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City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
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**AFFORDABLE HOUSING REGULATORY AGREEMENT**

**AND**

**DECLARATION OF RESTRICTIVE COVENANTS**

**428-432 Baden Avenue**

**by and between**

**THE CITY OF SOUTH SAN FRANCISCO**

**and**

**FOR THE FUTURE HOUSING, INC.**

## AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

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 For the Future Housing, Inc., a California corporation (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

### RECITALS

A. Owner owns, or intends to acquire, that certain real property located in the City of South San Francisco at 428 Baden Avenue, known as San Mateo County Assessor’s Parcel No. 012-314-010, and that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as County Assessor’s Parcel No. 012-321-160, more particularly described in Exhibit A attached hereto (collectively, the “**Combined Properties**”).

B. In accordance with 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, that certain Second Amendment to Purchase And Sale Agreement And Joint Escrow Instructions dated December 21, 2020, and that certain Third Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated \_\_\_\_\_ (as amended, the “**PSA**”) with respect to the sale of that certain real property located at 432 Baden Avenue, South San Francisco, California (Assessor’s Parcel Number 012-321-160), Owner will construct thirty-five (35) affordable dwelling units and one (1) manager unit on the Combined Properties (the “**Project**”).

C. On August 6, 2020, the Planning Commission approved a Use Permit and Design Review (Planning Commission Resolution No. 2866-2020), which approval, together with any approvals or permits now or hereafter issued with respect to the Project are referred to as the “**Project Approvals**.”

D. Owner has applied for a density bonus pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390. Owner has elected to obtain a 35% density bonus under state density bonus law.

E. The Downtown Residential Core (DRC) Zoning District, where the project is located, permits a density of 80 du/acre. The project site at 428 and 432 Baden Avenue is 14,000 sq. ft. therefore permitting a base density 26 units for the project. Owner has agreed that the Project will contain thirty-five (35) affordable dwelling units available to Eligible Households at an Affordable Rent, as those terms are defined in Section 1 hereof.

F. The Project utilizes one incentive/concession from the requirement under SSFMC 20.280.004 to increase the maximum lot coverage from 90% to 95%, and one development standard waiver from the requirement under SSFMC 20.300.016 that all electrical, telephone, cable television, and similar distribution lines providing direct service to a development site shall

be undergrounded.

G. Owner has, pursuant to Municipal Code Section 20.390.010.B.7, requested concessions and development standard waivers, including a reduction in total parking spaces. Based on the percentage of affordability units set aside, the Project is entitled to receive a parking reduction ratio of 0.5 spaces per bedroom, which would reduce the required number of parking spaces under SSFMC 20.330.007 to 23 spaces, although Owner has elected to provide 28 spaces.

H. Upon or prior to its completion of construction of the Project, Owner intends to enter into a Regulatory Agreement with the California Tax Credit Allocation Committee ("CTCAC") which will require that thirty-five (35) of the units in the Project are made available and rented to lower income tenants at an affordable rent.

I. To assist in the construction of affordable units at 428-432 Baden Avenue, City provided Owner with a loan. The short term component of the loan in the amount of Two Million Dollars (\$2,000,000.00) and the long term component of the loan in the amount of Two Million Fifty Thousand Dollars (\$2,050,000.00) will be provided from City Commercial Linkage Fee Fund (the "**Loan**"), as further set forth in the loan agreement entered into between the Parties ("**Loan Agreement**") concurrently herewith.

J. As a condition to the Loan Agreement, the City requires the Combined Properties 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, thirty-five (35) residential units in the Project be rented at Affordable Rents to Eligible Households ("**Restricted Units**"). The City requires Restricted Units assisted with funds from the City's Commercial Linkage Fee Fund to remain affordable for the longest feasible time.

K. 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.

**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.

"**Affordable Rent**" means the maximum rent for a Restricted Unit permitted under Section 2.2 hereof.

"**Area Median Income**" or "**AMI**" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the rents published annually by

the California Tax Credit Allocation Committee.

**"City Documents"** means this Agreement, the Loan Agreement, the Promissory Note and the Deed of Trust.

**"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.

**"Claims"** is defined in Section 10.

**"Indemnitees"** is defined in Section 10.

**"Rent-Restricted"** means a dwelling unit for which the gross rent charged for such unit does not exceed the Affordable Rent permitted under Section 2.2 hereof.

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

**"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.

**"TCAC"** shall mean the California Tax Credit Allocation Committee.

**"Units"** shall mean the individual dwelling units to be constructed on the Combined Properties as part of the Project.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Properties and Project shall be used solely for the operation of affordable rental housing and related improvements in compliance with the Project Approvals 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 Income Limits. For a term of fifty-five (55) years commencing upon the date of City's issuance of a final certificate of occupancy for the Project, not less than thirty-five (35) of the Units in the Project (the "Restricted Units") shall be Rent-Restricted (as defined below), occupied (or if vacant, available for occupancy), and rented at Affordable Rent to Eligible Households. If the Project receives an allocation of Low Income Housing Tax Credits, upon or prior to its completion of construction of the Project, Owner shall enter into a Regulatory Agreement with CTCAC which requires that thirty-five (35) of the units in the Project are made available and rented to lower income tenants at an affordable rent (the "CTCAC Regulatory Agreement").

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 Affordable Rents for Restricted Units. The maximum rents of the Eligible Household tenants of the thirty-five (35) residential units subject to this Agreement shall be in accordance with the maximum rents set forth in Health and Safety Code Section 50053. 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 except as specified in this Section 2.2.

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 Restricted Unit by an Eligible Household, Owner shall rent the Unit to another Eligible Household at Affordable Rents in accordance with Section 2.1 and Exhibit B within thirty (30) days of termination of occupancy by the former Eligible Household.

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality among the different affordability categories set forth in Exhibit B. Eligible Households of Restricted Units shall have access to all common facilities of the Project equal to that of all other Eligible Households of Units in the Project and among the affordability categories set forth in Exhibit B. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.5 City Loan Funds. Owner shall ensure that all City Loan Funds are used for the construction and development of the Project in a manner consistent with the applicable City Loan Funds requirements and City Documents' terms, which at a minimum, requires residential rental units assisted with funds from the City's Affordable Housing Trust Fund to remain affordable for the longest feasible time.

2.6 No 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.

## 2.7 Non-Discrimination; Compliance with Fair Housing Laws.

2.7.1 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, if the Project receives an allocation of Low Income Housing Tax Credits, 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.

2.7.2 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.

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Combined Properties 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 Combined Properties, 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 Combined Properties, Project or part thereof.

All deeds made or entered into by Owner, its successors or assigns, as to any portion of the Combined Properties 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 Combined Properties 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. Eligible 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 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 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 Combined Properties 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 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.

#### 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 City's 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 successor statutes.

4.2 Effectiveness Succeeds Conveyance of Combined Properties 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 Combined Properties 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 Combined Properties 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 Combined Properties, the Project or any part thereof or interest therein. Each and every contract, deed, ground lease or other instrument affecting or conveying the Combined Properties 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 Combined Properties 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 Combined Properties 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 Combined Properties 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 Combined Properties 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 Combined Properties (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 Combined Properties or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Properties and the Project and shall make all repairs, renewals and replacements necessary to keep the Properties and the improvements located thereon in good condition and repair. Owner shall provide reasonable 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 Combined Properties and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Combined Properties.

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 Combined Properties ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the 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 set forth the manner in which Owner will encourage or incentivize (including financial incentives, to the extent allowed by TCAC regulations) Eligible Households who no longer qualify as Eligible 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 Combined Properties and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Combined Properties 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 Combined Properties 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 C.

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 Combined Properties.

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 City's 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 Combined Properties, 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 Combined Properties to an affiliate of Owner, as set forth in the Loan 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 Combined Properties 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 Combined Properties 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

Combined Properties, the Project or part thereof for the benefit of a lender (“**Lender**”) shall contain each of the following provisions: (i) Lender shall 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 Combined Properties, 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 Combined Properties 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 Combined Properties 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 Combined Properties or the Project or failure to pay any other charge that may result in a lien on the Combined Properties 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 Combined Properties 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 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 Combined Properties 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](mailto: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: [nell.selander@ssf.net](mailto:nell.selander@ssf.net)

With a Copy to: Meyers Nave  
Attn: Sky Woodruff, City Attorney  
1999 Harrison Street, 9<sup>th</sup> Floor  
Oakland, CA 94607  
Tel (510) 808-2000  
Fax (510) 444-1108  
Email [swoodruff@meyersnave.com](mailto: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, Exhibit B and Exhibit C, 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: \_\_\_\_\_

Charles Michael Futrell  
City Manager

ATTEST:

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

Rosa Govea Acosta,  
City Clerk

APPROVED AS TO FORM:

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

Sky Woodruff, City Attorney

**OWNER**

[Insert FTFH Signature Block]

**SIGNATURES MUST BE NOTARIZED.**



[illegible]

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

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

STATE OF CALIFORNIA )  
 )  
 )  
COUNTY OF SAN MATEO )

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

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

Exhibit A

Legal Description of Combined Properties

DRAFT

### Affordable Housing Requirements

- 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.

**EXHIBIT C**  
**Insert Insurance Requirements**

3884825.4

DRAFT