

**THIRD AMENDMENT TO PURCHASE AND
SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

(432 Baden Avenue, South San Francisco, California)

This Third Amendment to Purchase And Sale Agreement And Joint Escrow Instructions (this "Amendment") is made effective as of _____, 2021 ("Effective Date") by and between the City of South San Francisco, a municipal corporation ("Seller") and Baden Development, LLC, a California limited liability company ("Baden") and For The Future Housing, a California Corporation ("Buyer"). Seller, Baden and Buyer are sometimes collectively referred to herein as "the parties." Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

RECITALS

A. Seller and Baden entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020, that certain First Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated April 9, 2020, and that certain Second Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated December 21, 2020 (together, the "Agreement") with respect to that certain real property located at 432 Baden Avenue, South San Francisco, California (Assessor's Parcel Number 012-321-160) and other associated assets as more particularly described in the Agreement (collectively, the "Property");

B. As a condition to Closing, Baden and Seller agreed to execute an Affordable Housing Agreement (referred to therein as an "AHA"), which, among other things, would have required Baden to construct Below Market Rate units sufficient in number to meet or exceed South San Francisco Municipal Code Chapter 20.380, et. al.;

C. Baden has entered into that certain Assignment and Assumption of Purchase Agreement dated April 28, 2021 (the "Assignment") with Buyer, attached hereto as Exhibit A and incorporated herein, pursuant to which Baden would assign all of its rights and obligations under the Agreement to Buyer, and Buyer would accept and assume all of Baden's obligations under the Agreement, and Seller consents to such assignment; and

D. Baden and Seller desire for Baden to assign its interest in the Agreement, as amended hereby, to Buyer, and in furtherance of that objective, Baden, Buyer and Seller desire (i) to amend the Agreement to increase the number of below market rate housing units included in the development of the Property and to reduce the Purchase Price, (ii) to consent to the Assignment of the Agreement, as amended hereby, to Buyer, (iii) to extend the Closing Date, and (iv) to make such other changes as more particularly provided herein. Buyer agrees to enter into the Agreement, as amended herein, with Seller, and assume all rights and obligations of Baden thereunder.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating all of the above as though

set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties hereby agree as follows:**

1. **Consent to Assignment.** Buyer assume all rights and obligations of Baden under the Agreement and Seller hereby consents to the Assignment by executing this Amendment. All terms, covenants, conditions, restrictions and provisions of the Agreement are hereby ratified and shall remain in full force and effect and bind Buyer, with provisions as specifically amended herein.

2. **Amendment to Agreement.** The Agreement is amended as follows:

a. The AHA required as a condition to Closing shall require the construction of thirty-five (35) affordable dwelling units and one manager unit on the Property, where the dwelling units consist of 18 studios, 12 one-bedroom units, 3 two-bedroom units, and 3 three-bedroom units. Buyer shall make good-faith efforts to see that the affordability of these units be as listed below. Seller and Buyer acknowledge that the affordability of these units is subject to the affordable and tax credit financing awarded for the development. The final affordability levels of units shall be reflected in the AHA, and deviations from the mix listed below shall not require further amendment of this Agreement. In no case shall the average median income for the development exceed 50% AMI, which shall be included in the AHA.

- i. 60% Area Median Income (AMI) Level: 3 studio units, 2 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.
- ii. 50% AMI Level: 5 studio units, 3 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.
- iii. 40% AMI Level: 5 studio units, and 3 one-bedroom units.
- iv. 30% AMI Level: 5 studio units, 3 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.

*AMI means the lower of the AMI amounts established by the Tax Credit Allocation Committee or as defined in South San Francisco Municipal Code Chapter 20.380.

Buyer and Seller hereby approve the revised AHA in the form attached hereto as Exhibit B and incorporated herein. The AHA executed by the parties prior to Closing shall be substantially in the form attached hereto as Exhibit B.

- b. The Purchase Price is reduced to One Dollar (\$1.00).
- c. The Closing Date shall occur on January 5, 2022. Buyer has paid Seller a fee of \$15,000 for this delay of the Closing Date.

- d. If requested by Buyer, the Closing Date may be further delayed for up to thirty days with the written consent of the City Manager acting on behalf of Seller.

3. **Further Authorized Assignment.** Prior to or following Seller's consent to the Assignment, Buyer may not assign its rights and obligations under the Assignment and/or the Agreement without the prior written consent of Seller and the approval of the South San Francisco City Council; any such further assignments would also require an amendment to the Agreement. Notwithstanding the immediately preceding sentence, Buyer may assign its rights and obligations under the Assignment or the Agreement with the prior written consent of the City Manager. if such assignment is made to an entity that is (i) controlled by or under common control of the owners of Buyer, or (ii) an entity related to Buyer by merger, consolidation or non-bankruptcy reorganization, or (iii) an entity formed by Buyer as a successor entity to Buyer for the purpose of conducting the development under the Agreement. Seller's consent pursuant to this section, whether by the City Council or City Manager, shall not be unreasonably withheld conditioned, or delayed.

4. **General Provisions.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Amendment and the meaning of the provisions hereof. The provisions of this Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. The terms and provisions of this Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Amendment. The provisions of this Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

SELLER:

CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
Rosa Govea Acosta
City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff
City Attorney

BADEN:

Baden Development, LLC,
a California limited liability company

By: _____
Victor Lo
Title: Manager

APPROVED AS TO FORM:

By: _____
R. Ryan Shain
Counsel for Buyer

BUYER:

For The Future Housing, Inc.
a California corporation

By: _____
James Rendler
Title: Vice President

Exhibit A

EXHIBIT A

Assignment

[attached]

ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT

(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CA)

This ASSIGNMENT AND ASSUMPTION OF PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made and entered into as of April 28, 2021 (the “Effective Date”), by and between **BADEN DEVELOPMENT, LLC**, a California limited liability company (“**Buyer**” or “**Assignor**”) and **FOR THE FUTURE HOUSING, INC.**, a California corporation (“**Assignee**”).

RECITALS

A. Assignor and **CITY OF SOUTH SAN FRANCISCO**, a municipal corporation (“**Seller**”) are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of February 19, 2020 (as amended, the “**Purchase and Sale Agreement**”), a copy of which is attached hereto and incorporated herein as Exhibit A, with respect to that certain real property located at 432 Baden Avenue, South San Francisco, California, San Mateo County, Assessor’s Parcel Numbers 012-321- 160, as more particularly described in Exhibit A to the Purchase and Sale Agreement (“**Property**”). The Purchase Price for the Property under the Purchase and Sale Agreement is One Million One Hundred Thousand Dollars (\$1,100,000.00), to be paid in cash to Seller at Closing.

B. Pursuant to Section 3.4 of the Purchase and Sale Agreement, Buyer delivered the sum of One Hundred Dollars (\$100.00) to Seller through Escrow as Independent Consideration. Pursuant to Section 3.3 of the Purchase and Sale Agreement, Buyer deposited an Initial Deposit of Thirty Thousand Dollars (\$30,000.00) into Escrow with Escrow Holder, to be held in trust pursuant to the Purchase and Sale Agreement, and Buyer deposited an additional Seventy Thousand Dollars (\$70,000.00) in Escrow as an Additional Deposit. The Initial Deposit and Additional Deposit are collectively referred to herein as the “**Deposits.**”

C. Buyer and Seller entered into that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of April 9, 2020 (the “First Amendment”), a copy of which is attached hereto as Exhibit B and incorporated herein, extending the Closing Date and the Due Diligence Contingency Period. By letter dated June 22, 2020, a copy of which is attached hereto as Exhibit C and incorporated herein, Seller further extended the Closing Date and the Due Diligence Contingency Period. By letter dated July 20, 2020, a copy of which is attached hereto as Exhibit D and incorporated herein, Seller further extended the Closing Date and the Due Diligence Contingency Period.

D. Pursuant to Section 3.4 of the Purchase and Sale Agreement, on October 3, 2020, Buyer issued an Approval Notice to Seller, a copy of which is attached as Exhibit E and incorporated herein, prior to the expiration of the Due Diligence Contingency Period, that Buyer approved all due diligence items.

E. Buyer and Seller entered into that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of December 21, 2020 (the “Second Amendment”), a copy of which is attached hereto as Exhibit F and incorporated herein, extending the Closing Date to May 17, 2021.

F. Assignor desires to assign to Assignee all of Assignor’s right, title and interest in and to the Purchase and Sale Agreement, as amended, on the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase and Sale Agreement.

2. Assignment and Assumption. Subject to paragraph 3, below, Assignor hereby assigns, sells, transfers and sets over to Assignee all of Assignor's right, title, benefit, privileges and interest in and to, and all of Assignor's burdens, obligations and liabilities in connection with, the Purchase and Sale Agreement (collectively, the "**Assignment**"). Subject to paragraph 3, below, Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities of Assignor to be observed, performed, paid or discharged in connection with the Contracts.

3. Condition Subsequent to Effectiveness of Assignment and Assumption. Assignor and Assignee have entered into a Purchase and Sale Agreement and Joint Escrow Instructions of even date herewith (the "**Concurrent PSA**") whereby Assignor, as Seller, has agreed to sell to Assignee, as Buyer, that certain real property located at 428 Baden Avenue, South San Francisco, California ("**428 Baden**"). The Assignment shall become effective simultaneously upon the closing of the sale of 428 Baden pursuant to the Concurrent PSA (the "**428 Closing**"). The Assignment is expressly conditioned upon (a) the occurrence of the 428 Closing, and (b) the Seller's approval of this Assignment. If for any reason the Concurrent PSA is terminated or Assignee does not complete the purchase of 428 Baden, then this Agreement shall automatically terminate whereupon neither Assignor nor Assignee shall have any further rights or obligations under this Agreement. Promptly upon Assignee's delivery of an Approval Notice under the Concurrent PSA (as defined therein), Assignor shall diligently commence good faith efforts to obtain consent to this Assignment from Seller. If, despite its good faith efforts, Assignor is unable to obtain Seller's written consent to the Assignment prior to the date that is defined as the Concurrent PSA "Closing Date" (as that term is defined in and used under in the Current PSA), as that date may otherwise be extended under the terms of the Concurrent PSA, then Assignee may, at its sole option, either (a) terminate this Agreement by written notice to Assignor whereupon neither Assignor nor Assignee shall have any further rights or obligations under this Agreement, or (b) extend the Concurrent PSA "Closing Date" (as that term is defined in and used under the Current PSA) for up to thirty (30) days by written notice to Assignor.

4. Extension Payments. Notwithstanding the assignment of the Purchase and Sale Agreement to Assignee pursuant to this Agreement, Assignor shall remain responsible for payment of the two 90-day extension payments (\$15,000 each) described in paragraph 1.b. of the Second Amendment to the Purchase and Sale Agreement in the event that Assignee, in its sole discretion, determines to request either or both extensions from Seller.

5. Ratification. As of the date of this Agreement, Assignor, Assignee, and Seller, each (a) ratify and confirm the terms and conditions of the Purchase and Sale Agreement, and (b) certify that there are (i) no defaults on the part of Assignor under the Purchase and Sale Agreement and there are no events currently existing (or with the passage of time, giving of notice or both, which would exist) which would be deemed a default of Assignor or which would give Seller the right to cancel or terminate the Purchase and Sale Agreement, and (ii) no claims against Assignor under the Purchase and Sale Agreement.

6. Deposit. Assignor, Assignee, and Seller acknowledge and agree that, in connection with the Purchase and Sale Agreement, Assignor paid the Deposits in the amount of One Hundred Thousand Dollars (\$100,000.00) and the Independent Consideration of One Hundred Dollars (\$100.00) (collectively, the “**Assignor’s Deposit**”). In connection with the Assignment, Assignee shall replace Assignor’s Deposit with a new Deposit of \$100,100.00 (the “**Assignee’s Deposit**”). Assignee shall deliver the Assignee’s Deposit into Escrow with Escrow Holder on or immediately prior to the closing of the sale of 428 Baden under the Concurrent PSA. Assignor, Assignee, and Seller shall instruct the Title Company to release and return Assignor’s Deposit to Assignor upon the closing of the sale of 428 Baden under the Concurrent PSA pursuant to separate instructions submitted by the parties.

7. No Joint Venture. Neither anything in this Agreement nor any acts of the parties prior to the date hereof shall be deemed to create the relationship of partnership, or of joint venture, or of any association between the parties hereto.

8. Further Actions. Each of the parties hereto covenants and agrees, at its own expense, to execute and deliver, at the reasonable request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

9. Governing Law. This Agreement shall be governed and construed in accordance with California law.

10. Attorney’s Fees. In the event that any legal action or proceeding is commenced by any party to this Agreement to interpret or enforce this Agreement, or otherwise arising under this Agreement, the prevailing party in such action or proceeding shall be entitled to an award of its reasonable attorney’s fees and costs in addition to any other relief awarded.

11. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, taken together, will be deemed to constitute one and the same Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ASSIGNOR:

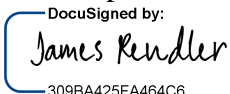
BADEN DEVELOPMENT, LLC,
a California limited liability company

DocuSigned by:

By: _____
Name: Victor Lo
Title: Manager

ASSIGNEE:

FOR THE FUTURE HOUSING, INC.,
a California corporation

DocuSigned by:

By: _____
Name: James Rendler
Title: Vice President

CONSENT

The undersigned SELLER consents to the above Assignment:

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____
Name: _____
Title: _____

Dated: _____

EXHIBIT A

Purchase and Sale Agreement and Joint Escrow Instructions

EXHIBIT B

First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions

EXHIBIT C

Letter dated June 22, 2020

EXHIBIT D

Letter dated July 20, 2020

EXHIBIT E

Approval Notice

EXHIBIT F

Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions

EXHIBIT A

Purchase and Sale Agreement and Joint Escrow Instructions

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“this **Agreement**”) is entered into as of February 19, 2020 (the “**Effective Date**”), by and between the City of South San Francisco, a municipal corporation, (“**Seller**”) and Baden Development, LLC, a California limited liability company (“**Buyer**”). Seller and Buyer are collectively referred to herein as the “**Parties.**”

RECITALS

A. Seller is owner of certain real property with an address of 432 Baden Avenue, South San Francisco, California, also known as San Mateo County Assessor’s Parcel Numbers 012-321-160 and as more particularly described in Exhibit A attached hereto and incorporated herein (“**Property**”).

B. The former Redevelopment Agency of the City of South San Francisco (“**RDA**”) purchased the Property on April 16, 1997.

C. On, June 29, 2011 the legislature of the State of California (the “**State**”) adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the Redevelopment Law, and the California Supreme Court decision in California Redevelopment Association, et al. v. Ana Matosantos, et al., upheld AB 26 (together with AB 1484, the “**Dissolution Law**”), and the RDA was dissolved on February 1, 2012.

D. Pursuant to the Dissolution Law, the South San Francisco Successor Agency (“**Agency**”) prepared a Long Range Property Management Plan (“**LRPMP**”), which was approved by a resolution of the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“**Oversight Board**”) on November 19, 2013, and on May 21, 2015, the Oversight Board approved the Amended Long Range Property Management Plan (“**LRPMP**”), which was approved by the California Department of Finance (“**DOF**”) on October 1, 2015.

E. Pursuant to the LRPMP and Dissolution Law, the Agency’s transfer of real property assets to the City for disposition consistent with the LRPMP is subject to entering into a Master Agreement for Taxing Entity Compensation by all Taxing Entities.

F. The City and Taxing Entities entered into an Amended and Restated Master Agreement for Taxing Entity Compensation, dated October 18, 2016 (“**Master Compensation Agreement**”), which governs the distribution of any net proceeds received from the sale of the Property, as defined herein.

G. The Property was transferred from the Agency to the City pursuant to a grant deed recorded on May 16, 2017.

H. Buyer agrees to purchase the Property, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the “**Purchase Price**”) is one million one hundred thousand dollars (\$1,100,000.00). The Purchase Price shall be paid in cash at the Closing to the Seller.

3. ESCROW.

3.1 Escrow Account. Seller has opened an interest-bearing escrow account (the “**Escrow**”) maintained by North American Title Company in San Mateo (the “**Escrow Holder**”), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within seven (7) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date that is the later of the following to occur shall be deemed the “**Opening of Escrow**”:

(a) the date that such fully executed Agreement is received by Escrow Holder.

(b) the date that Buyer submits Developer’s Financing Plan (as defined in Section 5.2(e) below) to Seller for review.

(c) the date that Buyer submits an application for building permits to develop the Property to Seller for review.

3.3 Buyer’s Deposit. Within three (3) business days after the Effective Date, Buyer shall deposit thirty thousand dollars (\$30,000.00) with Seller, to be held in trust pursuant to this Agreement (“**Initial Deposit**”). Within three (3) business days after the Opening of Escrow, Seller shall deposit the Initial Deposit into Escrow with Escrow Holder on behalf of Buyer. If Buyer issues an Approval Notice (as defined in Section 3.4 below), Buyer shall deposit an additional seventy thousand dollars (\$70,000.00) in Escrow (the “**Additional Deposit**”). The

Initial Deposit and Additional Deposit are sometimes collectively referred to herein as the “**Deposits.**” The Deposits shall be applied toward the Purchase Price in the event of Closing.

3.4 Satisfaction of Due Diligence Contingency. Buyer shall have the right, in its sole discretion, to terminate this Agreement for any reason prior to the expiration of the Due Diligence Contingency Period (as defined in Section 5(a) below) by providing written notice thereof and to receive a refund of the Deposits. Buyer hereby agrees to provide written notice to Seller prior to the expiration of the Due Diligence Contingency Period if Buyer approves all due diligence items (“**Approval Notice**”). If Buyer provides a termination notice to Seller before 11:59 p.m. on the last day of the Due Diligence Contingency Period, this Agreement shall terminate, and all amounts deposited by Buyer into escrow (except the Independent Consideration), together with interest thereon, if any, will be returned to Buyer, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. If Buyer fails to deliver the Approval Notice to Seller prior to 11:59 p.m. on the last day of the Due Diligence Contingency Period, it will be conclusively presumed that Buyer has disapproved all such items, matters or documents, and this Agreement shall terminate and the Deposits shall be refunded to Buyer.

3.5 Independent Consideration. As independent consideration for Seller’s entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of one hundred dollars (\$100.00) to Seller through Escrow (“**Independent Consideration**”). In the event that Buyer terminates this Agreement in accordance with Section 3.4 above, Seller shall retain the Independent Consideration; in the event that Buyer does not terminate this Agreement as aforesaid, the Independent Consideration shall be applied to the Purchase Price at Closing.

4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the “**Preliminary Report**”) to Buyer within three (3) days after the Effective Date. Buyer shall have until the end of the Due Diligence Contingency Period to approve the condition of title to the Property. If Buyer delivers the Approval Notice, Buyer agrees to take title to the Property subject to the following “**Permitted Exceptions**”: (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; and (c) the Schedule B exceptions to the title referenced in the Approval Notice. In no event shall any monetary liens be deemed a Permitted Exception. Buyer shall provide any objections to the condition of title to Seller in writing prior to the Due Diligence Contingency Period.

4.2 Environmental Condition of Property. Seller has provided Buyer with all documents reasonably known to Seller pertaining to the environmental condition of the Property. At Closing, the Buyer agrees to take title of the Property in AS- IS WHERE-IS condition with no environmental remediation work required by or indemnities from the Seller or the Agency. Seller, at Buyer’s expense, agrees to cooperate with Buyer to obtain regulatory approval of any necessary environmental work for the Property. Buyer explicitly acknowledges that Buyer will be responsible to manage and complete any remediation work for the Property after Closing. After

Closing, Seller shall have no further obligations with respect to environmental and/or natural hazards remediation costs.

4.3 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Pursuant to Section 4.2, Seller agrees to make any necessary disclosures required by law.

5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. The closing (the “**Closing**” or “**Close of Escrow**”) will occur no later than one hundred eighty (180) calendar days after the Effective Date (“**Closing Date**”) or such other date that the Parties agree in writing.

5.2 Buyer’s Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions or Buyer's written waiver thereof (in Buyer’s sole discretion) on or before the Closing Date:

(a) Buyer has approved the condition of the Property. Buyer will have sixty (60) calendar days from the Effective Date (the “**Due Diligence Contingency Period**”) to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession not later than two (2) business days following the execution and delivery of this Agreement. All physical inspections must be coordinated with Seller’s representative. Buyer hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) by Buyer’s inspections.

(b) Seller has performed all obligations to be performed by Seller pursuant to this Agreement.

(c) Seller’s representations and warranties herein are true and correct in all material respects as of the Closing Date.

(d) The Title Company is irrevocably committed to issue an ALTA standard coverage title insurance policy to Buyer, effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price.

(e) Seller shall have approved Buyer’s financing plan for the development of the Property, which shall include a proforma reasonably acceptable to Seller and proof of construction loan necessary to reasonably complete the development of the Property (the “**Developer’s Financing Plan**”).

(f) Seller shall have approved the construction contract for Buyer's development of the Property (the "**Construction Contract**").

(g) Seller shall have approved the merger of the Property with the adjacent lot located at 428 Baden Avenue, South San Francisco, California (the "**Adjacent Lot**").

(h) Buyer and Seller shall have executed an Affordable Housing Agreement ("**AHA**") for the Property on commercially reasonable terms and which shall include the following provisions: (1) Below Market Rate units shall be constructed by Buyer to meet or exceed South San Francisco Municipal Code Chapter 20.380 requirements; (2) Seller shall approve any proposed assignment of the AHA or disposition of the Property prior to completion of the development of the Property, and Seller's approval of the same, shall not be unreasonably withheld or delayed, it being acknowledged that the City Council would need to review and approve of any such proposed assignment.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) Buyer shall have submitted Developer's Financing Plan to Seller for approval.

(b) Buyer shall have obtained Seller's approval of a Construction Contract for development of the Property by Buyer.

(c) Buyer shall have taken all necessary actions for the issuance of building permits from Seller necessary to enable to development of the Property.

(d) Buyer shall have taken all necessary actions to obtain the approval of the merger of the Property with the Adjacent Lot and such approval shall be ready to be recorded promptly following the Closing.

(e) Buyer has performed all obligations to be performed by Buyer pursuant to this Agreement before Closing Date.

(f) Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

5.4 Conveyance of Title. Seller will deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions. The Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by Section 12); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge.

5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed, substantially in the form attached hereto as Exhibit B (“**Grant Deed**”); (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the “**Non-Foreign Affidavit**”); (iii) a California Franchise Tax Board form 590 (the “**California Certificate**”) to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131.

(b) Deliveries by Buyer. No less than one (1) business day prior to the close of escrow, Buyer shall deposit into escrow immediately available funds in the amount, which together with the Independent Consideration and the Deposits is equal to: (i) the Purchase Price as adjusted by any prorations between the Parties; (ii) the escrow fees and recording fees; and (iii) the cost of the Title Policy.

(c) Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed; (ii) disburse to Seller the Purchase Price, less Seller’s share of any escrow fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and the original recorded Grant Deed; (iv) pay any commissions and other expenses payable through escrow; and (v) distribute to itself the payment of escrow fees and expenses required hereunder.

(d) Closing Costs. Buyer will pay all escrow fees (including the costs of preparing documents and instruments), and recording fees. Buyer will also pay title insurance and title report costs. Seller will pay all transfer taxes and governmental conveyance fees, where applicable.

(e) Pro-Rations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) property taxes will be prorated as of the close of escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered; and (ii) any bond or assessment that constitutes a lien on the Property at the close of escrow will be assumed by Buyer. Seller does not pay ad valorem taxes.

5.6 Post-Closing Obligations. The following obligations shall survive the Close of Escrow:

(a) Permits. Buyer shall take all necessary actions for construction permits to be issued to Buyer for the development of the Property within ten (10) business days following the Close of Escrow.

(b) Commence Work. Buyer shall commence work to develop the Property within forty-five (45) days of the Close of Escrow.

(c) Lot Merger. Buyer shall record the merger of the Property with the Adjacent Lot within ten (10) business days of the Close of Escrow.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing Date provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing or terminate this Agreement and receive a refund of the Deposits. If Buyer determines it does not wish to proceed, then the terms of Section 3.4 will apply.

(a) Authority. Seller is a municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force.

(c) There are no agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow, which cannot be terminated on thirty (30) days prior written notice.

(d) Conflicts and Pending Actions. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller, which is in conflict with this Agreement. There is no action, suit, arbitration, unsatisfied order or judgment, governmental investigation or proceeding pending or, to Seller's knowledge, threatened against the Property or the transaction contemplated by this Agreement.

(f) Lease. There are no leases of space in the Property, subleases, licenses, franchise agreements or other agreements to occupy or utilize all or any portion of the Property that will be in force after the Closing. At Closing, Seller shall deliver the Property to Buyer vacant of any occupants.

(g) Condemnation. No condemnation proceedings relating to the Property are pending or, to Seller's knowledge, threatened.

(h) Foreign Person; OFAC. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended. Seller

represents and warrants that (a) Seller and, to Seller's actual knowledge, each person or entity owning an interest in Seller is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an Embargoed Person (as hereinafter defined), (b) to Seller's actual knowledge, none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and (c) to Seller's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Seller (whether directly or indirectly). The term "Embargoed Person" means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder.

(i) Compliance. Seller has not received any written notice from any governmental authority that the Property is not in material compliance with all applicable laws and regulations (including environmental and zoning laws and regulations), other than such violations as have been fully cured. To Seller's knowledge, neither Seller nor the Property are in default or breach of any material obligation under any encumbrances, covenants or easement agreements recorded against the Property.

(j) Hazardous Materials. Except as otherwise disclosed to Buyer by Seller (including in any materials delivered or made available to Buyer), Seller has received no written notice from any local, state or national governmental entity or agency of any asbestos, lead or other Hazardous Materials existing or potentially existing with respect to the Property. As used herein, "Hazardous Material" means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended, or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), as amended, or any other laws, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), or radon gas, urea formaldehyde, asbestos or lead.

(k) Purchase Options. There are no outstanding rights of first refusal, rights of first offer, purchase options or similar purchase rights with respect to the Property.

(l) Management Agreements. There are no management agreements, leasing agreements, brokerage agreements or similar agreements which affect the Property and will survive Closing.

(m) Taxes. To Seller's knowledge, there are no impositions of new special assessments with respect to the Property.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to Buyer's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall survive the expiration, termination, or close of escrow of this Agreement and shall not be deemed merged into the deed upon closing.

6.2 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) Buyer is a California limited liability company. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

(c) Pending Actions. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this Agreement.

(d) ERISA. Buyer is not acquiring the Property with the assets of an employee benefit plan as defined in Section 3(3) of ERISA.

(e) Foreign Person; OFAC. Buyer is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended. Buyer and, to Buyer's actual knowledge, each person or entity owning an interest in Buyer is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the OFAC and/or on any other similar List, (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (iii) not an "Embargoed Person," to Buyer's actual knowledge, none of the funds or other assets of Buyer constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and to Buyer's actual knowledge, no Embargoed Person has any interest of any nature whatsoever in Buyer (whether directly or indirectly).

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder.

6.3 Property Sold, "AS IS". Buyer specifically acknowledges that the Seller is selling the Property on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that, subject to Seller's representations, warranties, covenants and obligations set forth in this Agreement, and all exhibits attached hereto and incorporated herein, and any obligations arising under applicable law, and any document or instrument executed and delivered in connection with Closing, Buyer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Seller, or its employees, appointed or elected officials, agents, or brokers as to any matters concerning the Property. Subject to Seller's representations, warranties, covenants and obligations set forth in this Agreement, and all exhibits attached hereto and incorporated herein, and any obligations arising under applicable law, and any document or instrument executed and delivered in connection with Closing, Seller makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (v) except as otherwise provided in this Agreement, the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property.

7. REMEDIES In the event of a breach or default under this Agreement by Seller, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. **IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER'S SOLE REMEDY SHALL BE TO RETAIN THE DEPOSITS AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, THE DEPOSITS REPRESENT A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND ARE NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.**

VL
Buyer's Initials

CW
Seller's Initials

8. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement other than Victor Lo of Sierra Investments. Buyer shall indemnify, hold harmless and defend Seller from any and all claims, actions and liability for any commission, finder's fee, or similar charges arising out of Buyer's retention of Mr. Lo or any breach of the preceding sentence.

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement. Buyer may not assign its rights under this Agreement without first obtaining Seller's written consent, which approval may be given or withheld in Seller's reasonable discretion. Seller's approval of any assignment pursuant to this Section 9 shall be contingent on the review and approval by the City Council of such proposed assignment. Any transfer, directly or indirectly, of any stock, partnership interest or other ownership interest in Buyer, for the sole purpose of transferring Buyer's interest in this Agreement, without Seller's written approval, which approval may be given or withheld in Seller's reasonable discretion, shall constitute a default by Buyer under this Agreement; provided, however, that a transfer of an ownership interest in Buyer to investors as reasonably necessary to raise funds for the development of the Property will not be a default and will not require advanced consent of Seller, so long as Victor Lo retains exclusive, day-to-day managerial control of Buyer at all times. Without limitation of the foregoing, no assignment by Buyer shall relieve Buyer of any of its obligations or liabilities pursuant to this Agreement. Notwithstanding the foregoing, without having to obtain Seller's approval, Buyer may assign its interest in this Agreement on or before the Closing Date to an entity (a "Buyer Assignee") that is (a) an entity of which Buyer has day-to-day managerial control or (b) any joint venture entity in which Buyer maintains a majority economic interest, or may (c) partially assign this Agreement for the purposes of enabling closing as tenant-in-common with an otherwise joint venture partner of Buyer for the purposes of consummating a tax deferred exchange, so long as Buyer and Buyer Assignee execute and deliver an assignment and assumption agreement in form reasonably satisfactory to Seller, pursuant to which Buyer Assignee remakes all of Buyer's representation and warranties set forth in this Agreement and the transferor shall not be released from the obligations of "Buyer" hereunder.

10. ENVIRONMENTAL INDEMNITY. To the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller, and its respective elected and appointed officers, officials, employees, agents, consultants, contractors, and Agency harmless from and against any and all claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean-up of the Property), liabilities (including without limitation sums paid in settlements of

claims), interest, or losses, including reasonable attorneys' and paralegals' fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the "**Costs**") that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release, of any Hazardous Materials in, on or under the Property or in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within the Property, or any portion thereof, except those Costs that arise solely as a result of actions by Seller, or Seller's agents, employees, or contractors. The indemnification provided pursuant to this Section shall specifically apply to and include claims or actions brought by or on behalf of employees of Buyer or any of its predecessors in interest and Buyer hereby expressly waives any immunity to which Buyer may otherwise be entitled under any industrial or worker's compensation laws. In the event the Seller suffers or incurs any Costs, Buyer shall pay to Seller the total of all such Costs suffered or incurred by the Seller upon demand therefore by Seller. The indemnification provided pursuant to this Section shall include, without limitation, all loss or damage sustained by the Seller due to any Hazardous Materials: (a) that are present or suspected by a governmental agency having jurisdiction to be present in the Property or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Property (or any portion thereof) or to have emanated from the Property, or (b) that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Property (or any portion thereof) after the date of this Agreement as a result of Seller's or its predecessors' activities on the Property, or those of Seller's agents, employees, or contractors. The provisions of this Section 10 shall survive the termination of this Agreement and the Close of Escrow.

11. RELEASE BY BUYER. Effective upon the Close of Escrow, except with respect to the representations and warranties of Seller under Section 6.1 of this Agreement, Buyer waives releases, remises, acquits and forever discharges Seller, and its officers, directors, board members, managers, employees and agents, and any other person acting on behalf of Seller, from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the future on account of or in any way arising from or in connection with the physical condition of the Property or any law or regulation applicable thereto including, without limiting the generality of the foregoing, any federal, state or local law, ordinance or regulation pertaining to Hazardous Materials. This Section 11 shall survive the termination of this Agreement and the Close of Escrow.

BUYER ACKNOWLEDGES THAT BUYER IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

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

BY INITIALING BELOW, BUYER EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Buyer's initials: VL

12. HAZARDOUS MATERIALS; DEFINITIONS.

12.1 Hazardous Materials. As used in this Agreement, "**Hazardous Materials**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "Hazardous Materials" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

12.2 Environmental Laws. As used in this Agreement, "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

13. MISCELLANEOUS.

13.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing

party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

13.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

13.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

13.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

13.5 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

13.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

13.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision this is in keeping with the intent of the Parties as expressed herein.

13.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served

personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below, or by fax or electronic mail, in each case, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of first attempted delivery at the address and in the manner provided herein, or, in the case of electronic mail for fax, as of the date of the electronic mail or fax:

To Buyer: 311 9th Avenue
San Mateo, CA 94401
Attn: Mr. Victor Lo
Phone: 415-297-0709
Email: victor@sierrainvestments.com

With Copy To: Schinner & Shain, LLP
96 Jessie Street
San Francisco, CA 94105
Attn: R. Ryan Shain, Esq.
Phone: 310-913-4582
Email: shain@schinner.com

To Seller: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager, Mike Futrell
Email: mike.futrell@ssf.net
Telephone No.: (650) 829 6620
Fax (650) 829-6609

With Copy To: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: Project Manager, Julie Barnard
Email: Julie.barnard@ssf.net
Telephone No.: (650) 829 6629

With Copy To: Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: Sky Woodruff
Email: sky@meyersnave.com

To Escrow Holder: Katie Berggren
North American Title Company
66 Bovet Rd, Suite 200
San Mateo, CA 94402

Phone: 650-343-6282

Email: kberggren@nat.com

Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

13.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

13.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 11:59 p.m. on the next business day.

13.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

13.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

13.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

13.14 Signatures/Counterparts. This Agreement may be executed by electronic or facsimile signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

13.15 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

13.16 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations

hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

13.17 Possession. At Closing, Seller shall deliver sole and exclusive possession of the Property to Buyer.

13.18 Approvals. Whenever this Agreement calls for Seller approval, consent, extension or waiver, the written approval, consent, or waiver of the Seller's Executive Director or his or her designee(s) shall constitute the approval, consent, extension or waiver of the Seller, without further authorization required from the Seller's Council. The Seller hereby authorizes the City Manager and his or her designee(s) to deliver any such approvals, consents, or extensions or waivers as are required by this Agreement, or that do not otherwise reduce Seller's rights under this Agreement, and to waive requirements under this Agreement, on behalf of the Seller.

13.19 Merger, Survival. The provisions of this Agreement shall not merge with the delivery of the Deed or any other instrument delivered at Closing, but shall, except as otherwise provided in this Agreement, survive the Closing.

SIGNATURES ON FOLLOWING PAGE


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

SELLER:


CITY OF SOUTH SAN FRANCISCO

By: 
Mike Futrell
City Manager

ATTEST:

By: 
City Clerk 2/14/2020

APPROVED AS TO FORM:

By: 
Sky Woodruff
City Attorney

BUYER:

Baden Development, LLC,
a California limited liability company

By: 
Victor Lo
Title: Manager

APPROVED AS TO FORM:

By: 
Counsel for Buyer

LIST OF EXHIBITS

Exhibit A	Legal Description
Exhibit B	Grant Deed
Exhibit C	Permitted Exceptions
Exhibit D	Form of Affordable Housing Agreement
Exhibit E	Form of Completion Guaranty

Exhibit A

LEGAL DESCRIPTION

That real property situated in the State of California, County of San Mateo, City of South Su. Francisco, and described as Lot 8 in Block 117, as shown on that certain map entitled "SOUTH SAN FRANCISCO SAN MATEO CO. CAL PLAT. NO. 1", filed in the office of the County Recorder of San Mateo County, State of California, on March 1, 1892 in Book "B" of Maps at page(s) 6, and a copy entered in Book 2 of Maps at Page 52.

AP. No.: 012-321-160

JPN 012 032 321 16 A

Exhibit B

GRANT DEED

Recording Requested By and
When Recorded Return To:

Attention: _____

APN: _____

(Space above this line for Recorder's use)

GRANT DEED

THE UNDERSIGNED GRANTOR(s) DECLARE(s):

DOCUMENTARY TRANSFER TAX IS \$ _____ computed on full value of property conveyed, or computed on full value less value of liens or encumbrances remaining at time of sale.

Signature of Declarant

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____, a _____ ("Grantor") hereby grants to _____, a _____ ("Grantee"), the real property located in the City of _____, County of _____, State of _____, described on Exhibit A attached hereto and made a part hereof.

GRANTOR:

_____, a _____

By: _____

Its: _____

Date: _____

[Exhibit A and notarial acknowledgement to be attached]

Exhibit C

PERMITTED EXCEPTIONS

Exhibit D

FORM OF AFFORDABLE HOUSING AGREEMENT

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

City of South San Francisco

400 Grand Avenue

South San Francisco, CA 94080

Attn: City Manager

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

for 432 Baden Avenue, South San Francisco

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

BADEN DEVELOPMENT LLC

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2020 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and _____, a California corporation {INSERT NEW ENTITY IF APPLICABLE AT CLOSING} (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-321-160 and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. In accordance with that certain Purchase and Sale Agreement executed by and between the Parties and dated as of _____ (the “**PSA**”), Owner will re-develop the Property into a high-density, residential apartment building (the “**Project**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the PSA.

C. As a condition to its agreement to provide the City Grants, the City requires the Property to be subject to the terms, conditions and restrictions set forth herein, specifically, the City requires that for a period of not less than fifty-five (55) years, three (3) of the residential units in the Project be rented at Affordable Rents to Eligible Households.

D. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project’s Restricted Units for the benefit of the occupants of the Project. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

E. Chapter 20.380 of the South San Francisco Municipal Code sets forth the requirements for Inclusionary Housing (“**Inclusionary Housing Ordinance**”)

F. The Developer is planning to construct thirty six (36) rental units on the Project Property (the “**Project**”) and has submitted site development plan for the Project.

G.

H. The Developer is required by the Inclusionary Housing Ordinance to set aside ten percent (10%) of new housing as low- and moderate-income level housing.

I. The Inclusionary Housing Ordinance requires the Developer’s plans and the City’s conditions regarding inclusionary housing be set forth in an Affordable Housing Agreement.

J. This Affordable Housing Agreement is required as a condition of future discretionary permits for development of the Project Property and shall be recorded against the Project Property;

K. 432 Baden is located in the Residential Core District and the Project allows for 30 The Developer will utilize the State Density Bonus of 35% for the Project by providing 11.5%

of the units targeting Very Low Income households (“VLI”).

- J. The base density for the Project’s 14,000 sf (0.32 acre) lot is 80 du/acre, which allows for 26 units. The 35% density bonus to the base allowable 26 units returns a yield of 36 units. The project will provide 11.5% of the base density of 26 units or 3 units as VLI targeted.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

AGREEMENT

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any) and as defined below:

- Studio – 1 person
- One Bedroom – 1.5 people
- Two Bedroom – 3 people
- Three Bedroom – 4.5 people

“Affordable Rent” means the following amounts, less a utility allowance and such other adjustments as required pursuant to the California Redevelopment Law: (i) for units that are restricted for rental to households with incomes of not more than eighty percent (80%) of AMI (**“80% Units”**), a monthly rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of AMI, Adjusted for Family Size Appropriate for the Unit, and (ii) for units that are restricted for rental to households with incomes of not more than one hundred twenty percent (120%) of AMI (**“120% Units”**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“Area Median Income” or “AMI” means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (**“HUD”**) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (**“HCD”**) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“Claims” is defined in Section 10.

"Eligible Household" means a household for which gross household income does not exceed the applicable maximum income level for a Restricted Unit as specified in Section 2.1 and Exhibit B.

"Indemnitees" is defined in Section 10.

"Very Low-Income" means an annual gross household income that is less than or equal to the qualifying limits for households of Very Low-Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for San Mateo County. If HUD ceases to make such determination, "Very Low-Income" shall be defined as not greater than 50% of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of "Very Low-Income" used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

"Regulations" means Title 25 of the California Code of Regulations.

"Rent-Restricted" means a dwelling unit for which the gross rent charged for such unit does not exceed the Affordable Rent, as adjusted for assumed household size in accordance with the Department of Housing and Community Development ("HCD") guidelines.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at an Affordable Rent by a household of not more than a specified household income in accordance with and as set forth in Sections 2.1 and 2.2 and Exhibit B.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a mixed-use, multifamily rental housing development in compliance with the DA and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability 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 consent of City.

2.1 Affordability Requirements.

2.1.1 Property. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, not less than three (3) of the residential units of the Project shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy), available at Affordable Rents to Eligible Households with income no greater than 50% of Area Median Income. The three (3) residential units are allocated across unit type as specified in Exhibit B.

2.1.2 Recertification. In the event that recertification of Eligible Household incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.1 and Exhibit

B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved.

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.1 and Exhibit B. Notwithstanding the foregoing, no Eligible Household qualifying for a Restricted Unit shall be denied continued occupancy of a unit in the Project because, after admission, such Eligible Household's adjusted income increases to exceed the qualifying limit for such Restricted Unit. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed 140% of the applicable income limit. In the event the gross household income of a household that qualified at the applicable income limit at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted.

If upon recertification of Eligible Household incomes, Owner determines that a Eligible Household has a household income exceeding the maximum qualifying income for such Eligible Household's unit, the Eligible Household shall be permitted to continue to occupy the unit, and upon expiration of the Eligible Household's lease and upon sixty (60) days' written notice, Owner may increase the rent for such unit to the fair market rent, and Owner shall rent the next available unit to a Eligible Household whose household income does not exceed the applicable income limit in order to achieve the affordability requirements of this Agreement.

2.3 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Project. Eligible Households of Restricted Units shall have access to all common facilities of the Project equal to that of Eligible Households of units in the Project that are not Restricted Units. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.4 City Grant Funds. Owner shall ensure that all City Grant Funds are used for the construction of affordable units in a manner consistent with the applicable City Grant Funds requirements, which at a minimum, requires residential rental units assisted For with funds from the City's low- and moderate-income housing fund to remain affordable for the longest feasible time.

2.5 No Condominium Conversion. Owner shall not convert the residential 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 and meets the affordability requirements of Section 2.1. City's prior written consent shall be required with respect to the sale or condominium conversion of the retail/commercial portion of the Project or any part thereof.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 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 law 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 rental of the residential units in the Project to Eligible Households that include at least one member who lives or works in the City of South San Francisco. If there are fewer Eligible Households than the number of such units, the units will be made available to the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

2.6.2 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner shall accept as Eligible Households, on the same basis as all other prospective Eligible Households, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin 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 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 Eligible Households, lessees, sub-Eligible Households, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

3. Reporting Requirements.

3.1. Eligible Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted 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:

- (a) The identity of each household member; and
- (b) The total gross household income;

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. The Annual Report shall, at a minimum, include the following

information for each dwelling unit in the Project: (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) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying Eligible Household eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

3.3 On-site Inspection. 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 examine and make copies of all books, records, or other documents of the Owner which pertain to the Project.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Eligible Households. All Eligible Household lists, applications and waiting lists relating to the Project 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. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least three (3) years, and for any period during which there is an audit undertaken by the City pursuant to the DA.

4. Term of Agreement.

4.1 Term of Restrictions. Unless extended by mutual agreement of the Parties, upon the 55th anniversary of issuance of the final certificate of occupancy for the residential portion of the Project, this Agreement shall automatically terminate and be of no further force or effect.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, 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. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the Eligible Households of the individual dwelling units or retail/commercial space within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. 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.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

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 Eligible Households, certification and recertification of household 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.

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, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and such default continues for a period of thirty (30) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) 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 Section 6.2.1, shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 8% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

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**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's Eligible Household selection criteria, and how Owner plans to certify the eligibility of Eligible Households. 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 Project Eligible Households. 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.

6.4 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within thirty (30) 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 6.6 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 the DA, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the DA.

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. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that pursuant to Health and Safety Code Section 33334.14(a)(4), the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the DA, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default consistent with the requirements of Health and Safety Code Section 33334.14(a)(4), including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. Upon issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may freely 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.

Prior to 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 interest, right or obligations in the Property only as set forth in the DA, and with City's prior written consent, which consent City shall not withhold provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner's obligations under this Agreement, and upon City's and/or Agency's request, delivers to the City an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income multifamily rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in sub-clause (A).

Consent to any proposed Transfer may be given by the City's City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City's governing board. If a proposed Transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Owner, it shall be deemed rejected.

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 Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery of an invoice detailing such costs.

8.3 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. 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.

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**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) Owner's default in the performance of any material term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1), 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 thirty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- C. Pursue any other remedy allowed at law or in equity.

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.

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, 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 do not and shall not waive any rights against Owner that they 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 or the DA.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

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.

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 parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) 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
- (iii) 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

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: alex.greenwood@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff
555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-2000
Email sky@meyersnave.com

If to Developer: 311 9th Avenue
San Mateo, CA 94401
Attn: Mr. Victor Lo
Phone: 415-297-0709
Email: victor@sierrainvestments.com

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 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.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee 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.

11.8 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.

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

11.10 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.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 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.

11.13 Entire Agreement; Exhibits. This Agreement, together with the DA, and the other City Documents and Agency Documents 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 and B, attached hereto are incorporated herein by this reference.

11.14 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: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER

ROEM DEVELOPMENT CORPORATION,
A CALIFORNIA CORPORATION

By: _____

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 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

432 BADEN AVENUE

LEGAL DESCRIPTION

That real property situated in the State of California, County of San Mateo, City of South Su. Francisco, and described as Lot 8 in Block 117, as shown on that certain map entitled "SOUTH SAN FRANCISCO SAN MATEO CO. CAL PLAT. NO. 1", filed in the office of the County Recorder of San Mateo County, State of California, on March 1, 1892 in Book "B" of Maps at page(s) 6, and a copy entered in Book 2 of Maps at Page 52.

AP. No.: 012-321-160

JPN 012 032 321 16 A

Exhibit B**Number of Units by Unit Size and Targeted Area Median Income (AMI) Levels****432 Baden Avenue Property**

Maximum Household Income	30-60% AMI	Up to 60% AMI	60% - 80% AMI	80% -120% AMI	Total
Studio					
1-Bedroom					
2-Bedroom					
3-Bedroom					
Total					

Exhibit E

FORM OF COMPLETION GUARANTY

THIS COMPLETION GUARANTY (the “Guaranty”) is made this ___ day of _____, 2020 by and between THE CITY OF SOUTH SAN FRANCISCO, a municipal corporation (“City”) and _____ (“Guarantor”).

RECITALS

- A. On _____, _____, a _____ (“Developer”) acquired the real property commonly known as 432 Baden Avenue, South San Francisco, California (the “Property”) from the City pursuant to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 2020 (the “PSA”).
- B. As set forth in the PSA, Developer is to construct a 36 residential unit project, three (3) of which are required to be below market rate units (“Project”).
- C. As a condition precedent to transferring the Property to Developer, the City requires Guarantor to execute and deliver this Guaranty Guarantying the lien-free completion of the Project pursuant to, and in accordance with, the PSA, and providing for the performance of other covenants contained herein.

GUARANTY AND AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, Guarantor hereby agrees as follows:

1. Guaranty. Subject to the terms and conditions set forth herein, Guarantor unconditionally and irrevocably guarantees the full and timely performance of Developer’s obligations under the DA, to construct and complete the Project in accordance with the DA, free and clear of all mechanics liens.

2. Remedies. If Developer fails to timely perform an of its obligations under the PSA with respect to the construction and completion of the Project, after expiration of any applicable notice and cure periods, the City, prior to exercising any of its remedies hereunder, shall demand (by written notice) that Guarantor perform the same on Developer’s behalf. If, within thirty (30) days after receiving such demand, Guarantor advises the City in writing that Guarantor will commence and diligently proceed to cure all defaults of Developer under the DA, which by their nature are capable of being cured by Guarantor, then the PSA shall remain in full force and effect, and the City shall perform for the benefit of the Guarantor any unperformed obligations of the City under the DA. If Guarantor fails to respond to City’s written notice, or fails to perform as herein above provided, the City shall have the following remedies in addition to other remedies expressly provided herein:

(a) From time to time and without first being required to exhaust any or all security held by the City, if any, to require performance by the Guarantor of any obligation to be performed on the part of the Guarantor pursuant to the terms hereof, by action at law or in equity or both. Nothing herein shall be construed to prohibit the City from pursuing any remedies under any other agreement, against any person other than the Guarantor.

(b) If Guarantor does not timely perform its obligations under this Guaranty, the City, at City's option, shall have the right to perform any obligation required to be performed by Guarantor under this Guaranty, which City reasonably deems necessary, and expend such sums as City reasonably deems proper in order so to complete such obligation. The amount of any and all reasonable expenditures made by City shall be immediately due and payable by Guarantor to City, notwithstanding City's pursuit of any other rights or remedies.

3. Termination. This Guaranty shall terminate and be of no further force or effect upon the occurrence of either (i) upon issuance of a final certificate of occupancy for the Project, or (ii) termination of the PSA by either City or Developer in accordance with its own terms.

4. Interest. Any sums required to be paid by the Guarantor to the City pursuant to the terms hereof that are not paid within thirty (30) days of the date due, shall bear interest at the prime rate announced by the Bank of America plus three percent (3%), from the date said sums shall have become due until the date said sums are paid.

5. Consideration. Guarantor acknowledges that the undertakings given hereunder are given in consideration of the City's conveyance of the Property to Developer pursuant to the PSA and City's performance under the DA, and that the City would not convey the Property were it not for Guarantor's execution and delivery of this Guaranty.

6. No Waiver, Extension or Modification. No failure on the part of the City to pursue any remedy hereunder shall constitute a waiver on its part of the right to pursue said remedy on the basis of the same or a subsequent breach. No extension, modification, amendment or renewal of the PSA shall serve to waive the provisions hereof or discharge the Guarantor from any obligation herein contained, in whole or in part, except to the extent expressly approved by the City by written instrument signed by the City, specifying the nature and the extent of the intended waiver and discharge of the Guarantor.

7. Covenant of Guarantor. Guarantor shall promptly advise the City in writing of any material adverse change in the business or financial condition of Guarantor.

8. Guaranty Independent; Waiver of Exoneration.

(a) Guarantor agrees that the obligations hereunder are independent of and in addition to the undertakings of the Developer pursuant to the DA, any other Guarantees given in connection with the DA, and other obligations of the Guarantor to the City.

- (b) Guarantor agrees that the validity of this Guaranty shall continue and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting the Developer or its partners, parents, principals, or members whether or not notice is given to the Guarantor, or by any other circumstances or condition that may grant or result in a discharge, limitation or reduction of liability of the Developer or its partners, parents, principals, members or of a surety or a guarantor.
- (c) Guarantor waives all rights and remedies accorded by applicable law to guarantors and agrees not to assert or take advantage of any such rights or remedies including but not limited to any right to require the City to, after expiration of applicable notice and cure periods to Developer, (1) proceed against the Developer, any partner or member of the Developer or any other person, (2) proceed against or exhaust any security held by the City, or (3) pursue any remedy in the power of the City whatsoever. If Guarantor is liable pursuant to this Guaranty, Guarantor waives any defense arising by reason of any disability or other defense of the Developer or any partner or member of the Developer, or any of their parents, principals, or affiliated entities or by reason of the cessation from any cause whatsoever of the liability of the Developer or any member or partner of the Developer, or any of their parents, principals, or affiliated entities other than the full discharge and performance of all of Developer's obligations under the DA. Guarantor, except as expressly set forth herein, waives any defense it may acquire by reason of the City's election of any remedy against it or the Developer, or both, even though the Guarantors' right of subrogation may be impaired thereby or extinguished under the antideficiency statutes of the State of California. Without limiting the generality of the foregoing, Guarantor waives (a) any defense that may arise by reason of the lack of authority or of any other person or persons or the failure of City to file or enforce a claim against the estate (in administration, bankruptcy, or any other proceeding) of any other person or persons; (b) demand, protest and notice of any kind including but not limited to notice of any kind (except for the notice required in Sections 2 and 10 hereof or under the DA) including but not limited to notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or nonaction on the part of Developer, City, any endorser or creditor of Developer or Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by City as collateral or in connection with any obligations the performance of which are hereby Guaranty; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (d) any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about Developer, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intended to assume or has reason to believe that such facts are unknown to Guarantor; (e) any defense arising because of City's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code; and (f) any defense based on any borrowing or grant of a security interest under Section 364 of

the Federal Bankruptcy Code. Without limiting the generality of the foregoing or any other provision hereof, Guarantor hereby expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433 and California Code of Civil Procedure Sections 580(a), 580(b), 580(d), and 726.

- (e) Until termination of this Guaranty (as set forth in Section 3), Guarantor shall have no right of subrogation, and waives any right to enforce any remedy that the City now has or may hereafter have against the Developer or any member of Developer, or any other person, and waives the benefit of, and any right to participate in, any security now or hereafter held by City from the Developer.

9. Continued Existence; No Transfer or Assignment.

- (a) Guarantor does hereby further agree that as long as this Guaranty is in effect, it will not dispose of all or substantially all of its assets without the express written approval of the City, which shall not be unreasonably withheld.
- (b) The obligations of Guarantor under this Guaranty may not be assigned or transferred without, in each case, the express written approval of the City, which approval shall be within the sole and absolute discretion of the City.

10. Notices. City shall provide Guarantor with all written notices delivered to Developer pursuant to the PSA at the same time such notice is delivered to Developer. Guarantor shall not be liable under this Guaranty unless and until it has received such notice. The Guarantor shall have the right to perform any and all of Developer's obligations under the DA.

11. Miscellaneous.

- (a) This Guaranty shall inure to the benefit of City and its successors and assigns and shall bind the heirs, executors, administrators, personal representatives, successors and assigns of Guarantor.
- (b) This Guaranty shall be governed by and shall be construed in accordance with the laws of the State of California.
- (c) Time is of the essence hereof.
- (d) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- (e) Guarantor assumes the responsibility for keeping informed of (1) the financial condition of Developer, (2) any change in the management or control of Developer,

and (3) all other circumstances bearing upon the risk of nonperformance by Developer of its obligations under the DA.

- (f) This Guaranty shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of San Mateo County, California.

- (g) Any notice or communication required hereunder between City or Guarantor must be in writing, and may be given either personally, by e-mail (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by email transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party. Notices transmitted after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to: City of South San Francisco
400 Grand Avenue
Attn: City Manager
South San Francisco, CA 94080
Phone: (650) 877-8500
Fax: (650) 829-6609

With a Copy to: City of South San Francisco
400 Grand Avenue
Attn: ECD Director
South San Francisco, CA 94080
Phone: (650) 829-6622
alex.greenwood@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff
555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-2000
Email sky@meyersnave.com

If to Guarantor:

With Copies to:

(h) In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Guaranty, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

GUARANTOR

By: _____ Name: _____

Its _____

EXHIBIT B

First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions

**FIRST AMENDMENT TO PURCHASE AND
SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

(432 Baden Avenue, South San Francisco, California)

This First Amendment to Purchase And Sale Agreement And Joint Escrow Instructions ("First Amendment") is made effective as of April 9, 2020 ("Effective Date") by and between the City of South San Francisco, a municipal corporation ("Seller") and Baden Development, LLC, a California limited liability company ("Buyer"). Seller and Buyer are sometimes collectively referred to herein as "the parties."

RECITALS

A. Seller and Buyer entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020 (the "Agreement") with respect to that certain real property located at 432 Baden Avenue, South San Francisco, California (Assessor's Parcel Number 012-321-160) and other associated assets as more particularly described in the Agreement (collectively, the "Property"); and

B. Seller and Buyer desire to amend the Agreement to extend both the expiration of the Due Diligence Contingency Period and the Closing Date as more particularly provided herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties hereby agree as follows:**

1. **Recitals**. The foregoing recitals are true and correct and hereby incorporated herein.
2. **Defined Terms**. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
3. **Section 5.1 of the Agreement**. Section 5.1 of the Agreement is hereby amended to read as follows with additions in double underline and deletions in ~~strikethrough~~:

5.1 Closing. The closing (the "**Closing**" or "**Close of Escrow**") will occur no later than ~~one hundred eighty (180) calendar days after the Effective Date~~ October 6, 2020 ("**Closing Date**") or such other date that the Parties agree in writing. Pursuant

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA)

to Section 13.18 and a further request by Buyer, the City Manager or his/her designee may approve another extension of the Closing Date of six (6) months or less. If Buyer requests an extension of the Closing Date that is greater than six (6) months, such request shall be reviewed by the City Council.

4. **Section 5.2(a) of the Agreement.** Section 5.2 of Agreement is hereby amended to read as follows with additions in double underline and deletions in ~~strikethrough~~:

5.2 **Buyer's Conditions to Closing.** Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Closing Date:

(a) Buyer has approved the condition of the Property. Buyer will have ~~sixty (60) calendar days from the Effective Date~~ until June 19, 2020 (the "**Due Diligence Contingency Period**") to complete physical inspections of the Property and due diligence related to the purchase of the Property. Pursuant to Section 13.18 and a further request by Buyer, the City Manager or his/her designee may approve another extension of the Due Diligence Contingency Period of six (6) months or less. If Buyer requests an extension of the Due Diligence Contingency Period greater than six (6) months, such request shall be reviewed by the City Council. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession not later than two (2) business days following the execution and delivery of this Agreement. All physical inspections must be coordinated with Seller's representative. Buyer hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) by Buyer's inspections.

5. **Effect of First Amendment.** Except as expressly modified by this First Amendment, the Agreement shall continue in full force and effect according to its terms, and Seller and Buyer hereby ratify and affirm all their respective rights and obligations under the Agreement, including but not limited to the indemnification obligations. In the event of any conflict between the First Amendment and the Agreement, the provisions of this First Amendment shall govern.
6. **Binding Agreement.** This First Amendment shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the parties hereto. Any reference in this First Amendment to a specifically named party shall be deemed to apply to any successor, administrator, executor, or assign of such party who has acquired an interest in compliance with the terms of this First Amendment or under law.

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA)

7. **Counterparts**. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute the same document.
8. **California Law**. This First Amendment shall be governed by and interpreted in accordance with the laws of the State of California.
9. **Invalidity**. Any provision of this First Amendment that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be deemed severed from this First Amendment, and the remaining provisions shall remain in full force and effect as if the invalid or unenforceable provision had not been a part hereof
10. **Headings**. The headings used in this First Amendment are for convenience only and shall be disregarded in interpreting the substantive provisions of this First Amendment.

SIGNATURES ON FOLLOWING PAGE

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA)


IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

SELLER:

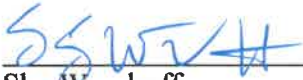
CITY OF SOUTH SAN FRANCISCO

By: 
Mike Futrell
City Manager

ATTEST:

By: 
City Clerk 4/22/2020

APPROVED AS TO FORM:

By: 
Sky Woodruff
City Attorney

BUYER:

Baden Development, LLC,
a California limited liability company

By: 
Victor Lo
Title: Manager

APPROVED AS TO FORM:

By: 
R. Ryan Shain
Counsel for Buyer
3511392.1

EXHIBIT C

Letter dated June 22, 2020



CITY COUNCIL 2020

RICHARD GARBARINO, MAYOR
MARK ADDIEGO, VICE MAYOR
KARYL MATSUMOTO, COUNCILMEMBER
MARK NAGALES, COUNCILMEMBER
BUENAFLOR NICOLAS, COUNCILMEMBER

MIKE FUTRELL, CITY MANAGER

OFFICE OF THE CITY MANAGER

June 22, 2020

Attn: Victor Lo, Manager
Baden Development, LLC
311 9th Avenue
San Mateo, CA 94401

**Re: Approval of Request for Extension of Due Diligence Contingency Period for 432
Baden Avenue**


Dear Mr Lo:

I am in receipt of Baden Development, LLC's ("Buyer") June 17, 2020 request to extend the Due Diligence Contingency period relating to the purchase of 432 Baden Ave. by forty-five (45) days pursuant to Section 4 of the First Amendment to the Purchase and Sale Agreement by and between the City of South San Francisco ("Seller") and Buyer, effective April 9, 2020 ("First Amendment"). The First Amendment allows the City Manager or his/her designee to approve another extension of the Due Diligence Contingency Period of six (6) months or less beyond that granted by the First Amendment pursuant to Section 5.2(a). Section 5.2(a) as amended by the First Amendment further states that, if Buyer requests an extension of the Due Diligence Contingency Period greater than six (6) months, such request shall be reviewed by the City Council. Based upon the reasons set forth in Buyer's June 17, 2020 request, I hereby approve the extension of the Due Diligence Contingency Period to August 3, 2020.

In addition, on June 19, 2020, Buyer further requested an extension of the Close of Escrow to November 30, 2020 pursuant to City Manager's approval allowed by Section 5.1 as amended by the First Amendment. Accordingly, pursuant to Section 5.1 as amended by the First Amendment the Close of Escrow is hereby approved to be November 30, 2020 ("Closing Date"). The First Amendment further states that, if Buyer requests an extension of the Closing Date greater than six (6) months, such request shall be reviewed by the City Council. The Attachment of this document outlines the original and amended deadlines.


Please sign a copy of this letter where indicated and return to the City, or let us know if you have any questions.

Sincerely,



Mike Futrell
City Manager, City of South San Francisco

Agreed:



Victor Lo
Manager, Baden Development LLC

Attachment: Purchase and Sale Agreement Performance Schedule Amendments

cc: Alex Greenwood, Economic and Community Development Director
Nell Selander, Economic and Community Development Deputy Director
Sky Woodruff, City Attorney
Ryan Shain, Schinner & Shain, LLP

3545915.1

Attachment 1

Deliverable	Original Agreement Date	First Amendment Date	Extension Date	Date Requiring Council Approval
Due Diligence Period ends	April, 19, 2020	June 19, 2020	August 3, 2020	October 18, 2020
Close of Escrow	August 17, 2020	October 6, 2020	November 30, 2020	February 16, 2021

EXHIBIT D

Letter dated July 20, 2020



CITY COUNCIL 2020

RICHARD GARBARINO, MAYOR
MARK ADDIEGO, VICE MAYOR
KARYL MATSUMOTO, COUNCILMEMBER
MARK NAGALES, COUNCILMEMBER
BUENAFLOR NICOLAS, COUNCILMEMBER

MIKE FUTRELL, CITY MANAGER

OFFICE OF THE CITY MANAGER

July 20, 2020

Attn: Victor Lo, Manager
Baden Development, LLC
311 9th Avenue
San Mateo, CA 94401

Re: Approval of Request for Second Extension of the First Amendment to the Purchase and Sale Agreement (“PSA”) for 432 Baden Avenue

Dear Mr Lo:

I am in receipt of Baden Development, LLC’s (“Buyer”) July 7, 2020 request to extend the Due Diligence Contingency period relating to the purchase of 432 Baden Ave. by the maximum number of days without requiring Council approved (6 months) pursuant to Section 4 of the First Amendment to the Purchase and Sale Agreement by and between the City of South San Francisco (“Seller”) and Buyer, effective April 9, 2020 (“First Amendment”). The First Amendment allows the City Manager or his/her designee to approve another extension of the Due Diligence Contingency Period of six (6) months or less beyond that granted by the First Amendment pursuant to Section 5.2(a). Section 5.2(a) as amended by the First Amendment further states that, if Buyer requests an extension of the Due Diligence Contingency Period greater than six (6) months, such request shall be reviewed by the City Council. Based upon the reasons set forth in Buyer’s July 7, 2020 request, I hereby approve the extension of the Due Diligence Contingency Period to October 18, 2020.

In addition, on July 7, 2020, Buyer further requested an extension of the Close of Escrow to February 16, 2021 pursuant to City Manager’s approval allowed by Section 5.1 as amended by the First Amendment. Accordingly, pursuant to Section 5.1 as amended by the First Amendment the Close of Escrow is hereby approved to be February 16, 2021 (“Closing Date”). The First Amendment further states that, if Buyer requests an extension of the Closing Date greater than six (6) months, such request shall be reviewed by the City Council. The Attachment of this document outlines the original and amended deadlines.


Please sign a copy of this letter where indicated and return to the City, or let us know if you have any questions.

Sincerely,



Mike Futrell
City Manager, City of South San Francisco

Agreed:



Victor Lo
Manager, Baden Development LLC

Attachment: Purchase and Sale Agreement Performance Schedule Amendments

cc: Alex Greenwood, Economic and Community Development Director
Nell Selander, Economic and Community Development Deputy Director
Sky Woodruff, City Attorney
Ryan Shain, Schinner & Shain, LLP

Attachment 1

Deliverable	Original Agreement Date	First Amendment Date	First Extension Date	Extension Approved*
Due Diligence Period ends	April, 19, 2020	June 19, 2020	August 3, 2020	October 18, 2020
Close of Escrow	August 17, 2020	October 6, 2020	November 30, 2020	February 16, 2021

* Any further extensions will require Council approval

EXHIBIT E

Approval Notice

Baden Development, LLC
311 9th Avenue
San Mateo, CA 94401

SENT VIA ELECTRONIC MAIL

October 2, 2020

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager, Mike Futrell
Email: mike.futrell@ssf.net

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: Project Manager, Julie Barnard
Email: Julie.barnard@ssf.net

Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: Sky Woodruff
Email: sky@meyersnave.com

Re: Buyer's Approval Notice

Purchase and Sale Agreement and Joint Escrow Instructions dated February 19, 2020, as amended (the "**Agreement**") by and between City of South San Francisco, a municipal corporation, ("**Seller**") and Baden Development, LLC, a California limited liability company ("**Buyer**") concerning 432 Baden Avenue, South San Francisco, California (the "**Property**").

Dear Mr. Futrell and Ms. Barnard,

This letter shall serve as Buyer's Approval Notice issued pursuant to Section 3.4 of the Agreement. We appreciate the City's support of our project and look forward to our continued progress.

Sincerely yours,

Baden Development, LLC,
a California limited liability company

By: _____



Victor Lo

Title: Manager

EXHIBIT F

Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions

**SECOND AMENDMENT TO PURCHASE AND
SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

(432 Baden Avenue, South San Francisco, California)

This Second Amendment to Purchase And Sale Agreement And Joint Escrow Instructions (this "Amendment") is made effective as of December 21, 2020 ("Effective Date") by and between the City of South San Francisco, a municipal corporation ("Seller") and Baden Development, LLC, a California limited liability company ("Buyer"). Seller and Buyer are sometimes collectively referred to herein as "the parties."

RECITALS

A. Seller and Buyer entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020 and that certain First Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated April 9, 2020 (together, the "Agreement") with respect to that certain real property located at 432 Baden Avenue, South San Francisco, California (Assessor's Parcel Number 012-321-160) and other associated assets as more particularly described in the Agreement (collectively, the "Property");

B. Seller and Buyer desire to amend the Agreement to extend the Closing Date as more particularly provided herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and incorporating all of the above as though set forth in full herein and in consideration of all the recitals, conditions and agreements contained herein, **the parties hereby agree as follows:**

1. **Amendment to Agreement.** The parties amend the Agreement as follows:
 - a. The Closing Date shall be delayed until May 17, 2021.
 - b. The Closing Date may be further delayed if requested by Buyer with the written consent of the City Manager acting on behalf of Seller. City Manager may delay the Closing Date two times by up to 90 days each time. Any additional delay of the Closing Date shall require approval of the City Council. Buyer shall pay Seller a fee of \$15,000.00 for each such additional delay of the Closing Date.

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA)

2. **General Provisions.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Amendment and the meaning of the provisions hereof. The provisions of this Amendment shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question. Except as expressly amended pursuant to this Amendment, the terms and provisions of the Agreement shall remain unmodified and shall continue in full force and effect, and Buyer and Seller hereby ratify and affirm all their respective rights and obligations under the Agreement. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. The terms and provisions of this Amendment, together with the Agreement, shall constitute all of the terms and provisions to which Buyer and Seller have agreed with respect to the transaction governed hereby, and there are no other terms and provisions, oral or written, that apply to the Agreement and/or the Property other than as set forth in the Agreement as modified by this Amendment. The provisions of this Amendment shall apply to, be binding upon, and inure to the benefit of the parties hereto and to their respective successors and assigns. This Amendment may be executed in multiple counterparts, all of which shall constitute an original, and all of which together shall constitute a single instrument. Counterparts of this Amendment executed and delivered by facsimile, email or other means of electronic delivery shall constitute originals for all purposes.

SIGNATURES ON FOLLOWING PAGE

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
(432 BADEN AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA)

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

SELLER:

CITY OF SOUTH SAN FRANCISCO

By: DocuSigned by:
Mike Futrell
68E2134787CA4DB...
Mike Futrell
City Manager

ATTEST:

By: DocuSigned by:
Rosa Gomez Acosta
5908B15FF63F418...
Rosa Acosta
City Clerk



APPROVED AS TO FORM:

By: DocuSigned by:
Claire Lai
951A604F45D4468...
Sky Woodruff
City Attorney

BUYER:

Baden Development, LLC,
a California limited liability company

By: DocuSigned by:
Victor Lo
B9384AF1BE804D2...
Victor Lo
Title: Manager

APPROVED AS TO FORM:

By: DocuSigned by:
R. Ryan Shain
3E87DB74FC3D4ED...
R. Ryan Shain
Counsel for Buyer

Exhibit B

EXHIBIT B

Form of AHA

3817876.6

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

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

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

Space above this line for Recorder's use.

[FORM OF]

COMBINED AFFORDABLE AND DENSITY BONUS HOUSING AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

428-432 Baden Avenue

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

FOR THE FUTURE HOUSING

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This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2021 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and For the Future Housing, a California Corporation (“**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 428-432 Baden Avenue, and more particularly described in **Exhibit A** attached hereto (the “**Property**”); and

B. C. The City has approved Use Permit No. UP19-0005 on August 6, 2020 for the construction of 36 rental units with 28 parking spaces over 0.32 acres on 428 and 432 Baden Avenue (the “**Project**”); and

D. As a condition of developing the Project, Owner is required to comply with South San Francisco Municipal Code Chapter 20.380 and, as a result, Use Permit 19-0005 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 one-hundred percent (100%) of the Project’s “**Dwelling Units**” as “**Inclusionary Units**” as those terms are defined in Chapter 20.380 as a method to comply with Chapter 20.380; and

E. In particular, Owner has elected to provide thirty-six (36) of 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 [# of units] to “**Lower Income Households**” as defined herein (“**Lower Income Units**”) and [# of units] to “**Very Low Income Households**” as defined in herein (“**Very Low Income Units**”) and [# of units] to “**Extremely Low Income Households**” as defined herein (“**Extremely Low Income Units**”) for the full term of the Agreement and Owner agrees to produce the Inclusionary Units pursuant to the schedule; and

F. Owner has further elected to provide the following amenities to the residents of the Inclusionary Units [describe any amenities and services provided, such as daycare, after school programs, transportation, job training/employment services and recreation]; and

G. [If Owner utilizes an affordable housing developer add the following] Owner has chosen and the City has approved [name of affordable housing developer] pursuant to the [describe agreement selecting developer] who shall function as [specify developer’s role and relationship to the project]; and

H. [If offsets are granted by the City Council add the following] The City has approved Resolution No. [#] on [date of approval] in order to provide Owner [describe offsets] necessary to enable affordability in excess of the requirements of Chapter 20.380; and

I. [If a density bonus has been granted add the following 3 Recitals] Pursuant to Government Code Sections 65915 through 65918 (“**State Density Bonus Law**”) and South San Francisco Municipal Code Chapter 20.390, Owner has further agreed to provide [# of units] in the Project as “**Target Dwelling Units**” as that term is defined in such Chapter available for rent to Lower Income Households (“**Lower Income Units**”) and [# of units] available for rent to Very Low Income Households (“**Very Low Income Units**”) for the full term of the Agreement; and

J. In accordance with Owner’s “**Density Bonus Application**” submitted pursuant to South San Francisco Municipal Code Section 20.390.009, attached hereto and incorporated herein as **Exhibit C**, and pursuant to UP [#], the Owner has agreed to construct the Target Units pursuant to the schedule included in and at the square footage, number of bedrooms and specific location identified in the Density Bonus Application; and

K. [If DB Units granted] In response to Owner’s Density Bonus Application, the City has granted [# number] of “**Density Bonus Dwelling Units**” as that term is defined in Chapter 20.390 to Owner. [If incentives, concessions, waivers or modifications granted]City has further granted [include description of incentives and concessions, waivers and modifications of development standards, provision of favorable parking requirements, and financial assistance to be provided by the City]; and

L. In compliance with South San Francisco Municipal Code Section 20.380.014 [if **DB add** “and Section 20.390.010”], 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 the Development Agreement; and

M. Owner has agreed to execute and comply with this Agreement, the Development Agreement and 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

N. The Parties have further agreed to execute a “Notice of Affordability Restrictions on Transfer” and a “Request for Notice of Default” substantially in the forms attached hereto as Exhibits B and C respectively, and shall cause such notices to be recorded substantially concurrently with the recordation of this Agreement; and

O. As required by the Municipal Code and the Development Agreement, 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

P. The Inclusionary Units [if DB add “and Target 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.

The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” shall be determined as defined below, and for units of any other size consistent with applicable federal rules (if any) and Section 50052.5(h) of the California Health and Safety Code, as it exists or may be amended:

One Bedroom – 1.5 people Two Bedroom – 3 people Three Bedroom – 4.5 people

“Adjusted Income” means, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HUD or TCAC.

“Affordable Rent” means rents allowed by TCAC for the Unit's designated income level. If TCAC does not publish such rents, it means the following amounts, less a utility allowance and such other adjustments as required pursuant to the California Law: (i) for Units occupied by Extremely Low Income Households, a monthly rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of AMI, Adjusted for Family Size Appropriate for the Unit; (ii) for Units occupied by Very Low Income Households, a monthly rent that does not exceed one-twelfth (1/12) of fifty percent (50%) of AMI, Adjusted for Family Size Appropriate for the Unit; and (iii) for Units occupied by Lower Income Households, a monthly rent that does not exceed one-twelfth (1/12) of eighty percent (80%) of AMI, Adjusted for Family Size Appropriate for the Unit.

“Area Median Income” or **“AMI”** means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by TCAC if the Project is restricted by a tax credit regulatory agreement, or by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the HCD in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c). In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

“**Claims**” is defined in Section 10.

“**Developer**” is defined in the Development Agreement.

“**Extremely Low Income Household**” means persons and families whose incomes do not exceed an annual gross household income for households of 30% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.P.

“**Indemnitees**” is defined in Section 10.

“**Lower Income Household**” persons and families whose incomes do not exceed an annual gross household income for households of 80% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.H.

“**Rent**” shall mean the total of monthly payments by the residents of a Unit (other than the manager’s Unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the Resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Resident.

“**Resident**” shall mean an individual or household occupying a Unit.

“**TCAC**” shall mean the California Tax Credit Allocation Committee.

“**Units**” shall mean the individual dwelling units to be constructed on the Property as part of the Project.

“**Very Low Income Household**” means persons and families whose incomes do not exceed an annual gross household income for households of 50% Income Level as published by TCAC, adjusted for Actual Household Size, or if TCAC does not publish such levels, it shall have the meaning set forth in South San Francisco Municipal Code Section 20.390.002.P.

2. Use and Affordability Restrictions.

Owner hereby covenants and agrees, for itself and its successors and assigns, that the Project shall be used solely in compliance with the requirements set forth herein and the Development Agreement. 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 [insert #] Lower Income Units at an Affordable Rent to and occupied by or, if vacant, available for occupancy by Lower Income Households; and

2.1.2 the [insert #] Very Low Income Units at an Affordable Rent to and occupied by or, if vacant, available for occupancy by Very Low Income Households; and

2.1.3 the [insert #] Very Low Income Units at an Affordable Rent to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

2.2 Preferences; Non-Discrimination; Compliance with Laws.

2.2.1 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 Residents 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.

2.2.2 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 Residents, 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.

2.2.3 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).”

2.2.4 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.*

2.2.5 Compliance with Prevailing Wage Laws.

2.2.5.1 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.

2.2.5.2 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.

2.2.5.3 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.

2.2.5.4 “**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.

2.2.5.5 Owner acknowledges and agrees that City’s Request for Qualifications and Request for Proposals for selection of an Owner to develop the Project, if any, required that all proposals submitted include the payment of prevailing wages, and that Owner’s proposal included the payment of prevailing wages. In furtherance of the foregoing, and notwithstanding anything in this Section to the contrary, Owner shall pay prevailing wages in accordance with California Prevailing Wage Laws for all construction work performed on behalf of the Project, as set forth in Owner’s proposal.

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:

- (a) The identity of each household member; and
- (b) 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 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.

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.

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. All resident lists, applications and waiting lists relating to the Project 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. 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 fifteen (15) 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 fifteen (15) days is reasonably necessary to correct the deficiency, then Owner shall begin to correct the deficiency within fifteen (15) 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:

[CURRENT OPTION] Such household shall be permitted to continue occupying the Affordable Unit upon expiration of the household's lease, and upon sixty (60) days written notice, the rent shall be increased to the lesser of thirty percent (30%) of the household's Income or fair market value.

[OPTION 1]

Where the Project consists of less than twenty-five (25) Dwelling Units and:

1. The over-income household's Income exceeds 60% AMI, but is less than 100% AMI, the household shall remain eligible to rent the Affordable Unit and the rent shall be set at 30% of 60% AMI.

2. The over-income's household's Income exceeds 100% AMI, the household will be deemed no longer income eligible to rent an Affordable Unit. For such Residents, the Owner:

a. Shall provide the household a written notice of their over-income status within ten (10) days of recertification and a written 60-day notice to vacate the Affordable Unit; and

b. Shall bring the Project into conformance with this Agreement by renting the vacated Affordable Unit to an income-eligible household (either Lower, Very Low or Extremely 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 does not exceed that of former resident household when they qualified for 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, 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 55th 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 pursuant to 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 and Repayment of Loan.

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) a residents' association with members who reside in the Affordable Units; (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 Regulatory Agreement 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's shall not be relieved of its duty to perform of management duties in the event that it hires a management agent.

6.1.1 Approval of Management Policies.

Owner shall submit its written management policies with respect to the Project to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement and City Guidelines.

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) days after written notice from City with respect to graffiti, debris, and waste material or thirty (30) 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 (including financial incentives, to the extent allowed by TCAC regulations) Residents who no longer qualify as income-eligible for the Affordable Units to transition to market rate housing opportunities within the City. 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, the proposed management entity, 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 F**. 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 concurrently with Owner's acquisition of the Property. 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 Restrictions on Transfer and Encumbrance.

Upon issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may, upon City's written consent, 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.

Consent to any proposed transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Owner, it shall be deemed rejected.

The City may declare any attempt to transfer the Project or Property in any manner that does not comply with this Agreement is prohibited, shall constitute an Event of Default and is null and void and of no effect, and said transfer shall be enjoined at the City's request by a court of competent jurisdiction.

Owner shall reimburse City for all costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee or seeking redress for a transfer sought in violation of

the Agreement within ten (10) days following City's delivery of an invoice detailing such costs. If, after thirty (30) days, Owner fails to remit such costs to the City pursuant to its demand therefor, it may recover the costs by imposing a special assessment on the Property which shall be collected in the same manner and at the same time as property taxes.

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 The occurrence of a transfer in violation of Section 8.1 hereof;

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 or the Development 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

If the Owner has breached its obligation to rent the Inclusionary Units (or any of them) to Very Low Income or Lower Income Households at an Affordable Rent pursuant to this Agreement, then a fee in the amount of \$[in lieu fee amount applicable to the Project if they didn't provide units] (“Fee”) which was avoided by City in consideration for Owner’s agreement to rent the Inclusionary Units at an Affordable Rent in accordance with this Agreement as well as 10% interest on the Fee shall become immediately due and payable by the Owner to the City.

If, after thirty (30) days, Owner fails to remit the Fee to the City pursuant to its demand therefor, City may impose the 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 or receives higher rental amounts on the Affordable Units than allowed pursuant to this Agreement, Owner shall be required to

reimburse the 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 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.

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 San Francisco Municipal Code Section 20.380.015, any amendment 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: mike.futrell@ssf.net
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: alex.greenwood@ssf.net
With a Copy to:	Meyers Nave Attn: Sky Woodruff, City Attorney 1999 Harrison Street, 9th Floor Oakland, CA 94612 Tel (510) 808-2000 Fax (510) 444-1108 Email swoodruff@meyersnave.com
If to Owner:	[Insert]

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 [if DB add “and 20.390”], 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 an administrative fee to City to reimburse it for all administrative and processing costs and fees incurred in processing the Plan and implementing the requirements Chapter 20.380 on a project specific basis. [If DB add “Owner shall further pay an administrative fee to City per Resolution [#] for City’s administration and monitoring of Target Dwelling Units.”]

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 G, 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: _____

Mike Futrell, City Manager

ATTEST:

By: _____

Rosa Govea Acosta, City Clerk

APPROVED AS TO FORM:

By: _____

Sky Woodruff, City Attorney

OWNER:

By: _____

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 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

[Insert Property Legal Description]

Exhibit B – Inclusionary Housing Plan

Exhibit C – Density Application Bonus [insert if DB]

Exhibit D – Promissory Note

Exhibit E – Deed of Trust

Exhibit F – Notice of Affordability Restrictions

Exhibit G – Request for Notice of Default

Exhibit H – Insurance Requirements

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