

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"), Baden Development, LLC, a California limited liability company ("Baden"), and For The Future Housing, Inc., 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, as amended by 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 (as amended, 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 a "**Regulatory Agreement**"), 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 has assigned all of its rights and obligations under the Agreement to Buyer, and Buyer has accepted and assumed 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, (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**, with amendments to Agreement reflected as additions in double underline and deletions in ~~strikethrough~~.

1. **Consent to Assignment.** Buyer assumes 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. **Section 5.1 of Agreement is Amended as Follows:**

Section 5.1

- a) ~~The Closing Date shall be delayed until May 17, 2021. The Closing Date shall occur on January 5, 2022. Baden has paid Seller a fee of \$15,000 for this delay of the Closing Date.~~
- 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. 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. **Section 5.2(e) (Buyer's Conditions to Closing) of Agreement is Amended as Follows:**

Section 5.2(e) Seller shall have approved Buyer's draft financing plan for the development of the Property, which shall outline the sources/uses and anticipated timeline for securing financing and shall include a proforma reasonably acceptable to Seller and proof of ~~construction loan necessary to reasonably complete the development of the Property~~ acquisition loan (the "**Developer's First Financing Plan**"). Prior to issuance of the first building permit that is necessary to enable development of the Property, Buyer shall provide proof of construction loan and executed construction contract(s) necessary to reasonably complete the development of the Property ("Developer's Second Financing Plan").

4. **Section 5.2(h) of Agreement is Amended as Follows:**

Section 5.2(h) Buyer and Seller shall have executed an Affordable Housing Regulatory

Agreement and Declaration of Restrictive Covenants—(“AHA”) (“Regulatory Agreement”) 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~~ Construction of thirty-five (35) affordable dwelling units and one (1) manager unit on the Property (hereinafter “Units”); (2) Affordability levels of the Units, as established in the Regulatory Agreement, shall reflect the lower of the Area Median Income (“AMI”) amounts as defined in South San Francisco Municipal Code Chapter 20.380, and affordability levels shall be consistent with the AMI levels outlined in Regulatory Agreement Exhibit B; (23) 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. Buyer may not assign its rights and obligations under the Regulatory Agreement without the prior written consent of Seller and the approval of the City, as provided therein. Seller’s consent pursuant to this section, whether by the City Council or City Manager, shall not be unreasonably withheld conditioned, or delayed.

5. **Section 5.6 (Post-Closing Obligations) of Agreement is Amended as Follows:**

Section 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. Buyer shall obtain building permits that are necessary to enable development of the Property within twenty-four (24) months after the Closing Date. Building permit issuance shall be contingent upon Seller approving the Developer’s Second Financing Plan. If Buyer has not obtained all necessary financing within twenty-four (24) months, Buyer has submitted a minimum of two low income housing tax credit applications, and City determines there is a reasonable likelihood that necessary financing will be obtained, the City Manager may, upon request from the Borrower, extend Buyer’s obligation to pull building permits up to an additional twenty four (24) months. Any request for extension by Borrower must be received by City no later than ninety (90) days before the date upon which building permits must be obtained. Any extension approved by the City Manager shall be in writing.
- (b) Commence Work. Buyer shall commence work to develop the Property within forty-five (45) days of the Close of Escrow. After Buyer has obtained the building permits, as required in subsection (a)

- above, Buyer shall commence construction within six (6) months from the issuance of the first building permit.
- (c) Lot Merger. Buyer shall use commercially reasonable efforts to record the merger of the Property with the Adjacent Lot within ten (10) business days of the Close of Escrow.
 - (d) Parking Spaces. Buyer agrees to enter into a license agreement with Seller after the Closing Date to authorize the continued use of the Property as parking spaces until Buyer begins construction on the Property. The City shall indemnify and defend Buyer from liability associated with such use.
 - (e) Transfer/Sale. Buyer intends to form a single purpose entity prior to the Closing Date. Buyer shall not transfer or sell the Property to a different corporation, organization, entity, or individual after the Closing Date unless Buyer has obtained prior written consent from the City for such conveyance, which consent shall not be unreasonably withheld, conditioned, or delayed.

5. **Regulatory Agreement.** Buyer and Seller hereby approve the revised Regulatory Agreement in the form attached hereto as Exhibit B and incorporated herein. The Regulatory Agreement, executed by the parties prior to the Closing Date, shall be substantially in the form attached hereto as Exhibit B.

6. **Prevailing Wage.** Buyer and its contractors and agents shall be responsible for determining whether California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), shall be applicable to the Project. If Buyer, its contractors and agents determine that Prevailing Wage Laws apply to the Project, Buyer shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Buyer's expense.

To the fullest extent permitted by law, Buyer shall indemnify, defend (with counsel approved by City) and hold the City, and their respective elected and appointed officers, officials, employees, agents, consultants, and contractors (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**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Buyer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement. The provisions of this Section 6 shall survive the expiration or earlier

termination of this Agreement and the issuance of a Certificate of Completion for the Project. Buyer's indemnification obligations set forth in this section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees.

7. **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.

8. **Counterparts.** 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

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