_\_\_\_\_  
Sharon Ranals, City Manager

ATTEST:

By: \_\_\_\_\_  
Rosa Acosta, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sky Woodruff, City Attorney

## ACKNOWLEDGMENT

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

State of California

County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## **Exhibit [H] – Insurance Requirements**

5207240.1

02979.00002/1384112v1

## **EXHIBIT H**

### **Insurance Requirements**

Insurance coverage. Throughout the term of this Agreement, Owner shall comply with the insurance requirements set forth in the City Documents, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the City Documents.

1. Workers' Compensation. Throughout the term of this Agreement, Owner shall comply with, and shall ensure that Owner's contractors comply with, the laws of the State of California concerning workers' compensation. Without limiting the generality of the foregoing, Owner shall maintain in effect throughout the term of this Agreement, one or more policies of worker's compensation insurance as required by law. Owner's policy shall also include employer's liability coverage in an amount not less than \$1,000,000 per accident.
2. General Liability Insurance. Owner and all contractors working on behalf of Owner on the Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement commercial general liability insurance in the amount of \$5,000,000 per occurrence for bodily injury, personal injury, and property damage, products, completed operations, and contractual liability coverage. Such insurance shall be written on an occurrence basis and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by other named or additional insureds will be called upon to cover a loss covered thereunder.
3. Automobile Liability Insurance. Owner and all contractors working on behalf of Owner on the Project shall at their sole cost obtain and keep in full force and effect throughout the term of this Agreement automobile liability insurance in the amount of \$3,000,000 per occurrence for bodily injury and property damage. Such insurance shall be written on an occurrence basis, and shall provide that (i) the Indemnitees shall be named as additional insureds under the policy; (ii) the policy shall operate as primary insurance; and (iii) no other insurance maintained by other named or additional insureds will be called upon to cover a loss covered thereunder.
4. Course of Construction Insurance. Owner shall obtain at its sole cost and keep in full force and effect throughout the course of construction, Course of Construction insurance with policy limits no less than \$ 5,000,000, with no coinsurance penalty provisions, and in the standard " Builders Risk" form of policy. The City shall be named as loss payee as their interests may appear, and the insurer shall waive all rights of subrogation against the City.
5. Certificates of Insurance. Owner shall file with the City, prior to commencement of construction of the Project or any portion thereof, and prior to commencement of construction on the Property pursuant to this Agreement, certificates of insurance in form acceptable to the City, evidencing the insurance coverage required pursuant to this Section together with duly executed endorsements evidencing additional insured status as required pursuant to this Section. Such certificates shall include a statement of obligation on the part of the carrier to notify the City of any cancellation, major change in coverage, expiration,

termination or nonrenewal of the coverage at least thirty (30) calendar days prior to the effective date of such cancellation or change in coverage (except that only ten (10) calendar days prior notice shall be required for cancellation due to non-payment of premiums).

6. Other Requirements. Owner shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of substantial renovations or improvements on the Properties carries the same insurance required of Owner hereinabove, and in the amounts of coverage specified, and each general contractor shall be required to obtain certification of insurance from all subcontractors. The foregoing requirement for contractors shall not apply to routine repair and maintenance work. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name the City as loss payees as their interests may appear.
7. Reinstatement. If any insurance policy or coverage required hereunder is canceled or reduced, Owner shall, within thirty (30) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, the City may, without further notice and its option, procure such insurance coverage at Owner's expense and Owner shall promptly reimburse the City for such reasonable expense upon receipt of billing from the City.
8. Primary Coverage; Waiver of Subrogation. Coverage provided by Owner and its contractors shall be primary insurance and shall not be contributing with an insurance, or self-insurance maintained by the City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City.