

EXHIBIT B

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

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: Economic Development Department

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

(Space Above This Line for Recorder's Use)

**AFFORDABLE HOUSING AGREEMENT
FOR BELOW MARKET RATE PROPERTY**

This Affordable Housing Agreement for Below Market Rate Property ("**Agreement**") is entered into as of this ____ day of _____, 202_, by and between the City of South San Francisco ("**City**") and _____ ("**Owner**"). City and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. On January 15, 2019, California Governor Gavin Newsom signed Executive Order N-06-19 that ordered the California Department of General Services ("**DGS**") and the California Department of Housing and Community Development ("**HCD**") to identify and prioritize excess state-owned property and aggressively pursue sustainable, innovative, cost-effective housing projects. Assembly Bill 1486, also passed in 2019, aims to connect developers who are interested in building more affordable homes to surplus local public land that is both available and suitable for housing development.

B. In April 2020, City designated the Property located as surplus, pursuant to the Surplus Land Act, and provided notice to HCD, local public entities within South San Francisco, and affordable housing developers who have notified HCD of their interest in developing affordable housing on surplus local land.

C. Pursuant to the Surplus Land Act, City accepted Owner's offer to purchase and restrict the resale of the Property for a period of at least fifty-five (55) years to households of no less than four (4) persons earning less than or equal to eighty percent (80%) of Area Median Income ("**Lower Income Households**") and, subject to compliance with all applicable laws, such households shall include at least one member who lives or works in South San Francisco ("**Eligible Households**"). The Parties have entered into a Purchase and Sale Agreement ("**PSA**") conditioned upon Owner's agreement to restrict the resale of the Property in accordance with this Agreement.

WHEREAS, in order to effectuate the terms of the PSA, the Owner and City agree to adhere to the schedule and terms as set forth in the Sale Terms and Conditions, and more particularly described in Exhibit C attached hereto and incorporated herein; and

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, City and Owner hereby agree as follows:

AGREEMENT

1. As a condition of purchasing the Property, the Owner shall make it available for sale as affordable to Eligible Households guaranteed by the Resale Restriction Documents as set forth in Section 3 hereof and Exhibit B attached hereto and incorporated herein. In particular, Owner shall sell the Property to a household of no less than four (4) persons whose annual gross income does not exceed eighty percent (80%) of the annual median income for San Mateo County, adjusted for household size, as published by the State of California annually, pursuant to California Code of Regulations, Title 25, Section 6932 (“**Area Median Income**”) and, subject to compliance with all applicable laws, such Lower Income Households shall include at least one member who lives or works in South San Francisco.

2. Owner shall price the Property in accordance with the terms and conditions outlined in the Sale Terms and Conditions, attached hereto as Exhibit C. City shall approve the sales price for the Property prior to Owner entering into agreements with Eligible Households for the sale of the Property.

3. Owner shall require each Eligible Household to execute a Resale Restriction and Option to Purchase Agreement (“**Resale Restriction Agreement**”), an Excess Sale Proceeds Promissory Note (“**Promissory Note**”), and a Performance Deed of Trust (“**Deed of Trust**”) substantially in the form attached hereto as Exhibit B (collectively, the “**Resale Restriction Documents**”). The Resale Restriction Documents shall be recorded against the Property upon close of escrow of sale for the Property. The Property shall remain restricted and affordable to Eligible Households for a term of fifty-five (55) years, commencing on the date each of the Property is first sold. The restrictions shall apply to all subsequent Owners during the term.

4. Owner shall ensure that each purchaser of the Property is a Lower Income Household which meets the income requirements set forth in Section 1 hereof and, subject to compliance with all applicable laws, ensure that such Lower Income Households includes at least one member who lives or works in South San Francisco. Owner shall obtain an income and local preference verification from each proposed purchaser, and shall submit such information to the City for City’s approval as provided in Exhibit C. Owner shall work with the City and/or the City’s Housing Administrator to identify and qualify eligible Owners for the Property. At the time of sale, Owner shall pay an administrative fee to reimburse the City for all administrative and

processing costs and fees incurred in processing the sale of the Property, which may include the City's Housing Administrator fees.

5. The Property shall remain owner-occupied as enforced by the City through the Resale Restriction Agreement.

6. Owner shall indemnify, defend with counsel selected by the City in consultation with Owner, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising or allegedly arising out of or relating in any manner to Owner's performance or nonperformance under this Agreement, except to the extent arising from the gross negligence or willful misconduct of the City. The provisions of this section shall survive the expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement.

7. Owner shall reimburse the City for all administrative/processing costs and fees incurred in processing this Agreement, which may include reasonable attorney's fees and costs.

8. Owner hereby subjects the Property to the covenants, conditions and restrictions set forth in this Agreement. The Parties hereby declare their express intent that all such covenants, conditions and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors in title to the Property. All covenants without regard to technical classification or designation shall be binding for the benefit of the City, and such covenants shall run in favor of the City. Each and every contract, deed or other instrument hereafter executed applicable to or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, conditions and restrictions, regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instrument. This Agreement shall be recorded on the Property upon close of escrow pursuant to the PSA .

9. Prior to the closing of the sale of the Property to Eligible Households, the Owner may not transfer the whole or any part of the Property, or this Agreement. .

10. Provided that Owner has complied with all of the terms and conditions set forth herein, upon the sale by Owner of the Property, Owner shall be released from, and shall have no further obligations under this Agreement except for the duty to indemnify, defend and hold harmless the City as set forth in Section 6 above which shall not expire. Such release shall be effective upon the sale and shall not require any further action or documentation by any party to this Agreement. Any amendments to this Agreement shall be processed in the same manner as an original application for approval pursuant to Section 20.380.014 of the South San Francisco Municipal Code.

11. The laws of the State of California shall govern this Agreement without regard to principles of conflicts of laws. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Mateo or in the United States District Court for the Northern District of California.

12. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

13. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

14. Any notice or demand shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Owner:

City:

City of South San Francisco
Attn: Economic Development Director
400 Grand Avenue
South San Francisco, CA 94080

15.

SIGNATURES ON FOLLOWING PAGE.

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

OWNER :

CITY:

CITY OF SOUTH SAN FRANCISCO

By: _____

Name Printed: _____

Its: _____

By: _____

Charles Michael Futrell, City Manager

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

Sky Woodruff, City Attorney

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 _____) SS.

On _____, 2018, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

(This area for official notarial 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 _____) SS.

On _____, 2018, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

(This area for official notarial seal)

Exhibit A
Legal Description

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

PARCEL I:

Exhibit B
Form of Resale Restriction Documents

Exhibit C
Sale Terms and Conditions

1. Owner shall sell the Property at an affordable initial sales price. The City shall approve the affordable initial sales price for the Property prior to the sale to an Eligible Household which shall be set at a level at which allowable housing expenses do not exceed 30% x 70% of AMI for a household size of no less than 4 persons. "Allowable housing expenses" means the total monthly or annual recurring expenses required of a household to obtain shelter. Allowable housing expenses include loan principal and interest at the time of initial purchase by the homeowner, allowances for property and mortgage insurance, property taxes, and a reasonable allowance for utilities.

a. "Reasonable allowance for utilities" means the utility allowance published by the Housing Authority of the County of San Mateo from time to time. If the foregoing utility allowance is no longer published, then a reasonable allowance for utilities shall be calculated based upon comparable governmental published figures as determined by regulation of the City.

b. "Utilities" means garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels for a dwelling unit. Utilities does not include telephone, cable or internet service.

2. The Owner shall, prior to the initial sale of the Property, obtain and cause to be submitted to the City a verification of all household sources of income demonstrating that such household is a Lower Income Household, and further meets the eligibility requirements for an Eligible Household including that the Household contains no less than four (4) persons and includes at least one member who lives or works in South San Francisco. Such income and eligibility verification shall be submitted on such form as approved by the City. City shall approve each purchaser of an the Property prior to the sale.

3. Owner shall work with the City to develop a marketing and sales plan for the Property.

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