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AND WHEN RECORDED MAIL TO:**

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

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GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

**[*FORM OF* ]**

**AFFORDABLE HOUSING REGULATORY AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**Parcel 1, Building C2, South San Francisco**

**by and between**

**THE CITY OF SOUTH SAN FRANCISCO**

**and**

**BRIDGE HOUSING CORPORATION**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and BRIDGE Housing Corporation, a California nonprofit public benefit corporation (“**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 referred to a “Site C2”, located at 1051 Mission Road, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Under the Development Agreement executed by and between SSF PUC Housing Partners, LLC and the City dated as of \_\_\_\_\_ (the “**Development Agreement**”), as partially assigned to Owner, the Property is required to be used for one hundred fifty-eight (158) units of affordable housing and ancillary improvements (the “**Project**”).

C. Pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390, Owner has agreed that the Project will result in 55 units being available to residents with incomes at or below of fifty (50) percent of area median income. Furthermore, Developer has requested a density bonus of twenty five (25) percent and has, pursuant to Section 20.390.010.B.7, requested development standard waivers including a FAR increase above the maximum FAR for that site designated as "Site B" in the Development Agreement, and a waiver of setback requirements under South San Francisco Municipal Code Section 20.270.004(D) for the Property and for "Site C1" and "Site B," as designated in the Development Agreement. In addition, City, through its Commercial Linkage Fee fund, will provide \$2,000,000 of financial assistance to Owner as referenced in the Loan Agreement attached hereto as Exhibit B.

D. As required by 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 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.

**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 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.

**“Assignment and Assumption Agreement”** is defined as the Assignment and Assumption Agreement between the City of South San Francisco and BRIDGE Housing dated \_\_\_\_\_ and included as Exhibit F to the Development Agreement.

**“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 Property and Project shall be used solely for the operation of affordable rental housing and related improvements in compliance with the Development Agreement 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. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project, fifty-five (55) of the Units in the Project shall be rented at an Affordable Rent to and occupied by or, if vacant, available for occupancy by Very Low Income Households at Very Low Income Rents. The remaining Units within the Project, exclusive of a manager's Unit, shall be rented at an Affordable Rent to and occupied by or, if vacant, available for occupancy by households whose incomes range between Extremely Low Income Households and Lower Income Households. The average affordable restriction by of all of the Units, exclusive of a manager's Unit, shall be sixty percent (60%) of AMI.

2.2 Rents for Very Low Income Units. The Rent charged to Residents of the Very

Low Income Units shall not exceed the rents allowed by TCAC for the Unit's designated income level (the " **Low Income Rents**"). If TCAC does not publish such rents, the monthly Very Low Income Rents shall be 1/12th of 30% of the Unit's designated income level.

2.3 Increased Income of Residents. If, upon recertification of the income of a Resident of a Unit, the Owner determines that the Resident has an Adjusted Income exceeding the maximum qualifying income for the Unit, such Resident shall be permitted to continue occupying the Unit upon expiration of the Resident's lease, and upon sixty (60) days written notice, the Rent shall be increased to the lesser of thirty percent (30%) of the Resident's Adjusted Income or fair market value, subject to the maximum rent allowed pursuant to other funding restrictions.

2.4 Termination of Occupancy. Upon termination of occupancy of a Unit by a Resident, Owner shall rent the Unit, to a Resident whose income is at or below the income level of the former Resident when they qualified for occupancy of such Unit within thirty (30) days of termination of occupancy by the former Resident

2.5 Condominium Conversion. Owner shall not convert the 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 Units remain available as affordable housing. Prior to conveyance of any Unit(s), the buyer(s) of the for-sale 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.

## 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 fair housing laws and other applicable laws, and consistent with the program regulations for funding sources used for development of the Project, at initial lease up, Owner shall give a preference in the Project to households that include at least one member who lives or works in the City of South San Francisco. Owner will implement any preferences in the rental of Units in the Project pursuant to a preference plan approved by its lenders, investors and the City Manager. 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. Owner shall accept as Residents, on the same basis as all other prospective households, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.3 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).”

### 3. Reporting Requirements.

3.1. Household Certification. Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each 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 (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) 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 Very Low Income 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 TCAC regulatory agreement, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required by TCAC.

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

#### 4. Term of Agreement.

4.1 Term of Restrictions. Unless extended by mutual agreement of the Parties, upon the 55<sup>th</sup> anniversary of issuance of the final certificate of occupancy for the Project, this Agreement shall automatically terminate and be of no further force or effect. The Owner shall provide all notices and rights to tenants required to be given prior to and upon the expiration of affordability covenants pursuant to Government Code Section 65863.10 or a successor statute.

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. 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 Very Low Income Households and Residents, 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 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. 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 Units to prospective Extremely Low, Very Low and Lower Income Households in accordance with fair housing laws and this Agreement, Owner's Resident selection criteria, and how Owner plans to certify the eligibility of Residents. The Plan will also 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 Lower Income Households 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.

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 B.

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 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 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.

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 approval by the City which approval shall not be unreasonably withheld, 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 to an affiliate of Owner, as set forth in the Development Agreement.

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.

The Parties contemplate that Owner will assign its rights under this Agreement or its interests, rights, or obligations in the Property or under this Agreement, to a tax credit limited partnership that is an affiliate of Owner. Notwithstanding anything to the contrary herein, a transfer by the investor limited partner of its limited partner interest in the affiliate, or the exercise by the investor limited partner of its remedies against Owner for breach of the partnership agreement, including removal of Owner as a general partner, shall not constitute an assignment of Owner's interests, rights, or obligations in the Property or under this Agreement that would require City approval.

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. 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.

8.3 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 8.1 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) or the Assignment and Assumption Agreement as defined in Section 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 sixty (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. 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 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. 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 Party 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 Email: mike.futrell@ssf.net
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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  
555 12th Street, Suite 1500  
Oakland, CA 94607  
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 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 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. Exhibit A and Exhibit 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: \_Mike Futrell

Title: 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.**



STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN MATEO )

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

[illegible]

WITNESS my hand and official seal.

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

Exhibit A

[Insert Property Legal Description]

3426169.1