



REGULAR MEETING

OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF SOUTH SAN FRANCISCO REDEVELOPMENT AGENCY

P.O. Box 711 (City Hall, 400 Grand Avenue)
South San Francisco, California 94083

CITY HALL
LARGE CONFERENCE ROOM, TOP FLOOR
400 GRAND AVENUE

TUESDAY, DECEMBER 15, 2015
2:00 P.M.

PEOPLE OF SAN MATEO COUNTY

You are invited to offer your suggestions. In order that you may know our method of conducting Board business, we proceed as follows:

The regular meetings of the South San Francisco Oversight Board for the Successor Agency to the City of South San Francisco Redevelopment Agency are held on the third Tuesday of each month at 2:00 p.m. in the in the Large Conference Room, Top Floor at City Hall, 400 Grand Avenue, South San Francisco, California.

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item, and is distributed less than 72 hours prior to a regular meeting will be made available for public inspection in the City Clerk's Office located at City Hall. If, however, the document or writing is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting, as listed on this agenda. The address of City Hall is 400 Grand Avenue, South San Francisco, California 94080.

In compliance with Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the South San Francisco City Clerk's Office at (650) 877-8518. Notification 48 hours in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Chairperson:

Neil Cullen

Selected by:

Largest Special District of the type in H&R
Code Section 34188

Vice Chair:

Michael Krause
Assistant Superintendent, Business Services
South San Francisco Unified School District
Alternate: Vacant
Superintendent, South San Francisco Unified School District

Selected by:

San Mateo County Superintendent of Schools

Board Members:

Mark Addiego
Councilmember, City of South San Francisco

Barbara Christensen
Director of Community/Government Relations,
San Mateo County Community College District

Reyna Farrales
Deputy County Manager, San Mateo County

Paul Scannell

Billy Gross
Senior Planner, City of South San Francisco

Selected by:

Mayor of the City of South San Francisco

Chancellor of California Community College

San Mateo County Board of Supervisors

San Mateo County Board of Supervisors
(Public Member)

Mayor of the City of South San Francisco

Counsel

Craig Labadie

Advisory:

Jim Steele – Assistant City Manager, City of South San Francisco
Richard Lee – Finance Director, City of South San Francisco
Alex Greenwood – Director of Economic and Community Development, City of South San Francisco
Steve Mattas – Assistant City Attorney, City of South San Francisco
Krista Martinelli – City Clerk, City of South San Francisco
Armando Sanchez – Redevelopment Consultant, City of South San Francisco

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

AGENDA REVIEW

COMMUNICATIONS FROM STAFF

PUBLIC COMMENTS

Comments from members of the public on items not on this meeting agenda. The Chair may set time limit for speakers. Since these topics are non-agenda items, the Board may briefly respond to statements made or questions posed as allowed by the Brown Act (Government Code Section 54954.2). However, the Board may refer items to staff for attention, or have a matter placed on a future agenda for a more comprehensive action report.

MATTERS FOR CONSIDERATION

1. Motion to approve the Minutes of the Regular Meeting of November 17, 2015.
2. Approval of conceptual deal points for a proposal for the City to make an up-front payment to taxing entities in lieu of drafting a Revenue Sharing Agreement for commercial space at 636 El Camino Real, and direction to staff to return to the Oversight Board with a Resolution containing final terms.

PUBLIC HEARING

3. Resolution of the South San Francisco Oversight Board approving a Disposition and Development Agreement Between the Successor Agency and Brookwood Equities, LLC, for the Acquisition of Successor Agency Owned Parcels at 201, 207, 217-219 and 227 Grand Avenue (also known as 255 Cypress Avenue), for a Mixed-Use Residential Development. (Ron Gerber, ECD Housing Manager).

CLOSED SESSION

4. Closed Session:
Conference with Real Property Negotiators
(Pursuant to Government Code Section 54956.8)
Properties: 401, 411, 421, & 315 Airport Blvd, 405 Cypress Ave., and 216 Miller Ave., (the former Ford Properties).
Agency Negotiators: Alex Greenwood and Ron Gerber.
Negotiating Parties: Miller Cypress SSF, LLC, and the Successor Agency to the Redevelopment Agency of the City of South San Francisco.
Under negotiation: Price and terms for disposition of the property.

FUTURE AGENDA ITEMS

ADJOURNMENT



MINUTES
REGULAR MEETING
OVERSIGHT BOARD FOR THE
SUCCESSOR AGENCY TO THE CITY OF
SOUTH SAN FRANCISCO
REDEVELOPMENT AGENCY

DRAFT

P.O. Box 711 (City Hall, 400 Grand Avenue)
South San Francisco, California 94083

CITY HALL
LARGE CONFERENCE ROOM, TOP FLOOR
400 GRAND AVENUE

TUESDAY, NOVEMBER 17, 2015
2:00 P.M.

CALL TO ORDER

TIME: 2:00 P.M.

ROLL CALL

PRESENT: Boardmembers Addiego,
Gross, Scannell and Christensen,
Vice Chair Krause and Chair Cullen.

ABSENT: Boardmember Farrales.

PLEDGE OF ALLEGIANCE

Led by Boardmember Addiego.

AGENDA REVIEW

Chair Cullen advised of his recommendation that Items Nos. 3 and 4 be heard after Item No. 1.
Boardmembers agreed.

COMMUNICATIONS FROM STAFF

None.

PUBLIC COMMENTS

None.

MATTERS FOR CONSIDERATION

1. Motion to approve the Minutes of the Regular Meeting of October 20, 2015.

Motion–Boardmember Addiego/Second–Boardmember Scannell: to approve the minutes of the Regular Meeting of October 20, 2015. Approved by the following vote: AYES: Boardmembers Addiego, Gross, Scannell and Christensen, Vice Chair Krause and Chair Cullen. NAYS: None. ABSTAIN: None. ABSENT: Boardmember Farrales.

CLOSED SESSION

Time entered Closed Session: 2:02 P.M.
Open Session resumed: 3:07 P.M.

2. Closed Session:
Conference with Real Property Negotiators:
(Pursuant to Government Code Section 54956.8)
Properties: 201-219 Grand Avenue (APN: 012-316-110, 012-316-100, and 012-316-090) and 418 Linden Avenue (APN: 012-314-010)
Agency Negotiators: Alex Greenwood
Negotiating Parties: Brookwood Equities, LLC, the City of South San Francisco, and the Successor Agency to the Redevelopment Agency of the City of South San Francisco
Under Negotiation: Price and terms for disposition of the property.
3. Conference with Real Property Negotiators
(Pursuant to Government Code Section 54956.8)
Properties: 401, 411, 421, & 315 Airport Blvd, 405 Cypress Ave., and 216 Miller Ave., (the former Ford Properties).
Agency Negotiators: Alex Greenwood and Ron Gerber.
Negotiating Parties: Miller Cypress SSF, LLC, and the Successor Agency to the Redevelopment Agency of the City of South San Francisco.
Under negotiation: Price and terms for disposition of the property.

Report out of Closed Session by Chair Cullen: No reportable action.

4. Reorganization of the Board.

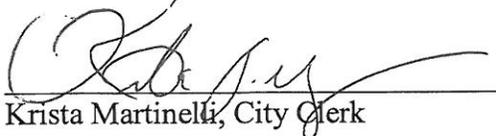
Motion–Boardmember Scannell/Second–Boardmember Christensen: to maintain the current organization of the Board with Neil Cullen serving as Chair and Michael Krause serving as Vice Chair. Approved by the following vote: AYES: Boardmembers Addiego, Gross, Scannell and Christensen, Vice Chair Krause and Chair Cullen. NAYS: None. ABSTAIN: None. ABSENT: Boardmember Farrales.

ADJOURNMENT

Being no further business Chair Cullen adjourned the meeting at 3:08 P.M.

Submitted by:

Approved by:



Krista Martinelli, City Clerk
City of South San Francisco

Neil Cullen, Chairperson of the Oversight Board
City of South San Francisco



Redevelopment Successor Agency Oversight Board

Staff Report

DATE: December 15, 2015

TO: Members of the Oversight Board

FROM: Alex Greenwood, Director of Economic and Community Development

SUBJECT: OUTLINE FOR THE TERMS OF A REVENUE SHARING AGREEMENT FOR COMMERCIAL SPACE AT 636 EL CAMINO REAL

RECOMMENDATION

It is recommended that the Oversight Board review the staff report and approve the conceptual deal points for a Revenue Sharing Agreement for commercial space at 636 El Camino Real and direct staff to return to the Oversight Board with a draft Revenue Sharing Agreement containing those terms.

BACKGROUND

As described in previous reports to the Oversight Board, 636 El Camino Real is a mixed-use affordable housing development constructed by Mid-Peninsula Housing Coalition (Mid-Pen) and sponsored by the Redevelopment Agency of the City of South San Francisco (RDA). To assist with making the project affordable to lower income households, the RDA contributed land and a \$9.9 million loan to Mid-Pen. These were RDA assets until redevelopment was abolished by the State of California. Pursuant to the dissolution statutes, the California Department of Finance (DOF) authorized the transfer of the land and Mid-Pen's \$9.9 million loan to the City as housing successor. Mid-Pen, as developer, owns the building improvements. However, because the housing project contains approximately 5,160 square feet of retail space, it is subject to California Health and Safety Code section 34176 (f), which requires the Oversight Board to:

“...consider the overall value to the community as well as the benefit to taxing entities of keeping the entire development intact or dividing the title and control over the property between the Housing Successor and the Successor Agency or other public or private agencies. The disposition of those assets may be accomplished by a revenue-sharing arrangement as approved by the Oversight Board on behalf of the affected taxing entities (emphasis added)”

The City, as housing successor, owns the land and has entered into a long term ground lease with Mid-Pen. Pursuant to a Master Lease Agreement, Mid-Pen leased the retail space to the former RDA for a term of 75 years. This was required to allow the RDA to control the commercial space tenants and ensure the spaces would be occupied. The RDA was interested in control primarily from a land use perspective; to attempt to increase pedestrian traffic and make the site more of an urban amenity, rather than as a revenue seeking tool. The Oversight Board and DOF authorized the assignment of the lease to the City. The City

subsequently entered into sub-lease agreements for two of the three commercial spaces and has completed the tenant improvements in those two spaces. The City, as Housing Successor Agency, paid for the cost of the two retail spaces with funding from Mid-Pen. With the City now collecting rents, it is necessary for the City and Oversight Board to reach agreement with respect to Health and Safety Code Section 34176(f) requiring a shared revenue agreement.

On August 19, 2014, the Oversight Board stated its preference that all net rental revenues (gross revenue minus operating costs and reserves) from the three retail spaces at 636 El Camino Real (the "Project") be conveyed to the taxing agencies. In exchange for receiving all net rental revenue, the Oversight Board agreed the Successor Agency would fund the initial tenant improvements for the third vacant retail unit in the Project (estimated at \$450,000). On September 23, 2014, the Oversight Board approved the submittal of the Successor Agency's Recognized Obligations Payment Schedule (ROPS) 14-15B that included \$450,000 in Redevelopment Property Tax Trust Fund (RPTTF) for the cost of the initial tenant improvements. The California Department of Finance subsequently reviewed the funding request for the Project and authorized it by virtue of approving ROPS 14-15B. Because RPTTF funds cannot be carried over from one ROPS period to the next, the funding request would appear in every ROPS cycle until the City entered into a lease agreement with a tenant and completes the tenant improvement.

However, upon submittal of the ROPS 15-16A, which included the \$450,000 in tenants improvements, DOF reversed its decision which had allocated RPTTF funding for the tenant improvements. The reason for the denial is that a contractual obligation for this agreement did not exist at the time the RDA was dissolved. The Successor Agency appealed the decision but DOF informed the Successor Agency that its initial determination allowing the expense from RPTTF was inappropriate. As a result, DOF determined the denial was final.

DISCUSSION

Following the decision by DOF, the Oversight Board directed a subcommittee, consisting of Board Members Mark Addiego and Barbara Christenson, to meet to discuss an alternative to the revenue sharing arrangement invalidated by DOF's denial of the ROPS expense. The two board members agreed that it would be fair and appropriate for the taxing agencies to receive an up front, one-time payment reflecting the net present value of the cash flows they would receive over time from the net rental payments. An up-front payment would have value for all parties by eliminating the City's and the taxing agencies' need to monitor the project in perpetuity and allow for winding down the affairs of the former Redevelopment Agency.

Based on this direction, a financial analysis was conducted by Economic Development and Finance Department staff to determine the income and expenses for the project, net operating income, and the net present value of annual net payments to the taxing agencies. Board Member Christenson requested a third party review the assumptions in the pro forma to verify whether they are reasonable. Board Member Christenson and staff had a conference call with James Chung, a retail expert and broker at Cassidy Turley, who was able to answer questions, verify assumption or provide market information as needed. Staff subsequently incorporated changes agreed upon during the call and information provide by Mr. Chung into the pro forma. A summary of the analysis appears as Exhibit A, and a list of assumptions used in the analysis appears as Exhibit B. Four of the assumptions used in the analysis merit explanation:

- **Share of Net Revenues:** The analysis assumes that the taxing entities will receive 29.65% of net revenues. This was calculated because the former Redevelopment Agency of the City of South San Francisco contributed \$14,458,537 (29.65%) of the total project development cost of \$48,769,355 (private tax credit investors and lenders contributed the bulk of the remaining funds). At one time, the City had agreed to give the taxing agencies 100% of the net income in exchange for the Oversight Board providing 100% (\$450,000) of the tenant improvements costs for the 3rd retail unit. However, the Successor Agency is no longer providing these funds therefore a proportional share to the amount contributed to the project would be a more appropriate way to apportion revenues going forward.
- **Buildout of 3rd Retail Space:** The City estimates it will pay \$450,000 for tenant improvements (plus \$10,000 to partially offset staff costs to manage the construction). The pro forma assumes that the cost for the buildout will occur in year 2.
- **Staffing Costs:** Annual City staff costs for administration are assumed to be 5% of gross income instead of 10% as previously estimated. This reduced staffing costs from \$6,000 per year to \$3,000 per year. An exception is made in year 2, when \$10,000 is allocated for staff costs to partially offset construction management costs for the buildout of the 3rd unit.
- **Discount Rate:** As shown in Exhibit A, the pro forma analysis calculates the net present value of the cash flows using an 8.5% discount rate as suggested by Mr. Chung of Cassidy Turley. This discount rate represents the property's current condition at 636 El Camino Real which includes a retail project with high vacancy, an unproven location, a site with physical limitations, and the added risk of having independent or "mom and pop-owned" tenants that typically have much greater risk from default. Based on the pro forma analysis contained in Exhibit A, the 30-year net present value of the retail spaces is \$122,696.

CONCLUSION

It is recommended that the Oversight Board review the terms of a Revenue Sharing Agreement for the commercial space at 636 El Camino Real as outlined in this staff report and attachments, and direct staff to return to the Oversight Board with a draft Revenue Sharing Agreement with those terms.

By: 
Alex Greenwood
Director of Economic and
Community Development

By: 
Mike Futrell
Executive Director

Attachments: Exhibit A – 636 El Camino Real Retail Pro-Forma
Exhibit B – Pro Forma Assumptions

| | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
|----|---------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| \$ | 45,604 | \$ 46,972 | \$ 48,381 | \$ 49,832 | \$ 51,327 | \$ 52,867 | \$ 54,453 | \$ 56,087 | \$ 57,769 | \$ 59,503 | \$ 61,288 | \$ 63,126 | \$ 65,020 | \$ 66,971 | \$ 68,980 |
| \$ | 30,402 | \$ 31,315 | \$ 32,254 | \$ 33,222 | \$ 34,218 | \$ 35,245 | \$ 36,302 | \$ 37,391 | \$ 38,513 | \$ 39,668 | \$ 40,858 | \$ 42,084 | \$ 43,347 | \$ 44,647 | \$ 45,986 |
| \$ | 57,315 | \$ 59,034 | \$ 60,805 | \$ 62,629 | \$ 64,508 | \$ 66,443 | \$ 68,437 | \$ 70,490 | \$ 72,604 | \$ 74,782 | \$ 77,026 | \$ 79,337 | \$ 81,717 | \$ 84,168 | \$ 86,693 |
| \$ | 133,496 | \$ 137,519 | \$ 141,662 | \$ 145,930 | \$ 150,326 | \$ 154,854 | \$ 159,518 | \$ 164,322 | \$ 169,225 | \$ 174,318 | \$ 179,564 | \$ 184,966 | \$ 190,531 | \$ 196,263 | \$ 202,167 |
| \$ | 13,332 | \$ 13,732 | \$ 14,144 | \$ 14,568 | \$ 15,005 | \$ 15,456 | \$ 15,919 | \$ 16,397 | \$ 16,889 | \$ 17,395 | \$ 17,917 | \$ 18,455 | \$ 19,008 | \$ 19,579 | \$ 20,166 |
| \$ | 4,000 | \$ 4,120 | \$ 4,243 | \$ 4,370 | \$ 4,502 | \$ 4,637 | \$ 4,776 | \$ 4,919 | \$ 5,067 | \$ 5,219 | \$ 5,375 | \$ 5,536 | \$ 5,703 | \$ 5,874 | \$ 6,050 |
| \$ | 2,666 | \$ 2,746 | \$ 2,829 | \$ 2,914 | \$ 3,001 | \$ 3,091 | \$ 3,184 | \$ 3,279 | \$ 3,378 | \$ 3,479 | \$ 3,583 | \$ 3,691 | \$ 3,802 | \$ 3,916 | \$ 4,033 |
| \$ | 1,333 | \$ 1,373 | \$ 1,414 | \$ 1,457 | \$ 1,501 | \$ 1,546 | \$ 1,592 | \$ 1,640 | \$ 1,689 | \$ 1,740 | \$ 1,792 | \$ 1,845 | \$ 1,901 | \$ 1,958 | \$ 2,017 |
| \$ | 667 | \$ 687 | \$ 707 | \$ 728 | \$ 750 | \$ 773 | \$ 796 | \$ 820 | \$ 844 | \$ 870 | \$ 896 | \$ 923 | \$ 950 | \$ 979 | \$ 1,008 |
| \$ | 5,319 | \$ 5,585 | \$ 5,864 | \$ 6,157 | \$ 6,465 | \$ 6,788 | \$ 7,128 | \$ 7,484 | \$ 7,858 | \$ 8,251 | \$ 8,664 | \$ 9,097 | \$ 9,552 | \$ 10,029 | \$ 10,531 |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | 1,406 | \$ 1,435 | \$ 1,463 | \$ 1,493 | \$ 1,522 | \$ 1,553 | \$ 1,584 | \$ 1,616 | \$ 1,648 | \$ 1,681 | \$ 1,714 | \$ 1,749 | \$ 1,784 | \$ 1,819 | \$ 1,856 |
| \$ | 6,666 | \$ 6,866 | \$ 7,072 | \$ 7,284 | \$ 7,503 | \$ 7,728 | \$ 7,960 | \$ 8,198 | \$ 8,444 | \$ 8,698 | \$ 8,959 | \$ 9,227 | \$ 9,504 | \$ 9,789 | \$ 10,083 |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | 2,666 | \$ 2,746 | \$ 2,829 | \$ 2,914 | \$ 3,001 | \$ 3,091 | \$ 3,184 | \$ 3,279 | \$ 3,378 | \$ 3,479 | \$ 3,583 | \$ 3,691 | \$ 3,802 | \$ 3,916 | \$ 4,033 |
| \$ | 19,998 | \$ 20,598 | \$ 21,216 | \$ 21,852 | \$ 22,508 | \$ 23,183 | \$ 23,879 | \$ 24,595 | \$ 25,333 | \$ 26,093 | \$ 26,876 | \$ 27,682 | \$ 28,513 | \$ 29,368 | \$ 30,249 |
| \$ | 58,054 | \$ 59,888 | \$ 61,782 | \$ 63,738 | \$ 65,758 | \$ 67,845 | \$ 70,001 | \$ 72,227 | \$ 74,528 | \$ 76,904 | \$ 79,359 | \$ 81,896 | \$ 84,518 | \$ 87,226 | \$ 90,026 |
| \$ | 75,442 | \$ 77,631 | \$ 79,881 | \$ 82,193 | \$ 84,568 | \$ 87,009 | \$ 89,518 | \$ 92,094 | \$ 94,698 | \$ 97,414 | \$ 100,204 | \$ 103,070 | \$ 106,014 | \$ 109,037 | \$ 112,141 |
| \$ | 22,369 | \$ 23,018 | \$ 23,685 | \$ 24,370 | \$ 25,075 | \$ 25,798 | \$ 26,542 | \$ 27,306 | \$ 28,078 | \$ 28,883 | \$ 29,711 | \$ 30,560 | \$ 31,433 | \$ 32,329 | \$ 33,250 |

| | 24 | 25 | 26 | 27 | 28 | 29 | 30 |
|----|---------|------------|------------|------------|------------|------------|------------|
| \$ | 71,049 | \$ 73,181 | \$ 75,376 | \$ 77,637 | \$ 79,966 | \$ 82,365 | \$ 84,836 |
| \$ | 47,366 | \$ 48,787 | \$ 50,251 | \$ 51,758 | \$ 53,311 | \$ 54,910 | \$ 56,558 |
| \$ | 89,294 | \$ 91,973 | \$ 94,732 | \$ 97,574 | \$ 100,501 | \$ 103,516 | \$ 106,622 |
| \$ | 208,248 | \$ 214,511 | \$ 220,963 | \$ 227,607 | \$ 234,452 | \$ 241,501 | \$ 248,762 |
| \$ | 20,771 | \$ 21,394 | \$ 22,036 | \$ 22,697 | \$ 23,378 | \$ 24,079 | \$ 24,802 |
| \$ | 6,231 | \$ 6,418 | \$ 6,611 | \$ 6,809 | \$ 7,013 | \$ 7,224 | \$ 7,440 |
| \$ | 4,154 | \$ 4,279 | \$ 4,407 | \$ 4,539 | \$ 4,676 | \$ 4,816 | \$ 4,960 |
| \$ | 2,077 | \$ 2,139 | \$ 2,204 | \$ 2,270 | \$ 2,338 | \$ 2,408 | \$ 2,480 |
| \$ | 1,039 | \$ 1,070 | \$ 1,102 | \$ 1,135 | \$ 1,169 | \$ 1,204 | \$ 1,240 |
| \$ | 11,057 | \$ 11,610 | \$ 12,191 | \$ 12,800 | \$ 13,440 | \$ 14,112 | \$ 14,818 |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | 1,893 | \$ 1,931 | \$ 1,969 | \$ 2,009 | \$ 2,049 | \$ 2,090 | \$ 2,132 |
| \$ | 10,385 | \$ 10,697 | \$ 11,018 | \$ 11,348 | \$ 11,689 | \$ 12,040 | \$ 12,401 |
| \$ | - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| \$ | 4,154 | \$ 4,279 | \$ 4,407 | \$ 4,539 | \$ 4,676 | \$ 4,816 | \$ 4,960 |
| \$ | 31,156 | \$ 32,091 | \$ 33,054 | \$ 34,045 | \$ 35,067 | \$ 36,119 | \$ 37,202 |
| \$ | 92,918 | \$ 95,908 | \$ 98,998 | \$ 102,192 | \$ 105,494 | \$ 108,907 | \$ 112,436 |
| \$ | 115,330 | \$ 118,603 | \$ 121,964 | \$ 125,415 | \$ 128,957 | \$ 132,594 | \$ 136,326 |
| \$ | 34,195 | \$ 35,166 | \$ 36,162 | \$ 37,186 | \$ 38,236 | \$ 39,314 | \$ 40,421 |

EXHIBIT B**Assumptions:**

1. NPV calculated as if the taxing agencies receive 29.65% of net revenues. (Note: This is proportionate to the former Redevelopment Agency's contribution to the project. Other funding sources made up the rest of the funding).
2. \$450,000 capital outlay by City is needed in Year 2 for tenant improvements/buildout to 3rd retail space.
3. Operating expenses based on historic performance of the asset.
4. Staff costs reduced from 10% to 5% of gross income totaling \$3,000 per year. This reflects costs for accounting, management of the property management consultant, and other oversight.
5. Vacancy reserve @ 2% of gross income.
6. Capital replacement reserve @ 15% of gross income.
7. Discount Rate is set at 8.5% based on information provided by James Chung, a retail expert and broker at Cassidy Turley. This discount rate represents the property's current condition which includes a retail project with high vacancy, an unproven location, a site with physical limitations, and the added risk of having independent or "mom and pop-owned" tenants that typically have much greater risk.



Redevelopment Successor Agency Oversight Board

Staff Report

DATE: December 15, 2015

TO: City of South San Francisco Successor Agency Oversight Board

FROM: Mike Futrell, Agency Executive Director
Alex Greenwood, Economic and Community Development Director

SUBJECT: A RESOLUTION OF THE SOUTH SAN FRANCISCO OVERSIGHT BOARD APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND BROOKWOOD EQUITIES, LLC, FOR THE ACQUISITION OF SUCCESSOR AGENCY OWNED PARCELS AT 201, 207, 217-219 AND 227 GRAND AVENUE (ALSO KNOWN AS 255 CYPRESS AVENUE), FOR A MIXED-USE RESIDENTIAL DEVELOPMENT

RECOMMENDATION

The Successor Agency recommends the Oversight Board (hereafter “Board”) adopt a resolution approving the proposed Disposition and Development Agreement (DDA) with Brookwood Equities LLC, as consistent with the Long Range Property Management Plan (LRPMP) for the disposition and development of a Downtown area site at Grand and Cypress Avenues.

BACKGROUND

The Board previously approved an Exclusive Negotiating Rights Agreement (ENRA) with Brookwood for the development of two sites: 201-219 Grand Avenue (parcels acquired by the former Redevelopment Agency now owned by the Successor Agency) and 418 Linden Avenue (City owned parcel). The Department of Finance (“DOF”) approved the ENRA on December 5, 2014. The ENRA provided grant funding from City affordable housing bonds for Brookwood to advance the design of the projects and receive approval of preliminary plans from the Planning Commission. This has been accomplished, and the next step in the project is to approve documents that will support the completion of design development, financing of the project, conveyance of the property, and completion of construction in a manner consistent with the LRPMP and ENRA.

Although the ENRA included two sites, and the proposed Disposition and Development Agreement includes the same two sites, the Board is asked only to approve the disposition of the Grand/Cypress parcels as consistent with the LRPMP, as they are the properties that are owned by the Successor Agency. No Board action is required regarding the City owned Linden parcel, as this parcel was never owned by the Redevelopment Agency or Successor Agency.

The proposed disposition of Grand/Cypress is consistent with the Long Range Property Management Plan (“LRPMP”), and the ENRA. In addition to approving the ENRA, the DOF approved the LRPMP on October 1, 2015. The LRPMP calls for Grand/Cypress to be developed for the purpose of fulfilling “the Redevelopment Plan, region and State goals of developing high density transit oriented housing.” The properties to be sold for development pursuant to a Successor Agency disposition agreement, will result in

Staff Report

Subject: A Resolution Approving the Proposed Disposition and Development Agreement with Brookwood Equities LLC

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the development of new transit oriented housing and produce significantly more property tax revenues over time to all of the taxing entities than an as-is sale.

The Successor Agency of the City of South San Francisco considered and approved the DDA on December 9, 2015.

The following provides the Board with a summary of the major elements of the DDA and its attachments for the Cypress/Grand parcels only.

DISCUSSION

Project Description

The Project will consist of the design, development and construction on the Grand/Cypress Avenue Property of approximately 46 residential units, (9 of which will be affordable per below), 4,000 square feet of common open space and approximately 19,200 square feet of ground-level space consisting of associated parking, lobby and common, utility, service, storage, and circulation areas and approximately 6,000 square feet of retail area.



Grand Cypress Perspective

Staff Report

Subject: A Resolution Approving the Proposed Disposition and Development Agreement with Brookwood Equities LLC

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Affordable Housing

Twenty percent (20%) of the residential units in the Project shall be rented at an affordable cost (as defined in the Regulatory Agreement), and for a term fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Project. This results in a total of 9 units that are affordable, including one moderate-income (120% Area Median Income household) unit, and 8 lower income (80%) units.

City Grant Assistance

The project's income and value has been impacted by the inclusion of affordable units, and therefore an offset is required to make the development economically viable. The ENRA includes provisions for City grants to help pay for the affordable units and to assist with the costs of design. The DDA provides a total of \$920,000 in City grants for this site, a portion of which have already been drawn down pursuant to the ENRA for the preparation of preliminary plans and Planning Commission approvals. These City funds are available from the remaining former Redevelopment Housing bond proceeds and the City's affordable housing in-lieu fund, which is separate from the Successor Agency's funds. The balance of the funds will be expended as part of design development and construction drawings over the next few months.

HEART Equity Assistance

In addition to the City assistance provided for the affordable units, the developer has applied for financial assistance from Housing Endowment and Regional Trust (HEART) for a portion of the development equity required. A preliminary commitment has been obtained to assist with the provision of the affordable units.

Land Purchase Price

The purchase price for the Grand/Cypress parcels is equivalent to the current appraised value of \$2,020,000.

Loan for Land Acquisition

The land value of the assembled parcels that comprise the site was estimated in the LRPMP at \$1.5 million. The estimated re-use value of the site when the ENRA was approved was \$1,185,000 based on the proposed development. During the process of obtaining project design approvals from the Planning Commission, the City undertook an appraisal of the properties and the land values are substantially higher than previously estimated (\$100 - \$103 per s.f. appraised value). This results in an increased land value of \$2,020,000 million for the Grand/Cypress site. Structuring the land payment so that it is paid over time can offset the impact of the increased land value. The Board and DOF previously approved the land payment as a loan as part of the ENRA approval. The land loan is proposed to have the following terms per the DDA:

- Land payments based on full market land value per the appraisal.
- Annual loan payments based on 2% of land value (\$40,000 annually), to start one year after occupancy (to allow rent up and income stabilization).

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- Term of the loan is 30 years, with full amount due payable when the development is sold.
- Interest is payable at 1%, which is deferred and accrues.
- The loan may be prepaid at developer option any time during the term.
- Land conveyance from City to developer contingent on the project being ready to start construction: all financing in place and building permits issued.
- Loan payments will be distributed to all taxing entities per their proportionate share.

Private Equity and Loan Financing

In addition to the public equity contributions detailed above, there will be substantial private equity devoted to the development as well. Brookwood is in negotiations with potential project lenders and equity sources. Brookwood will form a partnership or LLC with an equity source that will contribute the required equity for the project to be financed. Approximately \$6.4 million in private equity is expected to be invested. The developer will be required to obtain a preliminary financing commitment for the equity financing (Term Sheet) within 45 days of DDA approval or the Agency has the right to terminate the agreement effective immediately.

The remaining funds for the development will take the form of a loan of approximately \$20.2 million. A firm commitment of these loan funds must be obtained prior to the conveyance of the property and no later than 12 months after the adoption of the DDA.

Development Schedule

The developer intends to move as quickly as possible to advance the project. The following time frames are the maximums allowed under the terms if the DDA:

- **Retail broker engaged for retail leasing** - within 30 days of the execution of the DDA.
- **Preliminary financing commitment** - (term sheet from equity sources) - 45 days after approval of the DDA; and within 60 days thereafter an executed joint venture agreement for the equity portion of the financing.
- **Preliminary retail leases** - Lease commitments are due within 6 months of the DDA execution for 50% of the space.
- **Disbursement of remaining grant funds** - as costs are incurred through design development commencing immediately after DDA approval.
- **Final Financing, building permits, and conveyance of property** - the property will not be conveyed until all permits are received and all financing is in place, including loan funds. This must occur prior to start of construction.
- **Start of construction** - must occur no later than 12 months from the approval of the DDA.
- **Completion of construction** - must occur within 16 months of start of construction but may be completed within 30 months due to force majeure events.

Default Provisions

The agreement provides that in the event of developer failure to perform, the Agency can declare a default and terminate the agreement. For the requirement for submittals of the equity portions of the financing, the

termination is effective immediately with no cure period for the default. If the agreement is terminated, the Agency will own all rights to the plans and project entitlements.

Public Benefits of the Development

- **Implements Adopted City Downtown and State Transit Oriented Development Policies** - The projects are aligned with, and will implement the Downtown Area Specific Plan and State redevelopment dissolution policies. The developments will implement the concept of higher density development in proximity to transit, and will provide mixed-use development.
- **Implements Adopted City, Regional and State Housing Policies** - The development will assist the City with implementing its Housing Element policies and its ABAG regional fair share housing goals for a mix of workforce and market rate housing. The new units will provide housing for workers in the City's commercial areas, which will help create a balance of jobs and housing which is both a local and regional goal. The inclusion of affordable units fulfills State goals for transit oriented affordable housing.
- **Contains Active Ground Floor Retail uses on Grand Avenue** - Consistent with the Downtown Specific Plan the project will have active ground floor uses at a key Grand Avenue corner.
- **Implements Adopted City and State Climate Action Plan Policies** - To the extent that the City can promote the development of new housing near its commercial job centers, it will allow greater use of alternative transportation modes (walking, biking, transit) that will reduce auto trips and greenhouse gas reduction in conformance with the goals of the City's Climate Action Plan and State law.
- **Serves as Catalyst for Community Development Objectives** - The developments will have a catalytic effect for future new private development by demonstrating to the market that downtown investment can be economically successful. Further, the developments will redevelop underutilized parcels and return them to the tax rolls.
- **Creates Construction Jobs** - The developments will pay area standard wage and will support local labor and construction workers with new construction employment.
- **Provides New Revenues to the Taxing Entities** - The value of the development is estimated at \$26.6 million. This will produce new revenues for all of the taxing entities, the largest of which are the County, South San Francisco Unified School District, and the City. The parcels are currently not generating property tax revenue, as they are not on the tax rolls due to public ownership. The loan repayments will also produce annual revenues to the taxing entities. Table 1 summarizes the total annual revenues that the development will produce for the taxing entities. Property tax and loan payments will be distributed to all taxing entities per their proportionate share:

Table 1: Summary of Cypress/Grand Revenues

| ITEM | AMOUNT |
|------------------------------|-------------------|
| Development Value | \$ 26,600,000 |
| Property Taxes | \$ 266,000 |
| Land Loan Payments | \$ 40,000 |
| Total Annual Revenues | \$ 306,000 |

Disposition Document Approvals Required

Attached are the DDA and its various attachments that will require approval and execution to be effective. They include:

- The Disposition and Development Agreement
- Housing Regulatory Agreement
- Deed of Trust
- Promissory Note for the Loan

Oversight Board and Department of Finance Approvals

State dissolution laws govern the Oversight Board’s approval of the disposition of property owned by the Successor Agency. The Grand/Cypress parcels fall within the category of property retained for future development pursuant to the classification set forth in the LRPMP. The LRPMP contains the following development objectives for the site:

- *The Grand-Cypress properties sit at the gateway to Downtown South San Francisco. The properties are an important component of the City’s and the former Agency’s efforts to create a vibrant, transit- oriented and diverse downtown. Development of these properties and other sites owned by the Successor Agency will craft a vision for the Downtown core that provide transit supported housing and easy connectivity to the downtown South San Francisco Caltrain station.*
- *The Agency acquired these properties over the years to create a 27,200 sq. ft. lot assemblage that would be ideal for a major transit oriented development.*
- *The highest and best use of this property is to develop a project with high intensity uses. Therefore, to ensure this type of development occurs, the Successor Agency and/or the City will merge these parcels into a single parcel.*

The development plans for the site that have been approved by the City, are attached to the DDA, and which govern the development of the site, achieve all of these objectives. The individual parcels will be merged to create a stronger development site, the density of the project meets the higher density objectives of the LRPMP, and the site is within ¼ mile of the Caltrain Station. The ground floor retail/restaurant uses will achieve the objective of a vibrant and diverse downtown.

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The LRPMP and ENRA calls for the properties to be sold pursuant to a Successor Agency disposition agreement that results in a new development, rather than a simple as-is sale. The rationale is that the development of the parcels pursuant to the City's land use policies will produce significantly more property tax revenues over time to all of the taxing entities than a sale as-is. This is demonstrated in projections that are part of the LRPMP.

When the Oversight Board approved the Brookwood ERNA, the agreement provided that the value of the land would be paid over time as a loan. The amount of the land proceeds at that time was lower as the appraisal had not been completed. With the new appraised land value the taxing entities that the Oversight Board represents will receive more revenues than anticipated. The proposed transaction is consistent with the Oversight Board approved LRPMP, is similar to the land loan already approved in the ENRA, and the amount of revenues exceeds prior estimates.

If the Oversight Board finds the disposition of the Grand/Cypress parcels to be consistent with the approved Long Range Property Management Plan (LRPMP) there will be no State Department of Finance approval required, per recent legislation amending the redevelopment dissolutions laws (Health & Safety Code Section 34191.5(f)). Board adoption of the attached resolution accomplishes the Oversight Board approval and finding of consistency.

CONCLUSION

The sale of this site is consistent with and will implement the objectives of the Long Range Property Management Plan. It will return Redevelopment Agency acquired properties to private ownership and the tax roll. It will accomplish State, regional and local land use objectives for high density, transit oriented, and mixed-use development. It will provide new annual revenues to the taxing entities. Finally, it will bring the Board one step closer to completing the disposition of redevelopment assets per the dissolution laws.

By: 
Alex Greenwood
Director of Economic and Community
Development

Approved: 
Mike Futtrell
Agency Executive Director

Attachments:

- 1. Resolution Approving the Disposition and Development Agreement
- 2. Disposition and Development Agreement and attachments

RESOLUTION NO. _____

OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SOUTH SAN FRANCISCO,
STATE OF CALIFORNIA

A RESOLUTION OF THE SOUTH SAN FRANCISCO
OVERSIGHT BOARD APPROVING A DISPOSITION AND
DEVELOPMENT AGREEMENT BETWEEN THE SUCCESSOR
AGENCY AND BROOKWOOD EQUITIES, LLC, FOR THE
ACQUISITION OF SUCCESSOR AGENCY OWNED PARCELS
AT 201, 207, 217-219 AND 227 GRAND AVENUE (ALSO
KNOWN AS 255 CYPRESS AVENUE), FOR A MIXED-USE
RESIDENTIAL DEVELOPMENT

WHEREAS, the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“Agency”) is the owner of certain real property located in the City of South San Francisco, California, known as County Assessor’s Parcel Numbers 012-316-110 (201 Grand Avenue), 012-316-100 (207 Grand Avenue), and 012-316-090 (217-219 Grand Avenue) (collectively, the “Successor Agency Property”); and,

WHEREAS, on June 29, 2011 the legislature of the State of California (the “State”) adopted Assembly Bill 26 (“AB 26”), which amended provisions of the Redevelopment Law; and,

WHEREAS, pursuant to AB 26 and the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484, the “Dissolution Law”), the former Redevelopment Agency of the City of South San Francisco was dissolved on February 1, 2012; and,

WHEREAS, pursuant to the Dissolution Law, the Successor Agency Property was transferred from the former Redevelopment Agency of the City of South San Francisco, to the Agency; and,

WHEREAS, pursuant to the Dissolution Law, the Agency prepared a Long Range Property Management Plan (“LRPMP”), which has been approved by the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“Oversight Board”) and California Department of Finance (“DOF”); and,

WHEREAS, the approved LRPMP identifies the Successor Agency Property within the permissible use category of development consistent with an approved redevelopment project plan; and,

WHEREAS, the City of South San Francisco (“City”), the Agency and Brookwood Equities, LLP, a Delaware limited liability company (“Developer”), entered

into an Exclusive Negotiating Rights Agreement (“ENRA”) that established a mutual understanding among the City, the Agency and Developer regarding the potential development of the Successor Agency Property in conjunction with the potential development of the City-owned property at 418 Linden Avenue (“418 Linden Property”); and,

WHEREAS, on October 21, 2014, by Oversight Board Resolution # 7-2014 the ENRA was approved by the Oversight Board; and

WHEREAS, on December 5, 2014, the DOF approved the ENRA; and

WHEREAS, consistent with both the LRPMP and the ENRA, Developer has proposed to construct a five-story mixed-use residential and commercial development, consisting of 46 residential apartments, of which 9 will be affordable to low- and moderate-income households, above approximately 5,500 square feet of ground-floor commercial space and 61 ground level parking spaces on the Successor Agency Property (“Project”); and

WHEREAS, Dana Property Analysis conducted an appraisal for the Successor Agency Property, dated June 17, 2015 and values the Successor Agency Property at \$2,020,000; and

WHEREAS, the Successor Agency is interested in selling the Successor Agency Property to Developer for its appraised value, consistent with the terms of the LRPMP and ENRA; and,

WHEREAS, the City, the Agency, and the Developer now all wish to enter into a Disposition and Development Agreement between the City, the Agency and the Developer (“Agreement”) that will supersede any points of agreement contained within the ENRA; and,

WHEREAS, the City Council certified an Environmental Impact Report (“EIR”) on January 28, 2015 (State Clearinghouse number 2013102001) in accordance with the provisions of the California Environmental Quality Act (Public Resources Code, §§ 21000, et seq., “CEQA”) and CEQA Guidelines, which analyzed the potential environmental impacts of the development of the Downtown Station Area Specific Plan; and,

WHEREAS, the Project is within the Downtown Station Area Specific Plan and the Project would not result in any new significant environmental effects or a substantial increase in the severity of any previously identified effects beyond those previously disclosed and analyzed in the Downtown Station Area Specific Plan EIR certified by City Council,

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco does hereby resolve as follows:

1. Finds and determines that the recitals are true and correct.
2. Approves the terms of the Agreement in substantially the same form attached hereto as Attachment 1.
3. Authorizes the Executive Director to enter into and execute the Agreement on behalf of the Successor Agency, in substantially the same form as attached hereto as Attachment 1, and to execute such other documents and take such further actions as may be necessary or appropriate to carry out the intent of this Resolution.

* * * * *

I hereby certify that the foregoing resolution was regularly introduced and adopted by the Oversight Board for the Successor Agency to the City of South San Francisco Redevelopment Agency at a Regular Meeting held on the 15th day of December, 2015 by the following vote:

AYES: _____

NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST: _____
Successor Agency Clerk

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF
SOUTH SAN FRANCISCO

and

BROOKWOOD EQUITIES LLC

December, 2015

Exhibits

- A-1 Legal Description of Linden Avenue Property
- A-2 Legal Description of Grand-Cypress Avenue Property
- B Form of Memorandum of DDA and Option
- C-1 Form of City Purchase and Sale Agreement
- C-2 Form of Agency Purchase and Sale Agreement
- D-1 Form of City Note
- D-2 Form of Agency Note
- E-1 Form of City Deed of Trust
- E-2 Form of Agency Deed of Trust
- F-1 Form of Linden Regulatory Agreement
- F-2 Form of Grand-Cypress Agency Regulatory Agreement
- G Applicable Laws
- H Preliminary Financing Plan
- I Form of City Certificate of Completion
- J Form of Agency Certificate of Completion

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of December ___, 2015 (“Effective Date”), by and between the City of South San Francisco, a municipal corporation (“City”), the Successor Agency to the Redevelopment Agency of the City of South San Francisco, a public agency (“Agency”) and Brookwood Equities LLC, a Delaware limited liability company (“Developer”). City, Agency and Developer are hereinafter collectively referred to as the “Parties.”

RECITALS

A. City is the owner of the real property located in the City of South San Francisco at 418 Linden Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-314-010 and more particularly described in Exhibit A-1 attached hereto (the “Linden Avenue Property”).

B. Agency is the owner of the real property located in the City of South San Francisco at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A-2 attached hereto (the “Grand-Cypress Avenue Property”). The Grand-Cypress Avenue Property and the Linden Avenue Property are hereinafter collectively referred to as the “Property.”

C. Developer intends to create or has created two special purpose entities: Brookwood Cypress Venture LLC (“BCV”) for the Grand-Cypress Avenue Property and Brookwood Linden Venture LLC (“BLV”) for the Linden Avenue Property to serve as the ownership entities for the Project, defined below. For purposes of this Agreement and where the context warrants, a reference to the Developer shall be to BCV for the Cypress Avenue Property and a reference to the Developer shall be to BLV for the Linden Avenue Property once such entities have been formed and assumed the obligations of Developer for such Property.

D. Developer intends to construct a 5 story high-density mixed-use building on the Grand-Cypress Avenue Property that will be approximately 60 feet tall. The ground floor will consist of approximately 5,500 square feet of commercial area fronting on Grand and Cypress Avenues and a leasing office and resident lounge (the “Grand-Cypress Commercial Project”). Parking will be accessed from 3rd Lane. The upper four stories will consist of 46 apartment units, including a mix of three studio units, 21 one-bedroom units and 22 two-bedroom units (the “Grand-Cypress Housing Project”). Developer will enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “Grand-Cypress Regulatory Agreement”) with the City as Housing Successor to the former Redevelopment Agency of the City of South San Francisco (the “Former Agency”) that will require restriction of eight (8) housing units for Low-Income Eligible Households (as defined in the Grand-Cypress Regulatory Agreement) and one (1) housing unit for a Moderate Income Eligible Household (as defined in the Grand-Cypress Regulatory Agreement). The Grand-Cypress Housing Project and the Grand-Cypress Commercial Project are collectively referred to in this Agreement as the “Grand-Cypress Project.”

E. Developer intends to construct a 5-story high-density residential building on the Linden Avenue Property that will be approximately 60 feet tall. The ground floor will consist primarily of support uses for the residential units, including the entrance lobby, a resident

lounge, fitness room and bicycle storage. One live-work unit (residential/commercial) will also be on the ground floor, as will parking accessed from the rear circulation aisle. The upper four stories will consist of 38 residential uses, including a mix of four studio units, 18 one-bedroom units, 11 two-bedroom units and five three-bedroom units (the “Linden Housing Project”). Developer will enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “Linden Regulatory Agreement”) with the City that will require restriction of six (6) housing units for Low-Income Eligible Households (as defined in the Grand-Cypress Regulatory Agreement) and two (2) housing units for Moderate Income Eligible Households (as defined in the Grand-Cypress Regulatory Agreement). The Grand-Cypress Project and the Linden Housing Project are collectively referred to in this Agreement as the “Project.”

F. Subject to the terms and conditions set forth in this Agreement: (i) the City will enter into a purchase and sale agreement with Developer for the Linden Avenue Property, and the City will loan the purchase price for the Linden Avenue Property to Developer; (ii) the Agency will enter into a purchase and sale agreement with Developer for the Grand-Cypress Avenue Property, and the Agency will loan the purchase price for the Grand-Cypress to Developer; (iii) the City will provide Developer with a grant of \$435,000 from City Affordable Housing In-Lieu Fee Funds for Project predevelopment activities on the Linden Avenue Project; (iv) the City will provide a \$780,000 grant to Developer from Affordable Housing Bond Funds to partially finance development of the Project on the Linden Avenue Property; (v) the City will provide a \$920,000 grant to Developer from Affordable Housing Bond Funds to partially finance development of the Project on the Grand-Cypress Avenue Property; and (vi) Developer will construct the Project.

G. The Grand-Cypress Avenue Property is a former Redevelopment Agency property and is therefore subject to the State of California Redevelopment Dissolution Law (AB x1 26, as amended by AB 1484 and SB 107). City submitted a Long Range Property Management Plan dated November 19, 2013 (“LRPMP”), and subsequently amended and resubmitted it on May 21, 2015, that proposes development of the Grand-Cypress Avenue Property. On October 2, 2015 the State of California Department of Finance (“DOF”) approved the LRPMP.

H. The City Council, the governing board of the Successor Agency, and the Oversight Board have each determined that the disposition and development of the Property pursuant to this Agreement will be of benefit to the community and to the taxing entities that will share in the property taxes assessed against the Property.

I. The City Council, the governing board of the Successor Agency, and the Oversight Board have each approved the execution of this Agreement and the disposition of the Property as set forth in this Agreement, have followed all requisite procedures, and have adopted all requisite findings in connection with the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS

1.1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

- 1.1.1 “**Agency Deed of Trust**” is defined in Section 3.2.2.
- 1.1.2 “**Agency Documents**” is defined in Section 2.3.4.
- 1.1.3 “**Agency Note**” is defined in Section 3.2.2.
- 1.1.4 “**Bridging Contract Documents**” or “**BCD'S**” are described in Section 4.16.
- 1.1.5 “**Bridging Contracts**” is defined in Section 3.3.
- 1.1.6 “**Certificate of Completion**” is defined in Section 4.14.
- 1.1.7 “**City Deed of Trust**” is defined in Section 3.2.1.
- 1.1.8 “**City Documents**” is defined in Section 2.3.4.
- 1.1.9 “**City Notes**” or “**Notes**” are defined in Section 3.2.1.
- 1.1.10 “**Claims**” is defined in Section 4.18.
- 1.1.11 “**Conditions of Approval**” is defined in Section 4.1.
- 1.1.12 “**Construction Plans**” is defined in Section 4.12.
- 1.1.13 “**Deeds of Trust**” means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing to be executed by Developer as Trustor for the benefit of City and Agency recorded against the Property to secure the repayment of the Notes, as referenced in Section 3.2.
- 1.1.14 “**Environmental Laws**” is defined in Section 9.1.2.
- 1.1.15 “**Grand-Cypress Avenue Property**” is defined in Recital B.
- 1.1.16 “**Grand-Cypress Purchase and Sale Agreement**” is defined in Section 3.3.
- 1.1.17 “**Grand-Cypress Avenue Purchase Price**” is defined in Section 3.2.2.
- 1.1.18 “**Grand-Cypress Regulatory Agreement**” is defined in Recital D.

- 1.1.19 “**Hazardous Material**” is defined in Section 9.1 .1.
- 1.1.20 “**Indemnitees**” is defined in Section 4.18.
- 1.1.21 “**Linden Avenue Property**” is defined in Recital B.
- 1.1.22 “**Linden Purchase and Sale Agreement**” is de-fined in Section 3.2.
- 1.1.23 “**Linden Avenue Purchase Price**” is defined in Section 3.2.1.
- 1.1.24 “**Linden Regulatory Agreement**” is defined in Recital E.
- 1.1.25 “**Notes**” mean the City Note and the Agency Note as referenced in Section 3.2.
- 1.1.26 “**Official Records**” means the Official Records of San Mateo County.
- 1.1.27 “**Owner's Minimum Requirements**” or “**OMR's**” are defined in Section 4.10.
- 1.1.28 “**Owner's Design Consultant**” or “**ODC**” is defined in Section 4.10.
- 1.1.29 “**Project**” is defined in Recital C.
- 1.1.30 “**Property**” means collectively the Linden Avenue Property and the Cypress-Grand Avenue Property.
- 1.1.31 “**Purchase and Sale Agreements**” are defined in Sections 3.2 and 3.3.
- 1.1.32 “**Regulatory Agreement**” means collectively the Grand-Cypress Regulatory Agreement and the Linden Regulatory Agreement.
- 1.1.33 “**Transfer**” is defined in Section 8.2.

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE; CONDITIONS

PRECEDENT TO SALE CLOSING

2.1. Developer’s Representations. Developer represents and warrants to City and Agency as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to City and Agency. Developer acknowledges that City and Agency shall rely upon Developer’s representations made herein notwithstanding any investigation made by or on behalf of City or Agency. For purposes of this Agreement and where the context warrants, a reference to the Developer shall be to BCV for the Grand-Cypress Avenue Property and a reference to the Developer shall be to BLV for the Linden Avenue

Property once such entities have been formed and assumed the obligations of Developer for such Property. Upon execution of an assignment and assumption agreement between Developer, as assignor, and BCV, as assignee, in form and content acceptable to the Agency, Developer shall be released from all obligations under this DDA, the Purchase and Sale Agreement, and the Agency Documents. Upon execution of an assignment and assumption agreement between Developer, as assignor, and BLV, as assignee, in form and content acceptable to the City, Developer shall be released from all obligations under this DDA, the Purchase and Sale Agreement, and the City Documents.

(a) Authority. Developer is a limited liability company and in good standing under the laws of the State of California and the state of its formation. Developer has the full right, power and authority to undertake all obligations of Developer as provided herein, and the execution, performance and delivery of this Agreement by Developer has been duly authorized by all requisite actions. The persons executing this Agreement on behalf of Developer have been duly authorized to do so. This Agreement and the other Agency Documents and City Documents constitute valid and binding obligations of Developer, enforceable in accordance with their respective terms.

(b) No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

(d) No Developer Bankruptcy. Developer is not the subject of a bankruptcy or insolvency proceeding.

2.2. Effective Date. The obligations of Developer, City and Agency hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.3. Conditions Precedent. City's obligation to sell the Linden Avenue Property to Developer, and Agency's obligation to sell the Grand-Cypress Avenue Property to Developer, is conditioned upon the satisfaction of all of the requirements set forth in each subsection of this Section 2.3, unless any such condition is waived by City acting in the discretion of its City Manager or by Agency acting in the discretion of its Executive Director, as applicable. Prior to conveyance of the Linden Avenue Property and the Grand-Cypress Avenue Property:

2.3.1 Due Authorization and Good Standing. Developer shall have delivered to Agency and City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Developer is properly organized and authorized to do business in the State of California, (ii) a certified resolution indicating that Developer has authorized the execution of the Agency Documents and the City Documents and the transactions contemplated thereby and that the persons executing the Agency

Documents and City Documents on behalf of Developer have been duly authorized to do so, (iii) certified copies of Developer's articles of organization/certificate of formation and operating agreement.

- 2.3.2 No Litigation. There shall be no litigation pending with respect to this Agreement or any City approval related to the Project, the outcome of which could materially interfere with the development of the Property as set forth herein.
- 2.3.3 Approvals. As to the Grand-Cypress Avenue Property, this Agreement shall have been approved by the Oversight Board and any other public agency whose approval is required.
- 2.3.4 Execution and Delivery of Documents. Developer shall have executed, acknowledged as applicable, and delivered to City all documents required in connection with the transactions contemplated hereby, including without limitation, the Linden Regulatory Agreement, the City Deed of Trust and the Memorandum. All of the foregoing documents, together with this Agreement and the City Grant Deed are hereinafter referred to collectively as the "**City Documents.**" Developer shall have executed, acknowledged as applicable, and delivered to Agency all documents required in connection with the transactions contemplated hereby, including without limitation the Grand-Cypress Regulatory Agreement, the Agency Deed of Trust and the Memorandum. All of the foregoing documents, together with this Agreement and the Agency Grant Deed are hereinafter referred to collectively as the "**Agency Documents.**"
- 2.3.5 Design Review. City shall have reviewed and approved the Site Development Plan and Project design, which City acknowledges has been approved.
- 2.3.6 Permits and Approvals; Cooperation. Developer shall have obtained all entitlements, permits, licenses and approvals required for the construction of the Project on the Property, including without limitation, building permits and use permits or shall provide evidence satisfactory to City and Agency that receipt of such permits and approvals is subject only to such conditions as Agency and City may reasonably approve. Agency and City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for construction of the Project on the Property as contemplated by this Agreement.
- 2.3.7 Payment of Fees. Developer shall have paid when due all customary and reasonable City fees and charges in connection with the processing of City permits and approvals, as set forth in Section 4.4 of this Agreement.

- 2.3.8 Bridging Contract Documents, Budget and Schedule. City shall have approved the Bridging Contract Documents and Owner's Minimum Requirements for the Project pursuant to Article IV, and Agency and City shall have approved the construction budget and schedule for the Project.
- 2.3.9 Financing. Developer shall have delivered to Agency and City evidence reasonably satisfactory to Agency and City that satisfies all of the following:
- (a) Within forty-five (45) days of the Effective Date of this Agreement, Developer shall provide a Letter of Intent and a term sheet that both demonstrate the availability of equity financing for the Project.
 - (b) Within sixty (60) days from satisfaction of Section 2.3.9(a), Developer shall provide an executed joint venture agreement evidencing equity participation.
 - (c) No later than forty five (45) days prior to property conveyance, Developer shall provide proof that Developer has secured binding commitments for all funding required for the Project in excess of the City and Agency financing, subject only to commercially reasonable conditions.
- 2.3.10 Insurance and Performance Bonds. Developer shall have provided evidence reasonably satisfactory to Agency and City that Developer has obtained insurance coverage meeting the requirements set forth in Article XI and shall have provided to Agency and City performance bonds or other assurance of completion reasonably satisfactory to Agency and City pursuant to the requirements set forth in Section 4.20.
- 2.3.11 Memorandum. Developer, City and Agency shall execute and acknowledge a Memorandum of this Agreement ("Memorandum") substantially in the form attached hereto as Exhibit B, and Developer shall cause the Memorandum and Regulatory Agreement to be recorded in the Official Records of San Mateo County on the Closing Date.
- 2.3.12 Title. City shall have received assurance that the Regulatory Agreement and the Memorandum will be recorded subject only to: (a) the provisions and effects of the City Documents and Agency Documents, (b) any lien for current taxes and assessments or taxes and assessments accruing subsequent to recordation, and (c) the City Permitted Exceptions and Agency Permitted Exceptions as those terms are defined in the Regulatory Agreement.

ARTICLE III

SALE OF THE PROPERTY

3.1. Purchase Price

3.1.1 Linden Avenue Property. The Purchase Price for the Linden Avenue Property shall be the appraised value of the Linden Avenue Property, which is \$1,388,000 (the “**Linden Purchase Price**”).

3.1.2 Grand-Cypress Avenue Property. The Purchase Price for the Grand-Cypress Property shall be the appraised value of the Grand-Cypress Avenue Property, which is \$2,020,000 (the “**Grand-Cypress Purchase Price**”).

3.2. Sale of Linden Avenue Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, City shall sell to Developer, and Developer shall purchase from City, the Linden Avenue Property in accordance with and subject to the terms, covenants and conditions of this Agreement and the Purchase and Sale Agreement attached hereto as Exhibit C (the “**Linden Purchase and Sale Agreement**”), which agreement is incorporated herein by reference.

3.2.1 Pursuant to Sections 3.2.2 and 3.2.3 below, City will provide a loan to Developer in principal amount of One Million Three Hundred Eighty-Eight Thousand Dollars (\$1,388,000) (the “**City Loan**”) to finance the Linden Purchase Price. Developer shall execute a note (the “**City Note**”) to evidence the City Loan, and shall execute the Deed of Trust in favor of the City to provide security for the Loan. Nothing in this Agreement is intended to prohibit Developer from paying the Linden Purchase Price in immediately available funds or from securing financing for the purchase of the Property from another funding source.

3.2.2 City agrees to loan to Developer, and Developer agrees to borrow from and repay to City, the sum of One Million Three Hundred Eighty-Eight Thousand Dollars (\$1,388,000), upon the terms and conditions set forth in this Agreement.

3.2.3 Interest shall accrue on the outstanding principal balance of the City Note at the rate of one percent (1%) simple interest per annum, commencing upon the first anniversary of the Certificate of Completion for the Linden Avenue Property. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

3.2.4 Commencing upon the first anniversary of the Certificate of Completion, for the Linden Avenue Property and on each anniversary thereafter, Developer shall make annual payments of Twenty-Seven Thousand Seven Hundred Fifty Dollars (\$27,750). The entire outstanding principal balance

of the City Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on the thirtieth (30th) anniversary of the date of the City Note (the “**Maturity Date**”). Payments made under the City Note will be applied to principal amounts outstanding in accordance with the amortization schedule attached to the City Note.

- 3.2.5 All sums are due and payable under the City Note upon the sale or Transfer of the Linden Property, there is a conversion of the Linden Avenue Project to a condominium project, or there is a default under this Agreement, the City Note, or any other City Document.
- 3.2.6 The City Note shall be secured by a Deed of Trust on the Linden Avenue Property in the form attached hereto as Exhibit E-1 (the “**City Deed of Trust**”). The City Note and Deed of Trust shall be subordinated to the permanent and construction financing for the Project and the City shall execute any subordination agreement, if necessary, required by the Developer and the lender providing the permanent or construction financing for the Project.

3.3. Sale of Grand-Cypress Avenue Property. Provided that all conditions precedent set forth in this Agreement have been satisfied or waived, Agency shall sell to Developer, and Developer shall purchase from Agency the Grand-Cypress Avenue Property in accordance with and subject to the terms, covenants and conditions of this Agreement and the attached hereto as Exhibit C-1 (the “**Grand-Cypress Purchase and Sale Agreement**”), which agreement is incorporated herein by reference.

- 3.3.1 Pursuant to Sections 3.3.2 and 3.3.3 below, Agency will, provide a loan to Developer in the principal amount of Two Million Twenty Thousand Dollars (\$2,020,000) (the “**Agency Loan**”) to finance the Grand-Cypress Purchase Price. Buyer shall execute a note (the “**Agency Note**”) to evidence the Agency Loan, and shall execute the Deed of Trust in favor of the Agency to provide security for the Loan. Nothing in this Agreement is intended to prohibit Developer from paying the Grand-Cypress Purchase Price in immediately available funds or from securing financing for the purchase of the Property from another funding source.
- 3.3.2 Agency agrees to loan to Developer, and Developer agrees to borrow from and repay to Agency, the sum of Two Million Twenty Thousand Dollars (\$2,020,000), upon the terms and conditions set forth in this Agreement.
- 3.3.3 Interest shall accrue on the outstanding principal balance of the Agency Note at the rate of one percent (1%) simple interest per annum, commencing upon the first anniversary of the Certificate of Completion for the Grand-Cypress Property. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

- 3.3.4 Commencing upon the first anniversary of the Certificate of Completion, for the Grand-Cypress Avenue Property and on each anniversary thereafter, Developer shall make annual payments of Forty Thousand Dollars (\$40,000). The entire outstanding principal balance of the Agency Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on the thirtieth (30th) anniversary of the date of the Agency Note (the “**Maturity Date**”). Payments made under the Agency Note will be applied to principal amounts outstanding in accordance with the amortization schedule attached to the Agency Note.
- 3.3.5 All sums are due and payable under the Agency Note upon the sale or Transfer of the Grand-Cypress Property, there is a conversion of the Grand-Cypress Avenue Project to a condominium project, or there is a default under this Agreement, the Agency Note, or any other Agency Document.
- 3.3.6 The Agency Note shall be secured by a Deed of Trust on the Grand-Cypress Avenue Property in the form attached hereto as Exhibit E-2 (the “**Agency Deed of Trust**”). The Agency Note and Agency Deed of Trust shall be subordinated to the permanent and construction financing for the Project and the Agency shall execute any subordination agreement, if necessary, required by the Developer and a lender providing the permanent or construction financing for the Project. The City Note and the Agency Note shall be referred to hereafter as the “**Notes**” and the City Deed of Trust and the Agency Deed of Trust shall be referred to as the “**Deeds of Trust.**”

3.4. Closing Procedures. Within five (5) business days following Developer’s execution of the DDA, Developer, City and Agency shall each deposit into escrow three (3) executed counterpart copies of the Purchase and Sale Agreement. The date for close of escrow for the purchase of the Property (“**Closing Date**”) shall be no later than thirty (30) days after the Developer has received firm financing commitments for the financing and construction of the Project (provided Developer has finalized and is ready to enter into the final design and construction contracts for the Project) (the Bridging Contracts), unless the parties agree to an extension of such date.

3.5. Title Condition. Title to the Property shall be conveyed to Developer subject only to the title exceptions specifically approved by Developer, as provided in the Purchase and Sale Agreement. Notwithstanding anything to the contrary herein, City and Agency shall convey title free and clear of all monetary liens or encumbrances on their respective Property.

3.6. Effect of Dissolution of Agency. Upon dissolution of the Agency, the City will assume the Agency’s obligations and rights under this Agreement, subject to any applicable compensation agreements.

ARTICLE IV

DEVELOPMENT OF THE PROPERTY

4.1. The Project. Developer shall construct the Project in accordance with the terms and conditions of this Agreement and in compliance with the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

4.2. Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Property will be subject to recorded covenants that will restrict use of the Property to development of a residential project that includes affordable housing, and that for a term of not less than fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Project, not less than twenty percent (20%) of the residential units in the Project as a whole shall be rented at an affordable cost (as defined in the Regulatory Agreement) in accordance with the terms hereof and the South San Francisco Municipal Code, the Linden Regulatory Agreement or the Grand-Cypress Regulatory Agreement, as applicable, substantially in the forms attached hereto as Exhibits F-1 and F-2 (the “**Regulatory Agreements**”) concurrently with the execution of this Agreement, and which shall be recorded in the Official Records on the date that Developer acquires the Property.

4.3. No Condominium Conversion. Developer shall not convert the residential units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Project or any part thereof unless Developer obtains the City's consent and enters into new regulatory agreements with the City for “for sale” housing units. City’s prior written consent shall be required with respect to the sale or condominium conversion of the retail/commercial portion of the Project or any part thereof. Upon conversion of any portion of the Project to condominium or cooperative ownership, the City Note and the Agency Note will become immediately due and payable.

4.4. Commercial Project. Developer hereby agrees to abide by the following terms with respect to the Grand-Cypress Commercial Project:

- 4.4.1 Within 30 days of the Effective Date, Developer shall enter into an agreement with a qualified commercial broker to lease the commercial and retail space to be constructed in the Grand-Cypress Commercial Project.
- 4.4.2 Within the following 30 days following execution of the broker agreement, and every 30 days thereafter, Developer provide a retail leasing progress report that shows the tenants contacted, tenant contact information, and the results of such contact.

- 4.4.3 Developer shall provide executed letters of intent for the lease of 50% of the retail and commercial space within 180 days of the Effective Date and executed leases for 75% of the retail and commercial space within the following 120 days.
- 4.4.4 No more than 25% of gross lease area within the retail and commercial space may be leased to services industries, and not until at least 75% of the gross lease area has been leased to retail enterprises, unless otherwise approved by the City in its sole discretion.

4.5. Project Approvals. Developer acknowledges and agrees that execution of this Agreement by City and Agency does not constitute approval for the purpose of the issuance of building permits for the Project, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for construction of the Project on the Property including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review.

Developer covenants that it shall: (i) obtain all necessary permits and approvals which may be required by Agency, City, or any other governmental agency having jurisdiction over the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Project, and (iv) not commence construction work on the Project prior to issuance of building permits required for such work.

City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for construction of the Project.

4.6. Fees. Developer shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Project, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, if any, and any subsequent approvals for the Project. Consistent with the terms of the Agreement, City shall have the right to impose only those development fees (the “**Development Fees**”) identified in Exhibit G, and limited to (i) those actually in effect at the time the Agreement is executed identified herein as Existing Fees, at the rates in effect at the time the Development Fee is due including any lawfully imposed adjustments and escalators set forth in the applicable resolutions and ordinances, which are identified in Exhibit G, and (ii) those other generally applicable Future Fees and exactions identified in Exhibit G, at a rate for each such fee or exaction no greater than the rate specified for such fee or exaction in Exhibit F including any lawfully imposed adjustments and escalators set forth in the applicable resolutions and ordinances. Development Fees shall be due upon issuance of building permits or certificates of occupancy for the Project in accordance with the ordinances or resolutions imposing such fees, or as otherwise stipulated in this Agreement.

4.7. Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property and construction of the Project, including but not limited to any relocation obligations, and none of such costs and expenses shall be the obligation of the Agency or the City.

4.7.1 Relocation Obligations. Upon the Effective Date of this Agreement, City may, upon receipt of documentation of eligible relocation expenses incurred by current tenants at the Grand-Cypress Avenue Property, advance the cost of relocation expenses to tenants displaced by the Grand-Cypress Avenue Project. Within thirty (30) days following receipt of a request for reimbursement from the City, Developer shall reimburse City for funds advanced. Notwithstanding the foregoing, Developer's maximum obligation under this section shall be \$42,000.

4.8. Preliminary Financing Plan. As set forth in the attached as Exhibit H, Developer has provided Agency and City with a financing plan for the Project ("Preliminary Financing Plan") which describes: (i) the estimated costs of Project development, including without limitation acquisition costs and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Project, and (iii) all present sources of funding for construction and permanent financing, and (iv) evidence that Developer has obtained preliminary commitments from equity investors and/or lending institutions, subject only to commercially reasonable conditions. By its execution of this Agreement, Agency and City hereby approve the Preliminary Financing Plan. Prior to conveyance of the Property under the Purchase and Sale Agreement, Developer shall provide Agency and City with a Final Financing Plan that complies with Section 2.3.9 and contains all elements of the approved Preliminary Financing Plan as well as evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions.

4.9. Development Schedule. Developer shall commence and complete construction of the Project and shall satisfy all other obligations of Developer under this Agreement within the time periods set forth herein, as such time periods may be extended upon the mutual written consent of the Parties. Subject to force majeure, and the City's issuance of permits and approvals, Developer shall commence construction of both the Grand-Cypress Project and the Linden Housing Project not later than twelve (12) months following the Effective Date, and Developer shall diligently prosecute the construction work for both projects to completion in order to allow City to issue a final certificate of occupancy for both projects within sixteen (16) months following commencement of construction, but in no event later than thirty (30) months following the Effective Date. Subject only to force majeure, the availability of financing, and the City's issuance of permits and approvals, Developer's failure to commence or complete both the Grand-Cypress Project and the Linden Housing Project in accordance with the time periods specified in this Section 4.9 foregoing shall be an Event of Default hereunder.

4.10. Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Developer shall permit representatives of the Agency and the City to enter upon the Property following 24 hours written notice (except in the

case of emergency in which case such notice as may be practical under the circumstances shall be provided).

4.11. Agency and City Disclaimer. Developer acknowledges that the Agency and City are under no obligation, and neither Agency nor City undertakes or assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Project. Any review or inspection undertaken by the Agency or the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the Agency or the City as to the quality of the design or rehabilitation of the improvements or otherwise.

4.12. Bridging Contract Documents. Developer shall submit to City Staff detailed plans and other information (the “**Bridging Contract Documents**” or “**BCDs**”) that define the Project on the Property with sufficient detail for the purposes of the City and Developer. As used herein “**BCDs**” means the contract documents prepared by the Developer and by Gould Evans Architects and its sub-consultants who are retained by Developer as the Owner’s Design Consultant (the “**ODC**”) and upon which Developer and Developer’s contractors shall rely in entering into final design and construction contracts for the Projects. The BCDs shall sufficiently define the Project including the site development plans, architectural drawings, landscaping, exterior lighting and signage plans and initial specifications with definition of materials (referred to as the “**Owner’s Minimum Requirements**” or “**OMRs**”), elevations, and building plans (including sufficient information regarding mechanical parking systems). The BCDs shall be based upon the scope of development set forth herein and upon the approvals issued by the Agency and the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City. Provided that the BCDs are consistent with the requirements of this Agreement, approval of the BCDs by City shall be deemed approved thereof by Agency.

4.13. Change in Bridging Contract Documents. If Developer desires to make any material change in the approved BCDs, Developer shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld or delayed if the BCDs, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by Agency or City after the Effective Date. Unless a proposed change is rejected by City within twenty-one (21) days, it may be deemed approved. If rejected, the previously approved BCDs shall continue to remain in full force and effect. Any change in the BCDs required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved BCDs. Approval of changes to the BCDs by City shall be deemed approval thereof by Agency.

4.14. Construction Plans. Developer shall cause its General Contractor to submit to City's Building Department detailed construction plans for construction of the Project on the Property (the "**Construction Plans**"). As used herein "**Construction Plans**" means the final construction documents that are in conformance with the BCDs and OMRs and upon which Developer and Developer's contractors shall rely in constructing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth in the BCDs and upon the approvals issued by the Agency and the City for the Project, and shall not materially deviate therefrom without the express written consent of Agency and City. Provided that the Construction Plans are consistent with the BCDs, approval of the Construction Plans by City shall be deemed approval thereof by Agency.

4.15. Construction Pursuant to Plans. Developer and its contractor(s) shall construct the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City and/or the Agency pertaining to the Project. Developer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Projects. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

4.16. Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer shall submit the proposed change in writing to the Agency and City for their written approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by Agency or City after the Effective Date. Unless a proposed change is approved by City within twenty-one (21) days, it shall be deemed approved. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Construction Plans. Approval of changes to the Construction Plans by City shall be deemed approval thereof by Agency. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

4.17. Defects in Plans. Neither Agency nor City shall be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further

agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency or City of any of the insurance policies described in this Agreement. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

4.18. Certificate of Completion for Project. Promptly after completion of construction of the Project, issuance of a final Certificate of Occupancy by the City and the written request of Developer, the Agency and City will provide an instrument ("Certificate of Completion") so certifying, provided that at the time such certificate is requested all applicable work has been completed. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding construction of the Project. The Certificate of Completion for the Linden Avenue Property shall be issued substantially in the form attached hereto as Exhibit I ("City Certificate of Completion"), and at Developer's option, shall be recorded in the Official Records. The Certificate of Completion for the Grand-Cypress Avenue Property shall be issued substantially in the form attached hereto as Exhibit J ("Agency Certificate of Completion"), and at Developer's option, shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

4.19. Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

4.20. Prevailing Wage Requirements. To the full extent required by all applicable state and federal laws, rules and regulations, Developer and its contractors and agents shall comply with California Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("Prevailing Wage Laws"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City and Agency a plan for monitoring payment of prevailing wages and shall implement such plan at Developer's expense.

To the fullest extent permitted by law, Developer shall indemnify, defend (with counsel approved by Agency and City) and hold the Agency, 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 Agency and City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency or City of any of the insurance policies described in this Agreement. The provisions of this Section 4.20 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer'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.

4.21. Compliance with Laws. Developer shall carry out and shall cause its contractors to carry out construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.. Developer shall indemnify, defend (with counsel approved by Agency) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Developer's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency or City of any of the insurance policies described in this Agreement. Developer'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. Developer's defense and indemnification obligations set forth in this Section 4.21 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project.

4.22. Liens and Stop Notices. Until the expiration of the term of the Regulatory Agreement, Developer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Developer. If a claim of a lien or stop notice is given or recorded affecting the Project, Developer shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to Agency and City that the claim of lien or stop notice will be paid or discharged.

4.23. Right to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 4.22 above, the Agency and City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense upon notice to Developer and all sums advanced by Agency and/or City for such purpose shall be part of the indebtedness secured by the Agency Deed of Trust and City Deed of Trust, as applicable. In such event Developer shall be liable for and shall immediately reimburse Agency and/or City for such paid lien or stop notice. Alternatively, the Agency and/or City may require Developer to immediately deposit with Agency and/or City the amount necessary to satisfy such lien or claim pending resolution thereof. The Agency and/or City may use such deposit to satisfy any claim or lien that is adversely determined against Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The Agency and/or City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Agency and/or City deems necessary or desirable to protect its interest in the Property.

4.24. Performance and Payment Bonds. Prior to commencement of construction work on the Project, Developer shall cause its general contractor to deliver to the City and Agency copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Project. The bonds shall name the Agency and the City as co-obligees, as applicable. In lieu of such performance and payment bonds, subject to City's and Agency's approval of the form and substance thereof, Developer may submit evidence satisfactory to the City and Agency of the contractor's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the Agency and City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to Agency and City. Such evidence must be submitted to City and Agency in approvable form in sufficient time to allow for City's and Agency's review and approval prior to the scheduled construction start date.

4.25. Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article XI.

ARTICLE V

RESERVED

ARTICLE VI

CITY FINANCIAL ASSISTANCE

6.1. City Affordable Housing In-Lieu Grant. To assist in completion of the Project, City will provide Developer a grant in the amount of Four Hundred Thirty-Five Thousand

Dollars (\$435,000) from City Affordable Housing In-Lieu Fees for Project predevelopment activities on the Linden Avenue Property (the “City AHIL Grant”) upon the terms and conditions and for the purposes set forth in this Agreement. Provided that Developer has complied with all conditions precedent to disbursement of the City AHIL Grant set forth in Section 6.4, the proceeds of the City AHIL Grant shall be disbursed in accordance with this Article VI as it relates to predevelopment activities.

6.2. City Affordable Housing Bond Fund Grants. As further described in this Section, and in order to assist in the construction of affordable units, the City is providing Developer a total of \$1.7 Million dollars in grant funding (\$780,000 for Linden Avenue and \$920,000 for Grand-Cypress Avenue). Of this \$1.7 million dollars in grant funding, the City has already provided Developer with \$921,600 pursuant to the terms of the executed Exclusive Negotiation Rights Agreement (“ENRA”) for initial predevelopment expenses (\$387,000 for Linden and \$534,600 for Cypress). The remaining \$778,400 in grant funding will be provided following execution of this Agreement in order to assist with the completion of predevelopment activities.

- 6.2.1 Linden Avenue Grant. Agency has provided or will provide a grant to Developer in the amount of Seven Hundred Eighty Thousand Dollars (\$780,000) from Affordable Housing Bond Funds for construction of the affordable units on the Linden Avenue Property (the “Linden Avenue Grant”) upon the terms and conditions and for the purposes set forth in this Agreement.
- 6.2.2 Grand-Cypress Avenue Grant. City will provide a grant to Developer in the amount of Nine Hundred Twenty Thousand Dollars (\$920,000) from Affordable Housing Bond Funds for construction of the affordable units on the Grand-Cypress Avenue Property (the “Grand-Cypress Avenue Grant”) upon the terms and conditions and for the purposes set forth in this Agreement. The Linden Avenue Grant and Grand-Cypress Avenue Grant are hereinafter collectively referred to as the “Grants.”
- 6.2.3 Disbursement of Grant Proceeds. Provided that Developer has complied with all conditions precedent to disbursement of the Grants set forth in Section 6.3, the proceeds of the Grand-Cypress Avenue Grant, the Linden Avenue Grant and the City AHIL Grant (collectively, “Grant Proceeds”) shall be disbursed in accordance with this Section 6.2.3. Without limiting the generality of the foregoing, subject to Section 4.9, it is expressly understood by the Parties that City’s obligation to fund the Grants is contingent upon Developer’s provision to City of evidence reasonably satisfactory to City that Developer has obtained preliminary commitments from equity investors and/or lending institutions for the financing and construction of the Project (and provided Developer has finalized and is ready to enter into the construction contracts for the Project). The Parties agree the City shall disburse the Grant Proceeds only for, and to the extent necessary for, the purposes set forth in Section 6.3.

City shall have the right to terminate this Agreement, and shall have no further obligation to fund the Grants, if within twelve (12) months following the Effective Date, Developer does not concurrently obtain additional funding in an aggregate amount which is, in City's reasonable determination, sufficient to fully fund and construct the Project.

6.3. Conditions to Disbursement of Grants. City's obligation to further fund the City Grants and disburse the Grant Proceeds is conditioned upon the satisfaction of all of the conditions set forth in Section 2.3 (to the extent such conditions are applicable and required to be satisfied by the date of such request) and all of the following conditions:

- 6.3.1 For City Grant Proceeds to be used for predevelopment activities: In continuation of the Phase 1 Schematic Design/Entitlements and Phase 2 Bridging Contract Documents per ENRA and this Agreement, City shall disburse so much of the proceeds as requested within fifteen (15) days of City's receipt of a written requisition from Developer specifying the amount and use of the requested funds, accompanied by copies of third-party invoices, evidence of Developer's payment for services rendered in connection with the Project, and such other documentation as City shall reasonably require, including without limitation assignment agreements in form acceptable to City providing City with the right to rely upon and use the plans, studies and other work product paid for with the City Grant Proceeds.
- 6.3.2 For Grant Proceeds to be used for construction, if any funds remain from the predevelopment activities: (a) Developer's delivery to City of evidence reasonably satisfactory to City that Developer has obtained all necessary entitlements, permits (including without limitation building permits), licenses, and approvals required to develop the Project, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve; (b) City shall have approved the final plans and specifications for the Project; (c) Developer's construction financing for the Project shall have closed or shall close concurrently with City's disbursement of funds for construction, and Developer shall have delivered to City evidence reasonably satisfactory to City that Developer has secured binding commitments, subject only to commercially reasonable conditions, for all Project construction and permanent financing, (d) Developer's delivery to City and City approval of all of the following: (1) Project construction and operating budgets (2) performance bonds or other assurance of completion reasonably acceptable to City pursuant to the requirements set forth in Section 4.24; (3) construction schedule; (4) evidence of insurance coverage required pursuant to Section 11.2; (5) copies of such other documents related to the development and financing of the Project as City may reasonably request, and (6) Developer's delivery to City of evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Developer's provision to City of full waivers or releases of lien claims if required by City.

6.3.3 In addition to the above conditions, the following conditions apply for Grant Proceeds to be used for construction:

- (a) The conveyance of the Linden Avenue Property and Grand-Cypress Avenue Property to Developer.
- (b) Recordation of the Memorandum and the Regulatory Agreement in the Official Records.
- (c) Developer's delivery to City of evidence reasonable satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Developer's provision to City of full waivers or releases of lien claims if required by City.
- (d) Developer's delivery to the City of evidence of property and liability insurance coverage in accordance with the requirements set forth herein.
- (e) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Project or in the financial or other condition of Developer since the Effective Date of this Agreement.

6.4. No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Grant Proceeds following:

- (a) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Grants to be true and correct in all material respects;
- (b) the termination of this Agreement by mutual agreement of the Parties;
- (c) the occurrence of an Event of Default under any City Document which remains uncured beyond any applicable cure period after notice by the City, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Default under any City Document.

ARTICLE VII

USE OF THE PROPERTY

7.1. Use. Developer covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of a mixed-use, multi-family residential rental project in accordance with the terms and conditions of this Agreement and the Regulatory Agreement.

7.2. Maintenance. Developer shall at its own expense, maintain the Property, including the landscaping and common areas 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, Developer agrees to maintain the Property (including without limitation, the landscaping, driveways, parking areas, and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Developer shall prevent and/or rectify any physical deterioration of the Property except for ordinary wear and tear and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair.

7.3. Taxes and Assessments. Developer shall pay all real and personal property taxes, possessory interest taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Developer, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Developer exercises its right to contest any tax, assessment, or charge, the Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

7.4. Obligation to Refrain from Discrimination. Developer shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Developer covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Developer or any person claiming under or through Developer 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, sublessees or vendees in, of, or for the Property or part thereof. Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

All deeds, leases, sub-leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the improvements located thereon shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee 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 grantee or any person claiming under or through the grantee 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, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(b) In Leases or subleases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee 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, sublessees, subtenants, or vendees in the property herein leased.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) 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, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

(c) In Contracts, the following language shall appear:

“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 nor shall the transferee or

any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

ARTICLE VIII

LIMITATIONS ON CHANGE IN OWNERSHIP,

MANAGEMENT AND CONTROL OF

DEVELOPER; AGENCY OPTION

8.1. Change Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the construction of the Project pursuant to this Agreement. The qualifications, experience, and expertise of Developer and its principals and the financial capacity of Developer's financial partners or equity investors are of particular concern to the City and Agency. It is because of these qualifications, experience, financial capacity and expertise that the City and Agency have entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

8.2. Prohibition on Transfer. Prior to expiration of the term of the Regulatory Agreement, except for Permitted Transfers to Permitted Affiliates, defined herein, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “Transfer”) of the whole or any part of the Property or this Agreement, without the prior written approval of Agency and City, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the Agency’s or City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of Agency and City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than forty percent (40%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, member or other equity partner, nor the transfer by such investor to subsequent limited partners, members or other equity partners shall be restricted by this provision.

8.3. Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent the following (“Permitted Transfers”): (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; or (iii) a Transfer to BCV, BLV or other entity which is under the direct control of Developer so long as

Developer is the managing member of such entity and maintains at least a five percent (5)% equity interest in each such entity (“Permitted Affiliate”).

8.4. Requirements for Proposed Transfers. The Agency and City may, in the exercise of their reasonable discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 8.4 shall not apply to Transfers described in clauses (i) through (iii) of Section 8.3):

(a) The proposed transferee demonstrates to the Agency’s and City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the Agency and City to competently complete the Project and to otherwise fulfill the obligations undertaken by the Developer under this Agreement.

(b) The Developer and the proposed transferee shall submit for Agency and City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee’s qualifications and development capacity as the Agency and City may reasonably request.

(c) The proposed transferee shall expressly assume all of the rights and obligations of the Developer under this Agreement, the City Documents and the Agency Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer’s obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement.

(d) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the Agency and City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the Agency’s Chair unless the Chair, in his or her discretion, refers the matter of approval to the Agency’s governing board. 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 Agency or City in writing within thirty (30) days following Agency’s and City’s receipt of written request by Developer, it shall be deemed rejected, except for the transfer to BCV and BLV, in which case such transfer will be deemed accepted.

8.5. Effect of Transfer without Agency or City Consent.

8.5.1 In the absence of specific written agreement by the Agency and City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

8.5.2 Without limiting any other remedy Agency and City may have under this Agreement, or under law or equity, except for Permitted Transfers and as

otherwise provided in this Agreement, it shall be an Event of Default hereunder entitling Agency and City to terminate this Agreement if without the prior written approval of the Agency and City, Developer assigns or Transfers this Agreement or the Property prior to expiration of the term of the Regulatory Agreement. This Section 8.5.2 shall not apply to Permitted Transfers.

- 8.5.3 If, in violation of this Agreement, the Developer Transfers all or any part of the Linden Avenue Property or the improvements thereon, the City shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) Linden Avenue Purchase Price, and (b) the costs incurred by Developer in connection with the improvement and development of the Linden Avenue Property, including carrying charges, interest, fees, taxes, assessments and escrow fees, less any amount funded by the City pursuant to the City Grants. Such excess consideration shall belong to and be paid to the City by the Developer and until so paid, the City shall have a lien on the Linden Avenue Property for such amount.
- 8.5.4 If, in violation of this Agreement, the Developer Transfers all or any part of the Grand-Cypress Avenue Property or the improvements thereon, the Agency shall be entitled to receive from Developer the amount by which the consideration payable for such Transfer exceeds the sum of (a) the Grand-Cypress Avenue Purchase Price, and (b) the costs incurred by Developer in connection with the improvement and development of the Grand-Cypress Avenue Property, including carrying charges, interest, fees, taxes, assessments and escrow fees. Such excess consideration shall belong to and be paid to the Agency by the Developer and until so paid, the Agency shall have a lien on the Grand-Cypress Avenue Property for such amount.

8.6. Recovery of Agency/City Costs. Developer shall reimburse Agency and/or City for all Agency and/or City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect 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 Agency's and/or City's delivery to Developer of an invoice detailing such costs.

ARTICLE IX

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

9.1. Definitions.

- 9.1.1 **"Hazardous Material"** means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined

below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methytertbutyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

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

9.2. Reserved.

9.3. Property Sold, “AS IS”. Developer specifically acknowledges that the Agency and City are selling the Property on an “AS IS”, “WHERE IS” and “WITH ALL FAULTS” basis and that, subject to Seller's representations hereunder and in the Purchase and Sale Agreement and any obligations arising under such agreements or applicable law, Developer is not relying on any representations or warranties of any kind whatsoever, express or implied, from Agency, City, or their employees, board members, agents, or brokers as to any matters concerning the

Property. The Agency and City make no representations or warranties as to any matters concerning the Property, including without limitation: (i) the quality, nature, adequacy and physical condition of the Property, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the property for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence or removal of Hazardous Materials, substances or wastes on, under or about the Property or the adjoining or neighboring property; (viii) the quality of any labor and materials used in any improvements on the Property, (ix) the condition of title to the Property, (x) the leases, service contracts, or other agreements affecting the Property, or (xi) the economics of the operation of the Property.

9.4. Developer to Rely on Own Experts. Developer understands that notwithstanding the delivery by Agency or City to Developer of any materials, including, without limitation, third party reports, Developer will rely entirely on Developer's own experts and consultants and its own independent investigation in proceeding with the acquisition of the Property.

9.5. Right of Entry. Prior to commencement of construction, Developer and Developer's authorized representatives may enter upon and conduct further reviews and assessments of the physical and environmental condition of the Property and the condition of the existing improvements. Agency and/or City may require Developer to execute a right of entry agreement satisfactory to Agency and/or City prior to entry onto the Property for such purpose and shall require Developer to provide proof of liability insurance acceptable to Agency and/or City. Developer's inspection, examination, survey and review of the Property shall be at Developer's sole expense. Developer shall provide Agency and City with copies of all reports and test results promptly following completion of such reports and testing. Developer hereby agrees to notify the Agency and City twenty-four (24) hours in advance of its intention to enter the Property and will provide workplans, drawings, and descriptions of any intrusive sampling it intends to do. Developer must keep the Property in a safe condition during its entry. Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole expense. Developer will not permit any mechanics liens, stop notices or other liens or encumbrances to be placed against the Property prior to Close of Escrow. Without limiting any other indemnity provisions set forth in this Agreement, to the fullest extent permitted by law, Developer shall indemnify, defend (with counsel approved by Agency and City) and hold the Indemnitees harmless from and against all Claims resulting from or arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors pursuant to this Section 9.5. Developer's indemnification obligations set forth in this Section 9.5 shall survive the termination of this Agreement.

9.6. Release by Developer. Subject to Sellers' representations in this Agreement and in the Purchase and Sale Agreement and any obligations arising under such Agreements or applicable law, Developer WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER

DISCHARGES the Agency, City, their officers, board members, employees, agents, consultants and contractors, and any other person acting on behalf of the Agency or City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Developer now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Materials in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

Developer's initials: _____

9.7. Developer's Obligations. Developer hereby covenants and agrees that:

- (1) Developer shall not knowingly permit the Property, the Project or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Property or Project with the exception of cleaning supplies and other materials customarily used in construction, rehabilitation, use or maintenance of residential and commercial properties similar in nature to the Property and used, stored and disposed of in compliance with Environmental Laws.
- (2) Developer shall keep and maintain the Property, the Project and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.
- (3) Upon receiving actual knowledge of the same, Developer shall immediately advise City and Agency in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Property; or (iv) Developer's discovery of any occurrence or condition

on any real property adjoining or in the vicinity of the Project classified as “Border Zone Property” under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as “Hazardous Materials Claims.” The Agency and City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the Agency’s and/or City’s prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the Agency agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

ARTICLE X

DEFAULTS, REMEDIES AND TERMINATION

10.1. Event of Developer Default. The following events shall constitute an event of default on the part of Developer (“Event of Developer Default”):

(a) Developer fails to commence or complete construction of the Project within the times set forth in Section 4.9, or subject to force majeure, abandons or suspends construction of the Project prior to completion for a period of sixty (60) days or more;

(b) Developer fails to comply with the financing requirements as set forth in Section 2.3.9 of this Agreement. Notwithstanding any other provision, there shall be no cure period for this Event of Developer Default.

(c) Developer fails to pay the principal and interest (if any) payable to the City or Agency under any Note and such failure continues for ten (10) days after Agency and/or City, as applicable, notifies Developer thereof in writing;

(d) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VIII;

(e) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within ten (10) days;

(f) Subject to Developer’s right to contest the following charges pursuant to Section 7.3, if Developer fails to pay prior to delinquency taxes or assessments due on Grand-Cypress Avenue Property, or the Linden Avenue Property, as applicable, or fails to pay when due any other charge that may result in a lien on such Property, and Developer fails to

cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(g) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Grand-Cypress Avenue Property or the Linden Avenue Property, as applicable, 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;

(h) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Agency or the City in connection with this Agreement or Developer's request for the City Grants proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Agency or the City;

(i) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any managing member thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Developer or any managing member thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any managing member thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(j) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer;

(k) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(l) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(m) An event of default arises under any Agency Document or City Document, as applicable, and remains uncured beyond any applicable cure period after notice to Developer; or

(n) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency and/or City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default.

10.2. Agency's and City's Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City and Agency shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement upon thirty (30) days notice to Developer. If Agency and/or City makes such election, Agency and/or City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, which shall be thirty (30) days or more from the notice date, and upon the specified date, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

10.3. Agency's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default related to the Project prior to property conveyance or related to the Grand-Cypress Avenue Property following property conveyance, and the expiration of any applicable cure period, Agency shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and Agency may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the Agency Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the Agency Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of the Agency Documents;
- (c) Foreclose on the Grand-Cypress Avenue Property under the applicable Deed of Trust;
- (d) Obtain sole rights of possession and use for all design and planning documents related to the construction of the Project related to the Grand-Cypress Property to the extent assignable.
- (e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the Agency Documents and Agency's rights thereunder.

10.4. City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default related to the Project prior to property conveyance or related to the Linden Avenue Property following property conveyance, and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the City Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Linden Avenue Property under the applicable Deed of Trust;

(d) Obtain sole rights of possession and use for all design and planning documents related to the construction of the Project related to the Linden Property to the extent assignable.

(e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

10.5. No Cross Default. Except as otherwise expressly stated in this Agreement, (a) a default by Developer under the City Documents shall not by itself constitute a default under the Agency Documents allowing the Agency to exercise its remedies thereunder, and (b) a default by Developer under the Agency Documents shall not by itself constitute a default under the City Documents allowing the City to exercise its remedies thereunder. The rights and remedies of the City and Agency under the City Documents and the Agency Documents, respectively, are separate and distinct, and the exercise by either the Agency or City of one or more of such rights or remedies thereunder shall not by itself permit the exercise of rights and remedies by the other.

10.6. Inaction Not a Waiver of Default. No failure or delay by City or Agency in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either City or Agency of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

10.7. Agency's Option to Purchase, Enter and Possess. The Agency shall have the additional right at its option to purchase, enter and take possession of the Grand-Cypress Avenue Property with all improvements thereon (the "Repurchase Option"), if after conveyance of the Grand-Cypress Avenue Property, Developer (i) fails to begin construction of the Project on the Grand-Cypress Avenue Property within the time specified in Section 4.9 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Project on the Grand-Cypress Avenue Property for a period of sixty (60) days after written notice from Agency, (iii) fails to complete construction of the Project on the Grand-Cypress Avenue Property

by the time specified in Section 4.9 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Grand-Cypress Avenue Property or this Agreement in violation of Article VIII.

To exercise the Repurchase Option, the Agency shall pay to the Developer cash in an amount equal to:

- (i) The the principal amount that has been repaid to the date of default on the Loan for the Grand-Cypress Avenue Purchase Price; plus
- (ii) The fair market value of any new improvements existing on the Grand-Cypress Avenue Property at the time of exercise of the Repurchase Option; less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Grand-Cypress Avenue Property or the improvements thereon; less
- (iv) The amount of grant funds that were provided by the City to partially finance the construction of the Project for the Grand-Cypress Avenue Property; less
- (v) The value of any liens or encumbrances on the applicable portion of the Property the Agency assumes or takes subject to; less
- (vi) Any damages to which the Agency is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option, Agency shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Agency with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Agency's receipt of such summary, Agency shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10.7, and Developer shall execute and deposit into such escrow a grant deed transferring to Agency all of Developer's interest in the Grand-Cypress Avenue Property or portion thereof, as applicable and the improvements located thereon. In no event shall Developer be required to reimburse any City Grants or pay any amounts to Agency in connection with their exercise of the Repurchase Option.

10.8. City's Option to Purchase, Enter and Possess. The City shall have the additional right at its option to purchase, enter and take possession of the Linden Avenue Property with all improvements thereon (the "Repurchase Option"), if after conveyance of the Linden Avenue Property, Developer (i) fails to begin construction of the Project on the Linden Avenue Property within the time specified in Section 4.9 as such date may be extended pursuant to the terms hereof, (ii) abandons or suspends construction of the Project on the Linden Avenue Property for a period of sixty (60) days after written notice from City, (iii) fails to complete construction of the Project on the Linden Avenue Property by the time specified in Section 4.9 as such date may be extended pursuant to the terms hereof, or (iv) directly or indirectly, voluntarily or involuntarily Transfers the Linden Avenue Property or this Agreement in violation of Article VIII.

To exercise the Repurchase Option, the City shall pay to the Developer cash in an amount equal to:

- (i) The the principal amount that has been repaid to the date of default on the Loan for the Linden Avenue Purchase Price; plus
- (ii) The fair market value of any new improvements existing on the Linden Avenue Property at the time of exercise of the Repurchase Option; less
- (iii) Any gains or income withdrawn or made by the Developer from the applicable portion of the Linden Avenue Property or the improvements thereon; less
- (iv) The amount of grant funds that were provided by the City to partially finance the construction of the Project for the Linden Avenue Property; less
- (v) The value of any liens or encumbrances on the applicable portion of the Property the City assumes or takes subject to; less
- (vi) Any damages to which the City is entitled under this Agreement by reason of Developer's default.

In order to exercise the Repurchase Option, Agency shall give Developer notice of such exercise, and Developer shall, within thirty (30) days after receipt of such notice, provide Agency with a summary of all of Developer's costs incurred as described in this Section. Within thirty (30) days of Agency's receipt of such summary, Agency shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 10.8, and Developer shall execute and deposit into such escrow a grant deed transferring to Agency all of Developer's interest in the Linden Avenue Property or portion thereof, as applicable and the improvements located thereon. In no event shall Developer be required to reimburse any City Grants or pay any amounts to Agency in connection with their exercise of the Repurchase Option.

10.9. Memorandum of Option to Purchase. The parties shall cause a memorandum or memoranda of the rights granted to the Agency and City in Section 10.9 of this Agreement to be recorded in the official records of San Mateo County at the time of the Close of Escrow for conveyance of the Property to Developer. In lieu of such memorandum, the rights afforded Agency and City pursuant to Sections 10.8 may be described in the Agency Grant Deed and City Grant Deed.

10.10. Construction Plans. If this Agreement is terminated pursuant to Section 10.3, the Developer, at no cost to the Agency and City, shall deliver to the Agency and City copies of any construction plans, BCD's (including OMR's) and studies in the Developer's possession or in the possession of the Developer's consultants related to development of the Project on the Property, subject to the rights of third parties. In the event the Agency and/or City utilizes the construction plans or studies, the Agency and/or City shall indemnify the Developer for any claims arising from the use of construction plans or studies by the Agency and/or City pursuant to this Section 10.10.

10.11. Rights of Mortgagees. Any rights of the Agency and City under this Article X shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance of the Property to the Agency and/or City pursuant to this Article X shall be subject to mortgages and deeds of trust permitted by this Agreement.

ARTICLE XI

INDEMNITY AND INSURANCE.

11.1. Indemnity. To the fullest extent permitted by law, Developer shall indemnify, defend (with counsel approved by Agency and City) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Developer's or Developer's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof or otherwise arising out of or in connection with Developer's performance under this Agreement. Developer's indemnification obligations under this Section 11.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Project and the expiration or earlier termination of this Agreement. It is further agreed that Agency and City do not and shall not waive any rights against Developer that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or the deposit with Agency or City by Developer, of any of the insurance policies described in this Agreement.

11.2. Liability and Workers Compensation Insurance.

(a) Prior to initiating work on the Project and continuing through the issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer on the Project shall maintain a commercial general liability policy in the amount of One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as Agency and/or City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Until issuance of the Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City and Agency evidence satisfactory to Agency and City that Developer and any contractor with whom Developer has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Upon commencement of construction work and continuing until issuance of a Certificate of Completion, Developer and all contractors working on behalf of Developer shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Agency and City as loss payees.

(d) Developer shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to Agency and City, naming Agency and City as loss payees.

(e) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Agency and City as loss payees as their interests may appear.

(f) Prior to commencement of construction work, Developer shall furnish Agency and City with certificates of insurance in form acceptable to Agency and City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City and Agency of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

(g) If any insurance policy or coverage required hereunder is canceled or reduced, Developer shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Agency and City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Agency or City may, without further notice and at its option, procure such insurance coverage at Developer's expense, and Developer shall promptly reimburse Agency and/or City for such expense upon receipt of billing from Agency and/or City.

(h) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency and/or City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City and Agency. Developer shall furnish the required certificates and endorsements to Agency and City prior to the commencement of construction of the Project, and shall provide Agency and City with certified copies of the required insurance policies upon request of Agency and City.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. **No Brokers.** Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, real estate brokerage fee, finder's fee, or other compensation with respect to the transfer of the Property contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12.2. **Enforced Delay; Extension of Times of Performance.** Subject to the limitations set forth below, performance by either Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Party, acts or failures to act of any public or governmental agency or entity (other than the acts or failures to act of Agency or City which shall not excuse performance by Agency or City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Party within ten (10) days of receipt of the notice. Neither Party shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Parties (the Agency acting in the discretion of its Executive Director unless he or she determines in his or her discretion to refer such matter to the governing board of the Agency and the City acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). The Parties acknowledge that adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

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

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(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;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attention: City Manager
Fax: (650) 829-6609

with a copy to: Meyers Nave
Attn: Jason Rosenberg
575 Market Street, Suite 2080
San Francisco, CA 94105
Tel: (415) 421-3711
Fax: (415) 421-3767

Agency: Successor Agency to the
Redevelopment Agency of the City
of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: Agency Executive Director
Fax _____

Developer: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94111
Tel: (415) 402-0800
Fax: (415) 399-9367

with a copy to: Leland, Parachini, Steinberg,
Matzger & Melnick, LLP
Attention: Nina P. Kwan, Esq.
199 Fremont Street, 21st Flr.
San Francisco, CA 94105

Tel: (415) 957-1800
Fax: (415) 974-1520

12.4. Attorneys' Fees. If any Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12.5. Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6. Binding on Successors. Subject to the restrictions on Transfers set forth in Article VIII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

12.7. Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 4.17, 4.20, 4.21, 7.4, 11.1, 12.1, and 12.18 shall survive the expiration or termination of this Agreement and the issuance and recordation of a Certificate of Completion. None of the provisions, terms, representations, warranties and covenants of this Agreement are intended to or shall be merged by any grant deed conveying the Property to Developer or any successor in interest, and neither such grant deed nor any other document shall affect or impair the provisions, terms, representations, warranties and covenants contained herein.

12.8. Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

12.9. Action or Approval. Whenever action and/or approval by Agency is required under this Agreement, Agency's Chair or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Chair determines in his or her discretion that such action or approval requires referral to Agency's Board for consideration. Whenever action and/or approval by City is required under this Agreement, the City Manager or his or her designee may act on and/or approve such matter unless specifically provided

otherwise, or unless the City Manager determines in his or her discretion that such action or approval requires referral to the City Council for consideration.

12.10. Entire Agreement. This Agreement, including Exhibits A through I attached hereto and incorporated herein by this reference, together with the other Agency Documents and City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

12.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.12. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.13. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.14. 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.

12.15. Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of Agency or City shall be personally liable to Developer or its successors in interest in the event of any default or breach by Agency or City or for any amount which may become due to Developer or its successors in interest pursuant to this Agreement.

12.16. Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

12.17. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of

San Mateo County, California or in the Federal District Court for the Northern District of California.

12.18. General Indemnification. Developer shall indemnify, defend (with counsel approved by Agency and City) and hold harmless Indemnitees from all Claims (including without limitation, reasonable attorneys' fees) arising in connection with any claim, action or proceeding to attack, set aside, void, or annul any approval by the City or the Agency or any of its agencies, departments, commissions, agents, officers, employees or legislative body concerning the Project or this Agreement. The Agency will promptly notify Developer of any such claim, action or proceeding, and will cooperate fully in the defense. The Agency and City may, within the unlimited discretion of each, participate in the defense of any such claim, action or proceeding, and if the Agency or City chooses to do so, Developer shall reimburse Agency and City for reasonable attorneys' fees and expenses incurred.

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

CITY

CITY OF SOUTH SAN FRANCISCO,
A MUNICIPAL CORPORATION

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____

Jason Rosenberg, City Attorney

AGENCY

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SOUTH
SAN FRANCISCO,
A PUBLIC AGENCY

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Krista Martinelli, Agency Secretary

APPROVED AS TO FORM:

By: _____

Jason Rosenberg, Agency Counsel

DEVELOPER

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____

Shepherd Heery
Chairman and Chief Executive Officer

Exhibit A-1

LEGAL DESCRIPTION OF LINDEN AVENUE PROPERTY

(Attach legal description.)

Exhibit A-2

LEGAL DESCRIPTION OF GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

Exhibit B

FORM OF MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

(Attach form of Memorandum.)

Exhibit C-1

FORM OF GRAND-CYPRESS PURCHASE AND SALE AGREEMENT

(Attach form of Purchase and Sale Agreement.)

Exhibit C-2

FORM OF LINDEN PURCHASE AND SALE AGREEMENT

(Attach form of Purchase and Sale Agreement.)

Exhibit D-1

FORM OF CITY NOTE

(Attach form of Promissory Note.)

Exhibit D-2

FORM OF AGENCY NOTE

(Attach form of Promissory Note.)

Exhibit E-1

FORM OF CITY DEED OF TRUST

(Attach Deed of Trust)

Exhibit E-1

FORM OF AGENCY DEED OF TRUST

(Attach Deed of Trust)

Exhibit F-1

FORM OF LINDEN REGULATORY AGREEMENT

(Attach form of Regulatory Agreement.)

Exhibit F-2

FORM OF GRAND-CYPRESS REGULATORY AGREEMENT

(Attach form of Regulatory Agreement.)

Exhibit G

APPLICABLE LAWS

(Attach Applicable Laws.)

Exhibit H

PRELIMINARY FINANCING PLAN

(Attach Financing Plan)

Exhibit I

FORM OF CITY CERTIFICATE OF COMPLETION

(Attach form of Certificate.)

Exhibit J

FORM OF AGENCY CERTIFICATE OF COMPLETION

(Attach form of Certificate.)

**Recording Requested by
and when Recorded, return to:**

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

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

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**MEMORANDUM OF
DISPOSITION AND DEVELOPMENT AGREEMENT**

This Memorandum of Disposition and Development Agreement (this “**Memorandum**”) dated as of _____, 2015, is entered into by and between the City of South San Francisco, a municipal corporation (“**City**”), the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“**Agency**”), and Brookwood Equities, LLC, a Delaware limited liability company (“**Developer**”). City, Agency and Developer are hereinafter collectively referred to as the “**Parties**.”

1. DDA; Conveyance. The Parties have entered into that certain Disposition and Development Agreement dated as of _____, 2015 (the “**DDA**”), pursuant to which (a) City has agreed to sell to Developer and Developer has agreed to purchase and redevelop certain real property (the “**Linden Avenue Property**”) located at 418 Linden Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-314-010 and more particularly described in Exhibit A-1 attached hereto and incorporated herein by this reference; (b) Agency has agreed to sell to Developer and Developer has agreed to purchase and redevelop certain real property (the “**Grand-Cypress Avenue Property**”) located at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A-2 attached hereto. The Linden Avenue Property and Grand-Cypress Avenue Property are hereinafter collectively referred to as the “**Property**.”
2. Schedule for Construction. Among other conditions, the DDA provides that by not later than 30 months of Effective Date (unless such date is extended by mutual agreement of the Parties), Developer shall have completed construction of a mixed-used, multi-residential rental project (as more particularly described in the DDA, the “**Project**”) on the Property which will be subject to certain maintenance obligations pursuant to the terms of the DDA and Affordable Housing Regulatory Agreements and Declaration of Restrictive Covenants (“**Regulatory Agreements**”) for the Linden Avenue Property and the Grand-Cypress Avenue Property, which shall be executed by City or Agency, as applicable, and Developer and recorded in Official Records of San Mateo County substantially concurrently herewith.
3. City and Agency Option to Repurchase; Power of Termination. The DDA further provides that the City and the Agency have the right to purchase the Property pursuant to certain option rights as more particularly described in the DDA upon the occurrence of certain events,

including without limitation Developer's failure to commence construction of the Project within twelve (12) months following City's conveyance of the Property to Developer, Developer's failure to complete construction of the Project within the time period set forth in Section 2 above, Developer's transfer of the Property in violation of the DDA, and the occurrence of certain other events of default, as more particularly described in the DDA.

4. Restrictions on Transfer. The DDA further provides that prior to expiration of the term of the Regulatory Agreements: (i) except as permitted by the DDA, Developer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the improvements located thereon without the prior written approval of the City and/or Agency; and (ii) any transferee of all or part of the Property shall be subject to and shall expressly assume all of the covenants, obligations and restrictions of the DDA which pertain to the portion of the Property transferred, including without limitation, the provisions of the Regulatory Agreement.

5. DDA Controls. The Parties have executed and recorded this instrument to give notice of the DDA and the respective rights of the Parties thereunder. Copies of the unrecorded DDA are available at the offices of the City, 400 Grand Avenue, South San Francisco, CA 94080, and such document is incorporated by reference in its entirety in this Memorandum. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the DDA. In the event of any inconsistency between this Memorandum and the DDA, the DDA shall control.

6. Interpretation; Counterparts. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.

7. Binding Effect. The DDA shall bind and inure to the benefit of the Parties and their respective successors and assigns, subject to the provisions of the DDA concerning assignment.

8. Termination. Upon completion of construction of the Project in accordance with the DDA, the restrictions upon transfer described in Section 4 and the City's and Agency's rights to reacquire the Property described in Section 3 shall terminate and upon request, City and Agency agree to record a Certificate of Completion, and a termination of this Memorandum.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first set forth above.

CITY

CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____
Mike Futrell, City Manager

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

AGENCY

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SOUTH
SAN FRANCISCO,
a public agency

By: _____
Mike Futrell, Agency Executive Director

ATTEST:

By: _____
Krista Martinelli, Agency Secretary

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, Agency Counsel

DEVELOPER

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A-1

LINDEN AVENUE PROPERTY

(Attach legal description.)

Exhibit A-2

GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“this **Agreement**”) is made and entered into as of _____ (the “**Effective Date**”), by and between the City of South San Francisco, a municipal corporation, (“**City**” or the “**Seller**”) and Brookwood Equities LLC (“**Buyer**”). Seller and Buyer are collectively referred to herein as the “**Parties**.”

RECITALS

A. City is the owner of the real property located in the City of South San Francisco at 418 Linden Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-314-010 and more particularly described in Exhibit A-1 attached hereto (the “**Linden Avenue Property**” or the “**Property**”).

B. Buyer intends to create or has created a special purpose entity called Brookwood Linden Venture LLC (“**BLV**”) for the Linden Avenue Property to serve as the ownership entity for the Project, defined below. For purposes of this Agreement and where the context warrants, a reference to the Buyer shall be to BLV for the Linden Avenue Property once BLV has been formed and assumed the obligations of Buyer for such Property.

C. On _____, 2015, Buyer and Seller entered into that certain Disposition and Development Agreement (the “**DDA**”), pursuant to which Seller agreed to sell the Property to Buyer for construction of a residential development consisting of approximately 38 multi-family residential units, at least 8 of which will be affordable to low- and moderate - income households (the “**Project**”) pursuant to the terms set forth therein.

D. The Property is subject to the Linden Regulatory Agreement to be concurrently recorded in the official records of San Mateo County. A copy of the Linden Regulatory Agreement is attached hereto as Exhibit D.

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

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

2. PURCHASE AND SALE.

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

2.2. Purchase Price. The purchase price for the Linden Avenue Property to be paid by Buyer to City is One Million Three Hundred and Eighty Eight Thousand Dollars (\$1,388,000) ("**Purchase Price**").

2.3. Sale of Linden Avenue Property. The Purchase Price for the Linden Avenue Property shall be paid by execution of a promissory note by Buyer in the principal amount of One Million Three Hundred Eighty-Eight Thousand Dollars (\$1,388,000), with annual payments of Twenty Seven Thousand Seven Hundred Fifty Dollars (\$27,750), plus accrued interest, commencing one (1) year after the Certificate of Completion of the Linden Avenue Property, an interest rate of One (1%) and a term of thirty (30) years (the "**City Note**") in the form attached hereto as Exhibit D. The City Note shall be secured by a Deed of Trust on the Linden Avenue Property in the form attached hereto as Exhibit E (the "**City Deed of Trust**"). The City Note and Deed of Trust shall be subordinated to the permanent and construction financing for the Project and the City shall execute any subordination agreement, if necessary, required by the Buyer and the lender providing the permanent or construction financing for the Project.

2.4. Assignment and Assumption by Buyer Entities. For purposes of this Agreement and where the context warrants, a reference to the Buyer shall be to BLV for the Linden Avenue Property once BLV has been formed and assumed the obligations of Buyer for such Property. Upon execution of an assignment and assumption agreement between Buyer, as assignor, and BLV, as assignee, in form and content acceptable to the City, Buyer shall be released from all obligations under this DDA, the Purchase and Sale Agreement, and the City Documents.

3. ESCROW.

3.1. Escrow Account. Seller ~~have~~ has opened an escrow account (the "**Escrow**") maintained by First American Title Insurance Company (the "**Escrow Holder**"). Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2. Opening of Escrow. Within seven (7) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the "**Opening of Escrow**."

4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1. Condition of Title/Preliminary Title Report. Escrow Holder has delivered a Preliminary Title Report for the Property (the "**Preliminary Report**") to Buyer. Buyer has reviewed the Preliminary Report and approved all of the following exceptions to title, (the "**Permitted Exceptions**"): (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; and (c) the "Permitted Exceptions" listed on Exhibit C attached hereto.

4.2. Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath

the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller agrees to make all necessary disclosures required by law.

5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1. Closing. The closing (the “**Closing**” or “**Close of Escrow**”) will occur no later than (i) thirty (30) days after the Buyer has received firm financing commitments for the financing and construction of the Project (provided Buyer has finalized and is ready to enter into the final design and construction contracts for the Project) (“**Closing Date**”) or such other date as the Parties agree in writing.

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

(a) Buyer has approved the condition of the Property. Buyer will have forty-five (45) calendar days from Opening of Escrow (the “**Due Diligence Contingency Period**”) to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller have in its possession not later than two (2) business days following the execution and delivery of this Agreement. All physical inspections must be coordinated with Seller’ representative. Buyer hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) by Buyer’s inspections.

(b) Seller have performed all obligations to be performed by Seller pursuant to the DDA and this Agreement.

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

(d) The Title Company is irrevocably committed to issue a CLTA Title Policy to Buyer, effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price.

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

(a) Buyer has performed all obligations to be performed by Buyer pursuant to the DDA and this Agreement before Closing Date.

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

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

5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed, substantially in the form attached hereto as Exhibit B (“Grant Deed”); (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the “Non-Foreign Affidavit”); (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131, and (iv) immediately available funds to cover Seller's share of escrow fees, closing costs, and any other costs that are the responsibility of Seller under this Agreement.

(b) Deliveries by Buyer. No less than one (1) business day prior to the close of escrow, Buyer shall deposit into escrow the Promissory Notes and the Deeds of Trust for the Property and immediately available funds to cover (i) the escrow fees and recording fees; and (ii) the cost of the Title Policy, and (iii) any other costs that are the responsibility of Buyer under this Agreement.

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

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

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

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1. Seller’ Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in the DDA and other sections of

this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing Date provided however, if to Seller' actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 8.2 will apply.

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

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

(c) There are no agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow.

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

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

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

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor

protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

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

7. DEFAULT, REMEDIES, TERMINATION. Either Party shall be in default of this Agreement ("Default") if such Party fails to keep, observe or perform any of its covenants, duties or obligations under this Agreement, and the default continues for a period of thirty (30) days, unless a different time period is specified herein, after written notice thereof from the non-defaulting Party to the defaulting Party, or in the case of a Default that cannot with due diligence be cured within thirty (30) days or other time specified for herein, the defaulting Party fails to prosecute the curing of such Default with due diligence and in good faith to completion. Either Party shall have the right to terminate this Agreement upon a Default and expiration of any applicable cure period, and in accordance with the terms of this Agreement, in addition to pursuing all remedies available under law or equity. Except as otherwise provided herein, the rights and remedies of the Parties shall be cumulative; provided, however, that neither Party shall have a right to recover consequential or punitive damages.

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

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

10. ENVIRONMENTAL INDEMNITY. To the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller, and their respective elected and appointed officers, officials, employees, agents, consultants and contractors harmless from and against any and all claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean-up of the Property), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys' and paralegals' fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in

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

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

Buyer's initials: _____

12. HAZARDOUS MATERIALS; DEFINITIONS.

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

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

13. MISCELLANEOUS.

13.1. Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise

enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

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

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

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

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

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

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

13.8. Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which

provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94111
Tel: (415) 402-0800
Fax: (415) 399-9367

with a copy to: Leland, Parachini, Steinberg,
Matzger & Melnick, LLP
Attn: Nina P. Kwan
199 Fremont Street, 21st Flr.
San Francisco, CA 94105
Tel: (415) 957-1800
Fax: (415) 974-1520

To Seller: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager
Tel (650) 877-8501
Fax (650) 829-6609

with a copy to: Meyers Nave
Attn: Jason Rosenberg
575 Market Street, Suite 2080
San Francisco, CA 94105
Tel (415) 421-3711
Fax (415) 421-3767

If to Escrow Holder: First American Title Insurance
Attn: Marc Bonfigli
101 Mission Street, Suite 1600
San Francisco, CA 94105
Tel (415) 837-2235
Fax (714) 481-4597

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

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

13.10. Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

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

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

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

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

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

13.16. Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

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

SELLER:

CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg
City Attorney

BUYER:

BROOKWOOD EQUITIES LLC

By: _____

APPROVED AS TO FORM:

By: _____
Counsel for Buyer

LIST OF EXHIBITS

| | |
|-----------|----------------------|
| Exhibit A | Legal Description |
| Exhibit B | Grant Deed |
| Exhibit C | Permitted Exceptions |
| Exhibit D | City Note |
| Exhibit E | City Deed of Trust |
| Exhibit F | Regulatory Agreement |

Exhibit A

LEGAL DESCRIPTION

Exhibit B
GRANT DEED

Exhibit C

PERMITTED EXCEPTIONS

Exhibit D

CITY NOTE

Exhibit E

CITY DEED OF TRUST

Exhibit F

REGULATORY AGREEMENT

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“this **Agreement**”) is made and entered into as of _____ (the “**Effective Date**”), by and between the Successor Agency to the Redevelopment Agency of the City of South San Francisco, a public agency (referred to as “**Agency**”) or (the “**Seller**”) and Brookwood Equities LLC, (“**Buyer**”), which is the date this Agreement was approved by the South San Francisco Oversight Board (“**Oversight Board**”). Seller and Buyer are collectively referred to herein as the “**Parties**.”

RECITALS

A. Agency is the owner of the real property located in the City of South San Francisco at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A-2 attached hereto (the “**Grand-Cypress Avenue Property**”) or (the “**Property**”).

B. Buyer intends to create or has created a special purpose entity called Brookwood Cypress Venture LLC (“**BCV**”) for the Grand-Cypress Avenue Property to serve as the ownership entity for the Project, defined below. For purposes of this Agreement and where the context warrants, a reference to the Buyer shall be to BCV for the Cypress Avenue Property once BCV has been formed and assumed the obligations of Buyer for such Property.

C. On June 29, 2011 the legislature of the State of California (the “**State**”) adopted Assembly Bill x1 26 (“**AB 26**”), which amended provisions of the Redevelopment Law, which together with the California Supreme Court decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, which upheld AB 26 (together with AB 1484 and SB 107, the “**Dissolution Law**”), the former Redevelopment Agency of the City of South San Francisco was dissolved on February 1, 2012.

D. Pursuant to the Dissolution Law, the Agency has prepared a Long Range Property Management Plan (“**LRPMP**”), which the Oversight Board to the Agency approved on November 19, 2013, subsequently amended on May 21, 2015, and the DOF approved on October 2, 2015.

E. The LRPMP includes development plans for the Grand-Cypress Avenue Property, which are consistent with this Agreement.

F. On _____, 2015, Buyer and Seller entered into that certain Disposition and Development Agreement (the “**DDA**”), pursuant to which Seller agreed to sell the Property to Buyer for construction of a mixed-use development consisting of approximately 46 multi-family residential units, at least 11 of which will be affordable to low- and moderate - income households (the “**Project**”) pursuant to the terms set forth therein.

G. The Property is subject to the Regulatory Agreement to be concurrently recorded in the official records of San Mateo County. A copy of the Grand-Cypress Regulatory Agreement is attached hereto as Exhibit D.

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

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

2. PURCHASE AND SALE.

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

2.2. Purchase Price. The purchase price for the Grand-Cypress Avenue Property to be paid by Buyer to Agency is Two Million Twenty Thousand Dollars (\$2,020,000) ("**Purchase Price**").

2.3. Sale of Grand-Cypress Property. The Purchase Price for the Grand-Cypress Avenue Property shall be paid by execution of a promissory note by Buyer in the principal amount of Two Million Twenty Thousand Dollars (\$2,020,000), with annual payments of Forty Thousand Dollars (\$40,000), plus interest, commencing one (1) year after the Certificate of Completion of the Grand-Cypress Avenue Property, an interest rate of One (1%) percent and a term of thirty (30) years (the "**Agency Note**") in the form attached hereto as Exhibit D. The Agency Note shall be secured by a Deed of Trust on the Grand-Cypress Avenue Property in the form attached hereto as Exhibit E (the "**Agency Deed of Trust**"). The Agency Note and Deed of Trust shall be subordinated to the permanent and construction financing for the Project and the City shall execute any subordination agreement, if necessary, required by the Buyer and the lender providing the permanent or construction financing for the Project.

2.4. Assignment and Assumption by Buyer Entities. For purposes of this Agreement and where the context warrants, a reference to the Buyer shall be to BCV for the Grand- Cypress Avenue Property and a reference to the Buyer shall be to BLV for the Linden Avenue Property once such entities have been formed and assumed the obligations of Buyer for such Property. Upon execution of an assignment and assumption agreement between Buyer, as assignor, and BCV, as assignee, in form and content acceptable to the Agency, Buyer shall be released from all obligations under this DDA, the Purchase and Sale Agreement, and the Agency Documents. Upon execution of an assignment and assumption agreement between Buyer, as assignor, and BLV, as assignee, in form and content acceptable to the City, Buyer shall be released from all obligations under this DDA, the Purchase and Sale Agreement, and the City Documents.

3. ESCROW.

3.1. Escrow Account. Seller have opened an escrow account (the "**Escrow**") maintained by First American Title Insurance Company (the "**Escrow Holder**"). Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2. Opening of Escrow. Within seven (7) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the “**Opening of Escrow.**”

4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1. Condition of Title/Preliminary Title Report. Escrow Holder has delivered a Preliminary Title Report for the Property (the “**Preliminary Report**”) to Buyer. Buyer has reviewed the Preliminary Report and approved all of the following exceptions to title, (the “**Permitted Exceptions**”): (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; and (c) the “Permitted Exceptions” listed on Exhibit C attached hereto.

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

5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1. Closing. The closing (the “**Closing**” or “**Close of Escrow**”) will occur no later than (i) thirty (30) days after the Buyer has received firm financing commitments for the financing and construction of the Project (provided Buyer has finalized and is ready to enter into the final design and construction contracts for the Project) (“**Closing Date**”) or such other date as the Parties agree in writing.

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

(a) Buyer has approved the condition of the Property. Buyer will have forty-five (45) calendar days from Opening of Escrow (the “**Due Diligence Contingency Period**”) to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller have in its possession not later than two (2) business days following the execution and delivery of this Agreement. All physical inspections must be coordinated with Seller’ representative. Buyer hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) by Buyer’s inspections.

(b) Seller have performed all obligations to be performed by Seller pursuant to the DDA and this Agreement.

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

(d) The Title Company is irrevocably committed to issue a CLTA Title Policy to Buyer, effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price.

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

(a) Buyer has performed all obligations to be performed by Buyer pursuant to the DDA and this Agreement before Closing Date.

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

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

5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed, substantially in the form attached hereto as Exhibit B ("Grant Deed"); (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "Non-Foreign Affidavit"); (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131, and (iv) immediately available funds to cover Seller's share of escrow fees, closing costs, and any other costs that are the responsibility of Seller under this Agreement.

(b) Deliveries by Buyer. No less than one (1) business day prior to the close of escrow, Buyer shall deposit into escrow the Promissory Notes and the Deeds of Trust for the Property and immediately available funds to cover (i) the escrow fees and recording fees; and (ii) the cost of the Title Policy, and (iii) any other costs that are the responsibility of Buyer under this Agreement.

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

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

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

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1. Seller' Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in the DDA and other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing Date provided however, if to Seller' actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have three (3) business days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 8.2 will apply.

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

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

(c) There are no agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow.

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

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

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

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

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

7. DEFAULT, REMEDIES, TERMINATION. Either Party shall be in default of this Agreement ("Default") if such Party fails to keep, observe or perform any of its covenants, duties or obligations under this Agreement, and the default continues for a period of thirty (30) days, unless a different time period is specified herein, after written notice thereof from the non-defaulting Party to the defaulting Party, or in the case of a Default that cannot with due diligence be cured within thirty (30) days or other time specified for herein, the defaulting Party fails to prosecute the curing of such Default with due diligence and in good faith to completion. Either Party shall have the right to terminate this Agreement upon a Default and expiration of any applicable cure period, and in accordance with the terms of this Agreement, in addition to pursuing all remedies available under law or equity. Except as otherwise provided herein, the rights and remedies of the Parties shall be cumulative; provided, however, that neither Party shall have a right to recover consequential or punitive damages.

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

9. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason. No permitted assignment of any of the rights or obligations under this Agreement

shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

10. ENVIRONMENTAL INDEMNITY. To the fullest extent allowed by law, Buyer agrees to unconditionally and fully indemnify, protect, defend (with counsel satisfactory to Seller), and hold Seller, and their respective elected and appointed officers, officials, employees, agents, consultants and contractors harmless from and against any and all claims (including without limitation third party claims for personal injury, real or personal property damage, or damages to natural resources), actions, administrative proceedings (including without limitation both formal and informal proceedings), judgments, damages, punitive damages, penalties, fines, costs (including without limitation any and all costs relating to investigation, assessment, analysis or clean-up of the Property), liabilities (including without limitation sums paid in settlements of claims), interest, or losses, including reasonable attorneys' and paralegals' fees and expenses (including without limitation any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release, of any Hazardous Materials in, on or under the Property or in or into the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under or within the Property, or any portion thereof, except those Costs that arise solely as a result of actions by Seller or actions by the City. The indemnification provided pursuant to this Section shall specifically apply to and include claims or actions brought by or on behalf of employees of Buyer or any of its predecessors in interest and Buyer hereby expressly waives any immunity to which Buyer may otherwise be entitled under any industrial or worker's compensation laws. In the event the Seller suffers or incurs any Costs, Buyer shall pay to Seller the total of all such Costs suffered or incurred by the Seller upon demand therefore by Seller. The indemnification provided pursuant to this Section shall include, without limitation, all loss or damage sustained by the Seller due to any Hazardous Materials: (a) that are present or suspected by a governmental agency having jurisdiction to be present in the Property or in the air, soil, soil gas, groundwater, or surface water at, on, about, above, under, or within the Property (or any portion thereof) or to have emanated from the Property, or (b) that migrate, flow, percolate, diffuse, or in any way move onto, into, or under the air, soil, soil gas, groundwater, or surface water at, on, about, around, above, under, or within the Property (or any portion thereof) after the date of this Agreement as a result of Seller' or its predecessors' activities on the Property. The provisions of this Section 10 shall survive the termination of this Agreement and the Close of Escrow.

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

Materials. This Section 11 shall survive the termination of this Agreement and the Close of Escrow.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

Buyer's initials: _____

12. HAZARDOUS MATERIALS; DEFINITIONS.

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

12.2. Environmental Laws. As used in this Agreement, "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency

Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

13. MISCELLANEOUS.

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

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

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

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

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

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

understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

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

13.8. Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94111
Tel: (415) 402-0800
Fax: (415) 399-9367

with a copy to: Leland, Parachini, Steinberg,
Matzger & Melnick, LLP
Attn: Nina P. Kwan
199 Fremont Street, 21st Flr.
San Francisco, CA 94105
Tel: (415) 957-1800
Fax: (415) 974-1520

To Seller: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Manager
Tel (650) 877-8501
Fax (650) 829-6609

with a copy to: Meyers Nave
Attn: Steve Mattas
575 Market Street, Suite 2080
San Francisco, CA 94105
Tel (415) 421-3711
Fax (415) 421-3767

If to Escrow Holder: First American Title Insurance
 Attn: Marc Bonfigli
 101 Mission Street, Suite 1600
 San Francisco, CA 94105
 Tel (415) 837-2235
 Fax (714) 481-4597

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

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

13.10. Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

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

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

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

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

13.15. Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed

effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

13.16. Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

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

SELLER:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SOUTH SAN FRANCISCO

By: _____
Mike Futrell
Executive Director

ATTEST:

By: _____
Agency Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg
Agency Counsel

BUYER:

BROOKWOOD EQUITIES LLC

By: _____

APPROVED AS TO FORM:

By: _____
Counsel for Buyer

LIST OF EXHIBITS

| | |
|-----------|----------------------|
| Exhibit A | Legal Description |
| Exhibit B | Grant Deed |
| Exhibit C | Permitted Exceptions |
| Exhibit D | Agency Note |
| Exhibit E | Agency Deed of Trust |
| Exhibit F | Regulatory Agreement |

Exhibit A

LEGAL DESCRIPTION

Exhibit B
GRANT DEED

Exhibit C

PERMITTED EXCEPTIONS

Exhibit D

AGENCY NOTE

Exhibit E

AGENCY DEED OF TRUST

Exhibit F

REGULATORY AGREEMENT

SECURED PROMISSORY NOTE

(City Note)

\$1,388,000

South San Francisco, CA
_____, 2015

FOR VALUE RECEIVED, Brookwood Equities LLC, a Delaware limited liability company (“**Borrower**”), promises to pay to the City of South San Francisco, a municipal corporation (“**City**”), in lawful money of the United States of America, the principal sum of One Million Three Hundred Eighty Eight Thousand Dollars (\$1,388,000), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to a Disposition and Development Agreement dated as of _____, 2015 by and between Borrower, the Successor Agency to the Redevelopment Agency of the City of South San Francisco (the “**Agency**”) and City (the “**DDA**”) and a Purchase and Sale Agreement of even date therewith (“**Purchase and Sale Agreement**”) pursuant to which the City has agreed to provide a loan to Borrower in the amount of One Million Three Hundred Eighty Eight Thousand Dollars (\$1,388,000) (the “**Loan**”) for the purchase of certain property owned by the City, and is subject to the terms and conditions of the DDA and Purchase and Sale Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the DDA. If there is a conflict between the terms of the DDA and the Purchase and Sale Agreement, the terms of the DDA shall prevail.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the DDA and the Regulatory Agreement. The Regulatory Agreement shall remain effective for the full term thereof and shall survive repayment of this Note.

1. **INTEREST RATE.** Interest shall accrue on the outstanding principal balance of this Note at the rate of one percent (1%) simple interest per annum, commencing upon the first anniversary of the Certificate of Completion for the Linden Avenue Property. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

2. **PAYMENT DATES; MATURITY DATE.** Commencing upon the first anniversary of the Certificate of Completion, as defined in the Grant Deed, for the property described herein, and on each anniversary thereafter, Borrower shall make annual payments of Twenty-Seven Thousand Seven Hundred Fifty Dollars (\$27,750) until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the Maturity Date (defined below). The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be

payable in full on the **thirtieth (30th) anniversary** of the date of this Note (the “**Maturity Date**”). Payments made under this Note will be applied to the principal amount outstanding in accordance with the amortization schedule attached hereto and incorporated by reference.

3. **DUE ON SALE OR DEFAULT.** The entire unpaid principal balance and all sums accrued hereunder and under the DDA and the City Documents shall be immediately due and payable upon the sale or Transfer (as defined in Section 8.2 of the DDA) absent City consent, of all or any part of the Linden Avenue Property or the Project as it relates to the Linden Avenue Property, or any interest therein, the conversion of the Linden Avenue Property to condominium ownership in accordance with Section 4.3 of the DDA, or upon the occurrence of an Event of Default under the DDA or the City Documents, subject to expiration of any applicable cure period. Without limiting the generality of the foregoing, except as provided in the DDA, this Note shall not be assumable without City’s prior written consent, which consent may be granted or denied in City’s sole discretion.

4. **PREPAYMENT.** Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayment of this Note shall not affect the term of the Regulatory Agreement. Prepayments shall be applied first to principal and then to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest.

5. **MANNER OF PAYMENT.** All payments on this Note shall be made to City at 400 Grand Avenue, South San Francisco, CA 94080 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

6. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an event of default hereunder (“**Event of Default**”):

6.1 Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after receipt of written notice from the City to Borrower.

6.2 Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within 10 days after receipt of written notice from the City to Borrower.

6.3 Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“**Bankruptcy Law**”), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

6.4 A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a

trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower; or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

6.5 Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

6.6 Borrower shall have voluntarily suspended its business without curing such suspension within thirty (30) days of notice from the City or applicable governing entity or Borrower shall have been dissolved or terminated;

6.7 A default arises under any debt instrument secured by a mortgage or deed of trust on the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

6.8 Subject to Borrower's right to contest the following charges pursuant to the City Documents, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien.

6.9 Any representation or warranty contained in the DDA or any application, financial statement, certificate or report furnished in connection with the Loan proves to have been false or misleading in any material adverse respect when made.

6.10 An event of default shall have been declared under any other City Document related to the Linden Avenue Property subject to the applicable cure periods set forth in such documents.

6.11 Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 6) contained in this Note or in any other City Document related to the Linden Avenue Property, and unless such document specifies a different cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower (or such longer time as City may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

7. REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this

Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of six percent (6%) per annum (the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

9. MISCELLANEOUS

9.1 WAIVER. The rights and remedies of City under this Note shall be cumulative and not alternative. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of City arising out of this Note can be discharged by City, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by City; (b) no waiver that may be given by City will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the DDA.

9.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court having in the jurisdiction in which the Property is located (the "Property Jurisdiction"). Borrower agrees that any controversy arising under or in relation to the Note or any other City Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note and any other City Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

9.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

9.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

9.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9.9 JOINT AND SEVERAL OBLIGATION. If Borrower consists of two or more individuals, the obligations of such individuals hereunder shall be joint and several.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER

BROOKWOOD EQUITIES LLC,
a Delaware limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

2551563.1

SECURED PROMISSORY NOTE

(Agency Note)

\$2,020,000

South San Francisco, CA
_____, 2015

FOR VALUE RECEIVED, Brookwood Equities LLC, a Delaware limited liability company (“**Borrower**”), promises to pay to the Successor Agency to the Redevelopment Agency of the City of South San Francisco, a municipal corporation (“**Agency**”), in lawful money of the United States of America, the principal sum of Two Million Twenty Thousand Dollars (\$2,020,000), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to a Disposition and Development Agreement dated as of _____, 2015 by and between Borrower, the Successor Agency to the Redevelopment Agency of the City of South San Francisco (the “**Agency**”) and City (the “**DDA**”) and a Purchase and Sale Agreement of even date therewith (“**Purchase and Sale Agreement**”) pursuant to which the Agency has agreed to provide a loan to Borrower in the amount of Two Million Twenty Thousand Dollars (\$2,020,000) (the “**Loan**”) for the purchase of certain property owned by the Agency, and is subject to the terms and conditions of the DDA and Purchase and Sale Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the DDA. If there is a conflict between the terms of the DDA and the Purchase and Sale Agreement, the terms of the DDA shall prevail.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of Agency and encumbering the property described therein. Agency shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the DDA and the Regulatory Agreement. The Regulatory Agreement shall remain effective for the full term thereof and shall survive repayment of this Note.

1. INTEREST RATE. Interest shall accrue on the outstanding principal balance of this Note at the rate of one percent (1%) simple interest per annum, commencing upon the first anniversary of the Certificate of Completion for the Grand-Cypress Avenue Property. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

2. PAYMENT DATES; MATURITY DATE. Commencing upon the first anniversary of the Certificate of Completion, as defined in the Grant Deed, for the property described herein, and on each anniversary thereafter, Borrower shall make annual payments of Forty Thousand Dollars (\$40,000) until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the

Maturity Date (defined below). The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on the **thirtieth (30th) anniversary** of the date of this Note (the "**Maturity Date**"). Payments made under this Note will be applied to the principal amount outstanding in accordance with the amortization schedule attached hereto and incorporated by reference.

3. **DUE ON SALE OR DEFAULT.** The entire unpaid principal balance and all sums accrued hereunder and under the DDA and the Agency Documents shall be immediately due and payable upon the sale or Transfer (as defined in Section 8.2 of the DDA) absent Agency consent, of all or any part of the Grand-Cypress Avenue Property or the Project as it relates to Grand-Cypress Avenue Property, or any interest therein, the conversion of the Grand-Cypress Avenue Property to condominium ownership in accordance with Section 4.3 of the DDA, or upon the occurrence of an Event of Default under the DDA or the Agency Documents, subject to expiration of any applicable cure period. Without limiting the generality of the foregoing, except as provided in the DDA, this Note shall not be assumable without Agency's prior written consent, which consent may be granted or denied in Agency's sole discretion.

4. **PREPAYMENT.** Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayment of this Note shall not affect the term of the Regulatory Agreement. Prepayments shall be applied first to principal and then to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest.

5. **MANNER OF PAYMENT.** All payments on this Note shall be made to Agency at 400 Grand Avenue, South San Francisco, CA 94080 or such other place as Agency shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Agency in writing.

6. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

6.1 Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after receipt of written notice from the Agency to Borrower.

6.2 Borrower fails to maintain insurance on the Property and the Project as required pursuant to the Agency Documents and Borrower fails to cure such default within 10 days after receipt of written notice from the Agency to Borrower.

6.3 Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

6.4 A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower; or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

6.5 Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

6.6 Borrower shall have voluntarily suspended its business without curing such suspension within thirty (30) days of notice from the Agency or applicable governing entity or Borrower shall have been dissolved or terminated;

6.7 A default arises under any debt instrument secured by a mortgage or deed of trust on the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

6.8 Subject to Borrower's right to contest the following charges pursuant to the Agency Documents, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien.

6.9 Any representation or warranty contained in the DDA or any application, financial statement, certificate or report furnished in connection with the Loan proves to have been false or misleading in any material adverse respect when made.

6.10 An event of default shall have been declared under any other Agency Document related to the Grand-Cypress Avenue Property subject to the applicable cure periods set forth in such documents.

6.11 Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 6) contained in this Note or in any other Agency Document related to the Grand-Cypress Avenue Property, and unless such document specifies a different cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Borrower (or such longer time as Agency may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

7. REMEDIES. Upon the occurrence of an Event of Default hereunder, Agency may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to Agency under this Note and the other Agency Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Agency including, without limitation, reasonable attorneys' fees, incurred in connection with Agency's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of six percent (6%) per annum (the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Agency from exercising any of its other rights or remedies.

9. MISCELLANEOUS

9.1 WAIVER. The rights and remedies of Agency under this Note shall be cumulative and not alternative. No waiver by Agency of any right or remedy under this Note shall be effective unless in a writing signed by Agency. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Agency will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Agency arising out of this Note can be discharged by Agency, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Agency; (b) no waiver that may be given by Agency will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Agency to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the DDA.

9.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will

remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court having in the jurisdiction in which the Property is located (the "Property Jurisdiction"). Borrower agrees that any controversy arising under or in relation to the Note or any other Agency Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note and any other Agency Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

9.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Agency and its successors and assigns.

9.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Agency under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make Agency the partner or joint venturer of Borrower.

9.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9.9 JOINT AND SEVERAL OBLIGATION. If Borrower consists of two or more individuals, the obligations of such individuals hereunder shall be joint and several.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

2554807.1

SECURED PROMISSORY NOTE

(Agency Note)

\$2,020,000

South San Francisco, CA
_____, 2015

FOR VALUE RECEIVED, Brookwood Equities LLC, a Delaware limited liability company (“**Borrower**”), promises to pay to the Successor Agency to the Redevelopment Agency of the City of South San Francisco, a municipal corporation (“**Agency**”), in lawful money of the United States of America, the principal sum of Two Million Twenty Thousand Dollars (\$2,020,000), together with interest on the outstanding principal balance in accordance with the terms and conditions described herein.

This Secured Promissory Note (this “**Note**”) has been executed and delivered pursuant to a Disposition and Development Agreement dated as of _____, 2015 by and between Borrower, the Successor Agency to the Redevelopment Agency of the City of South San Francisco (the “**Agency**”) and City (the “**DDA**”) and a Purchase and Sale Agreement of even date therewith (“**Purchase and Sale Agreement**”) pursuant to which the Agency has agreed to provide a loan to Borrower in the amount of Two Million Twenty Thousand Dollars (\$2,020,000) (the “**Loan**”) for the purchase of certain property owned by the Agency, and is subject to the terms and conditions of the DDA and Purchase and Sale Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the DDA. If there is a conflict between the terms of the DDA and the Purchase and Sale Agreement, the terms of the DDA shall prevail.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of Agency and encumbering the property described therein. Agency shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the DDA and the Regulatory Agreement. The Regulatory Agreement shall remain effective for the full term thereof and shall survive repayment of this Note.

1. **INTEREST RATE.** Interest shall accrue on the outstanding principal balance of this Note at the rate of one percent (1%) simple interest per annum, commencing upon the first anniversary of the Certificate of Completion for the Grand-Cypress Avenue Property. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

2. **PAYMENT DATES; MATURITY DATE.** Commencing upon the first anniversary of the Certificate of Completion, as defined in the Grant Deed, for the property described herein, and on each anniversary thereafter, Borrower shall make annual payments of Forty Thousand Dollars (\$40,000) until the entire indebtedness evidenced hereby is fully paid, except that all remaining indebtedness, if not sooner paid, shall be due and payable upon the

Maturity Date (defined below). The entire outstanding principal balance of this Note, together with accrued interest and all other sums accrued hereunder shall be payable in full on the **thirtieth (30th) anniversary** of the date of this Note (the "**Maturity Date**"). Payments made under this Note will be applied to the principal amount outstanding in accordance with the amortization schedule attached hereto and incorporated by reference.

3. DUE ON SALE OR DEFAULT. The entire unpaid principal balance and all sums accrued hereunder and under the DDA and the Agency Documents shall be immediately due and payable upon the sale or Transfer (as defined in Section 8.2 of the DDA) absent Agency consent, of all or any part of the Grand-Cypress Avenue Property or the Project as it relates to Grand-Cypress Avenue Property, or any interest therein, the conversion of the Grand-Cypress Avenue Property to condominium ownership in accordance with Section 4.3 of the DDA, or upon the occurrence of an Event of Default under the DDA or the Agency Documents, subject to expiration of any applicable cure period. Without limiting the generality of the foregoing, except as provided in the DDA, this Note shall not be assumable without Agency's prior written consent, which consent may be granted or denied in Agency's sole discretion.

4. PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note provided that each such repayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such repayment. Prepayment of this Note shall not affect the term of the Regulatory Agreement. Prepayments shall be applied first to principal and then to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest.

5. MANNER OF PAYMENT. All payments on this Note shall be made to Agency at 400 Grand Avenue, South San Francisco, CA 94080 or such other place as Agency shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Agency in writing.

6. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

6.1 Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after receipt of written notice from the Agency to Borrower.

6.2 Borrower fails to maintain insurance on the Property and the Project as required pursuant to the Agency Documents and Borrower fails to cure such default within 10 days after receipt of written notice from the Agency to Borrower.

6.3 Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

6.4 A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower; or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Improvements, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

6.5 Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

6.6 Borrower shall have voluntarily suspended its business without curing such suspension within thirty (30) days of notice from the Agency or applicable governing entity or Borrower shall have been dissolved or terminated;

6.7 A default arises under any debt instrument secured by a mortgage or deed of trust on the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

6.8 Subject to Borrower's right to contest the following charges pursuant to the Agency Documents, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Project or fails to pay when due any other charge that may result in a lien on the Property or the Project, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien.

6.9 Any representation or warranty contained in the DDA or any application, financial statement, certificate or report furnished in connection with the Loan proves to have been false or misleading in any material adverse respect when made.

6.10 An event of default shall have been declared under any other Agency Document related to the Grand-Cypress Avenue Property subject to the applicable cure periods set forth in such documents.

6.11 Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Section 6) contained in this Note or in any other Agency Document related to the Grand-Cypress Avenue Property, and unless such document specifies a different cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Agency shall have given written notice of the default to Borrower (or such longer time as Agency may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

7. REMEDIES. Upon the occurrence of an Event of Default hereunder, Agency may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to Agency under this Note and the other Agency Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of Agency including, without limitation, reasonable attorneys' fees, incurred in connection with Agency's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust.

8. DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of six percent (6%) per annum (the "Default Rate"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in Section 1 of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent Agency from exercising any of its other rights or remedies.

9. MISCELLANEOUS

9.1 WAIVER. The rights and remedies of Agency under this Note shall be cumulative and not alternative. No waiver by Agency of any right or remedy under this Note shall be effective unless in a writing signed by Agency. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by Agency will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law (a) no claim or right of Agency arising out of this Note can be discharged by Agency, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Agency; (b) no waiver that may be given by Agency will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of Agency to take further action without notice or demand as provided in this Note. Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

9.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the DDA.

9.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will

remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. All persons and entities in any manner obligated under this Note consent to the jurisdiction of any federal or state court having in the jurisdiction in which the Property is located (the "Property Jurisdiction"). Borrower agrees that any controversy arising under or in relation to the Note or any other Agency Document shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note and any other Agency Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

9.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of Agency and its successors and assigns.

9.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

9.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and Agency under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make Agency the partner or joint venturer of Borrower.

9.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

9.9 JOINT AND SEVERAL OBLIGATION. If Borrower consists of two or more individuals, the obligations of such individuals hereunder shall be joint and several.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER

BROOKWOOD EQUITIES LLC, a Delaware limited liability company

By: BROOKWOOD GROUP, INC., a California corporation, its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

2554807.1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(CITY DEED OF TRUST)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, 2015, by Brookwood Equities LLC, a Delaware limited liability company ("Trustor") to _____ Title Company as trustee ("Trustee"), for the benefit of the City of South San Francisco, a municipal corporation ("Beneficiary").

RECITALS

A. Trustor owns or will own fee simple title to the land located at 418 Linden Avenue, known as San Mateo County Assessor's Parcel Nos. 012-314-010 and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). Trustor intends to construct, own and operate a mixed-use, multifamily residential development on the Land (the "**Project**").

B. Beneficiary, Trustor and the Successor Agency to the Redevelopment Agency of the City of South San Francisco ("Agency") have entered into a Disposition and Development Agreement dated as of _____, 2015 (the "**DDA**") and a Purchase and Sale Agreement of even date therewith (the "**Purchase and Sale Agreement**") pursuant to which Beneficiary will provide a loan to Trustor in the amount of One Million Three Hundred Eighty Eight Thousand Dollars (\$1,388,000) for purchase of the Land ("**Loan**"). Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof in the amount of the Loan to evidence Trustor's obligation to repay the Loan ("**Note**"). A Memorandum of the DDA will be recorded in the Official Records of San Mateo County concurrently herewith.

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (defined below) to secure repayment of the Note and performance of Trustor's obligations under the DDA and under the Loan Document (defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

(a) All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

(b) All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

(c) All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

(d) All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, “**Rents**”);

(e) All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding (“**Proceeds**”);

(f) All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor (“**Gross Revenues**”);

(g) All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, “**Plans**”); and

(h) All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, “**Financing**”).

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the “**Property**.”

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the “Secured Obligations”): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary’s interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended. The Note, the DDA, this Deed of Trust, and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“**Regulatory Agreement**”) dated as of the date hereof, executed by and between Trustor, Agency and Beneficiary and recorded substantially concurrently herewith are hereafter collectively referred to as the “**Loan Documents**.”

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys’ fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary’s right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not

cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so

filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of San Mateo County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("Permitted Encumbrances"), this Deed of Trust creates a valid lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2. Beneficiary agrees that it will not withhold consent to reasonable requests for subordination of this Deed of Trust to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the DDA provided that the subordination agreement includes reasonable protections to the Beneficiary in the event of default.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health

code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and to Trustor's best knowledge, no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) no contracts, licenses, leases or commitments regarding the maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) to Trustor's best knowledge there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan solely for purposes authorized by the Loan Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which

could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other Transfer (as defined in the DDA) occurs in violation of the Loan Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the proceeds of the Loan and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following two business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under

any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding anything to the contrary set forth herein, provided that Trustor is not in default under any Loan Document, Trustor shall be permitted to use the proceeds of insurance to rebuild the Improvements.

7.10.1 Trustor shall at all times during the term hereof, maintain a comprehensive general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Beneficiary as an additional insured. Trustor shall maintain workers' compensation insurance as required by law.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within fifteen (15) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least 30 days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof. If any insurance policy required pursuant to the Loan Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.11 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the best knowledge of Trustor: (i) the Land is free and has always been free of Hazardous Materials (as defined below) and is not and has never been in violation of any Environmental Law (as defined below); (ii) there are no buried or partially buried storage tanks located on the Land; (iii) Trustor has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Land; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Land, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Land has never been used as a dump or landfill; and (vii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "Indemnitees") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "Claim" and collectively "Claims") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

- a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;
- b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and
- c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

“Hazardous Materials” means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

“Environmental Law” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act

[California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.13 Indemnification. To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building,

construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14 Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, insurance and/or condemnation proceeds may be used to repair and/or restore the Project.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid and performed in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer occurs in violation of the DDA and Trustor fails to rescind such conveyance or otherwise cure such breach within the time period specified in paragraph j below;

d. Trustor fails to maintain the insurance coverage required hereunder or otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the time specified in Section 7.10;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 30 days.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity's assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than sixty (60) days following receipt of notice of default.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the

exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a

written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the Loan Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

- a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and
- b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any

time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

d. facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Beneficiary:

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

Trustor:

Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94111
Tel: (415) 402-0800
Fax: 415-399-9367

Trustee:

Attn: _____

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of San Mateo County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of

domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's City Manager or by any person who shall have been designated by Beneficiary's City Manager, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 2015, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 2015, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LAND

(Attach legal description.)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(AGENCY DEED OF TRUST)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING ("Deed of Trust") is made as of _____, 2015, by Brookwood
Equities LLC, a Delaware limited liability company ("**Trustor**") to _____ Title
Company as trustee ("**Trustee**"), for the benefit of the South San Francisco Successor Agency, a
municipal corporation ("**Beneficiary**").

RECITALS

A. Trustor owns or will own fee simple title to the land located at 201-219 Grand
Avenue known as San Mateo Assessor's Parcel Nos. 012-316-110, 012-316-100, 012-316-090
and 012-316-080, and more particularly described in Exhibit A attached hereto and incorporated
herein by this reference (the "**Land**"). Trustor intends to construct, own and operate a mixed-
use, multifamily residential development on the Land (the "**Project**").

B. Beneficiary, Trustor and the City of South San Francisco ("**City**") have entered
into a Disposition and Development Agreement dated as of _____, 2015 (the
"**DDA**") and a Purchase and Sale Agreement of even date therewith (the "**Purchase and Sale
Agreement**") pursuant to which Beneficiary will provide a loan to Trustor in the amount of Two
Million Twenty Thousand Dollars (\$2,020,000) for purchase of the Land ("**Loan**"). Trustor has
issued to Beneficiary a secured promissory note dated as of the date hereof in the amount of the
Loan to evidence Trustor's obligation to repay the Loan ("**Note**"). A Memorandum of the DDA
will be recorded in the Official Records of San Mateo County concurrently herewith.

C. As a condition precedent to the making of the Loan, Beneficiary has required that
Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien
and security interest in the Property (defined below) to secure repayment of the Note and
performance of Trustor's obligations under the DDA and under the Loan Document (defined
below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of
which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

(a) All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

(b) All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

(c) All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

(d) All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, “**Rents**”);

(e) All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding (“**Proceeds**”);

(f) All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor (“**Gross Revenues**”);

(g) All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, “**Plans**”); and

(h) All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. **Obligations Secured.** This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "Secured Obligations"): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents (defined below); (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended. The Note, the DDA, this Deed of Trust, and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("**Regulatory Agreement**") dated as of the date hereof, executed by and between Agency, City and Beneficiary and recorded substantially concurrently herewith are hereafter collectively referred to as the "**Loan Documents**."

3. **Assignment of Rents, Issues, and Profits.** Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every

right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "UCC"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property

conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of San Mateo County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("Permitted Encumbrances"), this Deed of Trust creates a valid lien on Trustor's entire interest in the Property; (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2. Beneficiary agrees that it will not withhold consent to reasonable requests for subordination of this Deed of Trust to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the DDA provided that the subordination agreement includes reasonable protections to the Beneficiary in the event of default.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and to Trustor's best knowledge, no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) no contracts, licenses, leases or commitments regarding the

maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) to Trustor's best knowledge there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and any interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan solely for purposes authorized by the Loan Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Project, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold,

assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other Transfer (as defined in the DDA) occurs in violation of the Loan Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the proceeds of the Loan and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following two business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding anything to the contrary set forth herein, provided that Trustor is

not in default under any Loan Document, Trustor shall be permitted to use the proceeds of insurance to rebuild the Improvements.

7.10.1 Trustor shall at all times during the term hereof, maintain a comprehensive general liability insurance policy in an amount not less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Beneficiary as an additional insured. Trustor shall maintain workers' compensation insurance as required by law.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within fifteen (15) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least 30 days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof. If any insurance policy required pursuant to the Loan Documents is canceled or the coverage provided thereunder is reduced, Trustor shall, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.11 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the best knowledge of Trustor: (i) the Land is free and has always been free of Hazardous Materials (as defined below) and is not and has never been in violation of any Environmental Law (as defined below); (ii) there are no buried or partially buried storage tanks located on the Land; (iii) Trustor has received no notice,

warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Land; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Land, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Land has never been used as a dump or landfill; and (vii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "Indemnitees") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "Claim" and collectively "Claims") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;

b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and

c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos

and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

“**Environmental Law**” means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.13 Indemnification. To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable

state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14 Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, unless the loss is caused by the willful misconduct, gross negligence, or bad faith of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is not impaired, insurance and/or condemnation proceeds may be used to repair and/or restore the Project.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid and performed in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed

of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

- a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;
- b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;
- c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer occurs in violation of the DDA and Trustor fails to rescind such conveyance or otherwise cure such breach within the time period specified in paragraph j below;
- d. Trustor fails to maintain the insurance coverage required hereunder or otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the time specified in Section 7.10;
- e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within 30 days.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (“Bankruptcy Law”), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor or any general partner thereof in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof or substantially all of such entity’s assets, (iii) orders the liquidation of Trustor or any general partner thereof, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder’s documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary’s reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than sixty (60) days following receipt of notice of default.

8.2 **Remedies.** Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary’s rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys’ fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the Loan Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of

Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- a. personal delivery, in which case notice shall be deemed delivered upon receipt;
- b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- c. nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- d. facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Beneficiary:

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

Trustor:

Brookwood Equities LLC
One Embarcadero, Suite 500
San Francisco, CA 94111
Tel: (415) 402-0800
Fax: (415) 399-9367

Formatted: Spanish (Mexico)

Trustee:

Attn: _____

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of San Mateo County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of

the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's City Manager or by any person who shall have been designated by Beneficiary's City Manager, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 2015, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 2015, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LAND

(Attach legal description.)

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

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

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

BROOKWOOD EQUITIES LLC

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2015 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and Brookwood Equities LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco at 418 Linden Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-314-010 and more particularly described in Exhibit A-1 attached hereto (the “**Property**”). Owner intends to create or has created a special purpose entity known as Brookwood Linden Venture LLC (“BLV”) for the Linden Avenue Property to serve as the ownership entity for the Property. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BLV for the Linden Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees permitted under the DDA defined below.

B. Owner intends to construct, own and operate a mixed-use, multi-family residential project (the “**Linden Project**”) on the Property in accordance with that certain Disposition and Development Agreement executed by and between the Parties and others dated as of the date hereof (the “**DDA**”), a memorandum of which shall be recorded substantially concurrently herewith in the Official Records of San Mateo County (“**Official Records**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the DDA.

C. The DDA provides that for a period of not less than fifty-five (55) years, twenty percent (20%) of the residential units in the Linden Project shall be rented at Affordable Rents to Eligible Households.

D. Subject to the conditions set forth in the DDA, City has agreed to provide to Owner a grant in the amount of Four Hundred Thirty-Five Thousand Dollars (\$435,000) from City Affordable Housing In-Lieu Fees for Linden Project predevelopment activities on the Linden Avenue Property in order to provide partial financing for Linden Project (the “**City Affordable Housing Grant**”).

E. In addition, as further described in the DDA, and in order to assist in the construction of affordable units, the City is providing Owner a grant in the amount of Seven Hundred Eighty Thousand Dollars (\$780,000) from Affordable Housing Bond Proceeds to partially finance the Linden Project on the Linden Avenue Property (“**Linden Grant**”). Certain of the grant proceeds have been provided to Owner pursuant to the terms of the executed Exclusive Negotiation Rights Agreement (“**ENRA**”) for initial predevelopment expenses and the remainder of the grant proceeds will be provided pursuant to the DDA in order to assist with the completion of predevelopment activities and if any funds remain, toward construction of the Linden Project. The Linden Grant and the Affordable Housing Grant are hereinafter collectively referred to as the “**City Grants**.”

F. As a condition to its agreement to provide the City Grants, the City requires the

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Property to be subject to the terms, conditions and restrictions set forth herein. The City requires residential rental units assisted with funds from the City's low- and moderate-income housing fund to remain affordable for the longest feasible time.

F. As a condition to its agreement to provide the City Grants, the City also requires the construction of the Linden Project to comply with the requirements of the South San Francisco Municipal Code Chapter 20.380.

G. 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 Linden Project's Restricted Units for the benefit of the Linden Project occupants. 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.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits. Additional terms are defined in the Recitals and text of this Agreement.

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

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

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

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

"Area Median Income" or "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development ("**HUD**") pursuant to Section 8 of the United States Housing

Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

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

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

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

“**Low-Income**” or “**Lower Income**” means an annual gross household income that is less than or equal to the qualifying limits for households of Lower Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for San Mateo County. If HUD ceases to make such determination, "Lower Income" shall be defined as not greater than 80% of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of "Lower Income" used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

“**Moderate-Income**” means an annual gross household income that is less than or equal to 120% of AMI, adjusted for actual household size as determined periodically by HCD on the basis of gross annual household income and published in the Regulations for San Mateo County.

“**Regulations**” means Title 25 of the California Code of Regulations.

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

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

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a mixed-use, multifamily rental housing development in compliance with the DDA 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. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BLV for the Linden Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees

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permitted under the DDA.

2.1 Affordability Requirements.

2.1.1 Linden Avenue Property. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Linden Project on the Linden Avenue Property, not less than six (6) of the residential units on the Linden Avenue Property shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than eighty percent (80%) of Area Median Income, and no fewer than two (2) additional units in the Linden Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than one hundred twenty percent (120%) of Area Median Income.

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 Linden Project to Eligible Household(s) until the required income mix is achieved.

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

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

2.3 Notice of Affordability Restrictions on Transfer of Property. The Parties shall execute a Notice of Affordability Restrictions on Transfer of Property substantially in the form attached hereto as Exhibit C, and shall cause such notice to be recorded substantially concurrently with the recordation of this Agreement.

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Linden Project. Eligible Households of Restricted

Units shall have access to all common facilities of the Linden Project equal to that of Eligible Households of units in the Linden Project that are not Restricted Units. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.5 Reserved.

2.6 No Condominium Conversion. Owner shall not convert the residential units in the Linden Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Linden Project or any part thereof for at least ten (10) years from the date of the Agreement, and provided Owner obtains the City's consent and meets the affordability requirements of Section 2.1. City's prior written consent shall be required with respect to the sale or condominium conversion of the retail/commercial portion of the Linden Project or any part thereof.

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 law and consistent with the program regulations for funding sources used for development of the Linden Project, at initial lease up, Owner shall give a preference in the rental of the residential units in the Linden Project to Eligible Households that include at least one member who lives or works in the City. If there are fewer Eligible Households than the number of such units, the units will be made available to the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

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

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Eligible Households, lessees, subEligible Households, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all

deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

3. Reporting Requirements.

3.1. Eligible Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

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

Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall provide copies of such certificates to City and make the originals 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 Linden Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Linden Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

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

Owner shall permit representatives of City to enter and inspect the Property and the Linden 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.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Linden Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

3.4 Additional Information. Owner shall provide any additional information reasonably requested by City. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner which pertain to the Linden Project during Owner's regular business hours.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Linden Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Eligible Households. All Eligible Household lists, applications and waiting lists relating to the Linden Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City 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 Restricted Units for a period of at least five (5) years, and for any period during which there is an audit undertaken by the City pursuant to the DDA.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Linden Project, unless the term is extended by mutual agreement of the Parties.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Linden Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the City Note, or (iii) any reconveyance of the City Deed of Trust.

4.3 Reconveyance. Upon the termination 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 the termination of this Agreement upon the expiration of the term as such may be extended pursuant to Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Linden 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 Linden Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Linden Project (other than the Eligible Households of the individual dwelling units or retail/commercial space within the Linden Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Linden 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 Linden Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Linden Project, including without limitation the selection of Eligible Households, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Linden Project.

6.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Linden 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 Linden Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Linden Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Linden Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Linden Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, 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, shall constitute an indebtedness secured by the City Deed of Trust, and 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 6% per annum or the highest rate permitted by

applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.3 Marketing and Management Plan. Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's Eligible Household selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Linden Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Linden Project Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Linden Project, and throughout the term of this Agreement.

6.4 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within thirty (30) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Linden Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 6.5 is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the DDA with respect to the Property, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the DDA.

6.7 Property Damage or Destruction. If any part of the Linden 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, if lenders or low-income housing tax credit investors providing financing for the Linden Project impose requirements that differ from the requirements of this Section, the requirements of such lenders and investors shall prevail.

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

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except for Permitted Transfers to Permitted Affiliates, defined herein, and except as permitted pursuant to the DDA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Linden Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the DDA, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than forty percent (40%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, member or other equity partner, nor the transfer by such investor to subsequent limited partners, members or other equity partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent the following (“Permitted Transfers”): (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the DDA; (iii) the lease of individual dwelling units to Eligible Households for occupancy as their principal residence in accordance with this Agreement and the lease of commercial space to retail and commercial Eligible Households, if applicable; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Linden Project or the Property in accordance with the DDA, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (v) a Transfer to BLV or other entity which is under the direct control of Owner so long as Owner is the managing

member of such entity and maintains at least five percent (5%) equity interest in each such entity (“Permitted Affiliate”).

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

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

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys’ fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City’s and/or Agency’s delivery of an invoice detailing such costs.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Linden Project or part thereof for the benefit of a lender other than City (“**Third-Party Lender**”) shall contain each of the following provisions: (i) Third-Party 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; (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 30 days; (iii) provided that City has cured any default under Third-Party Lender’s deed of trust and other loan documents, City shall have the right to foreclose City’s Deed of Trust without acceleration of Third-Party Lender’s debt. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within thirty (30) business days following Owner’s receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Linden 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

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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 Linden Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(a) The occurrence of a Transfer in violation of Section 8 hereof;

(b) Owner's failure to maintain insurance on the Property and the Linden Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days;

(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 Linden Project or failure to pay any other charge that may result in a lien on the Property or the Linden Project, and Owner's failure to cure such default within thirty (30) 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) A default arises under the DDA, the City Note, the City Deed of Trust, or any other City Document or Agency Document (as defined in the DDA) and remains uncured beyond the expiration of all applicable cure periods.

(f) Owner's default in the performance of any 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 ten (10) days in the event of a monetary default or thirty (30) 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 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than ninety (90) days from receipt of the notice of default.

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. Accelerate and declare the balance of the City Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the City Deed

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of Trust;

- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- D. 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 Linden Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Owner that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the DDA.

11. Miscellaneous.

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

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

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(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;

(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;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

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

Facsimile: (650) 829-6609

Owner: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94117
Attn: Shepherd Heery

Tel: (415) 402-0800

Facsimile: (415) 399-9367

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

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

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

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

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the DDA, the City Note, the City Deed of Trust, the Agency Deed of Trust and the other City Documents and Agency Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through 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: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER

BROOKWOOD EQUITIES LLC, a Delaware limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A-1

LINDEN AVENUE PROPERTY

(Attach legal description.)

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

| Maximum Household Income | 80% AMI | 120% AMI | Total |
|--------------------------|---------|----------|-------|
| Studio | 1 | 0 | 1 |
| 1-Bedroom | 3 | | 3 |
| 2-Bedroom | 2 | 1 | 3 |
| 3-Bedroom | 0 | 1 | 1 |
| Total | 6 | 2 | 8 |

Exhibit C

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

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

Space above this line for Recorder's use.

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (this "Notice") is dated as of _____, 2015 with reference to that certain real property located at 418 Linden Avenue, known as San Mateo County Assessor's Parcel Nos. 012-314-010 and more particularly described in Exhibit A-1 attached hereto (the "**Linden Avenue Property**" or the "**Property**")

1. The City of South San Francisco, a municipal corporation ("**City**"), the Successor Agency to the Redevelopment Agency of the City of South San Francisco ("**Agency**") and Brookwood Equities LLC, a Delaware limited liability company ("**Owner**") have entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") dated as of the date hereof and recorded in the Official Records of San Mateo County substantially concurrently herewith. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Regulatory Agreement for the Linden Avenue Property.

2. The Regulatory Agreement requires not less than six (6) of the residential units in the Linden Project on the Linden Avenue Property shall be rented at affordable rents to households whose income is no greater than eighty percent (80%) of Area Median Income and no fewer than two (2) additional units in the Linden Project on the Linden Avenue Property shall be rented at affordable rents to households whose income is no greater than one hundred twenty percent (120%) of Area Median Income, as more particularly set forth in the Regulatory Agreement.

3. The restrictions set forth in the Regulatory Agreement will be in effect for a period of fifty-five (55) years, commencing on the date of issuance of a final certificate of occupancy for the Linden Project developed on the Property.

This Notice is intended to provide notice of documents that affect title to the Property. Reference should be made to the Regulatory Agreement for a more detailed description of all matters described in this Notice. In the event of any conflict between the terms of this Notice and the terms of the Regulatory Agreement, the Regulatory Agreement shall prevail.

This Notice is being recorded and filed in compliance with California Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed by the City, Agency and the current owner of the Property.

IN WITNESS WHEREOF, City and Owner have executed this Notice as of the date first written above.

CITY:

**CITY OF SOUTH SAN FRANCISCO,
A MUNICIPAL CORPORATION**

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER:

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

Exhibit A-1

LINDEN AVENUE PROPERTY

(Attach legal description.)

EXHIBIT B
AFFORDABILITY REQUIREMENTS

Linden Avenue Property

| Maximum Household Income | 80% AMI | 120% AMI | Total |
|--------------------------|----------|----------|----------|
| Studio | 1 | 0 | 1 |
| 1-Bedroom | 3 | | 3 |
| 2-Bedroom | 2 | 1 | 3 |
| 3-Bedroom | 0 | 1 | 1 |
| Total | 6 | 2 | 8 |

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

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

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

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

BROOKWOOD EQUITIES LLC

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2015 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) as Housing Successor to the former Redevelopment Agency to the City of South San Francisco and Brookwood Equities LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco at 418 Grand-Cypress Avenue, located at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A-1 attached hereto (the “**Grand-Cypress Avenue Property**” or, the “**Property**”). Owner intends to create or has created a special purpose entity known as Brookwood Cypress Venture LLC (“**BCV**”) for the Grand-Cypress Avenue Property to serve as the ownership entity for the Property. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BCV for the Grand-Cypress Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees permitted under the DDA defined below.

B. Owner intends to construct, own and operate a mixed-use, multi-family residential project (the “**Grand-Cypress Project**”) on the Property in accordance with that certain Disposition and Development Agreement executed by and between the Parties and others dated as of the date hereof (the “**DDA**”), a memorandum of which shall be recorded substantially concurrently herewith in the Official Records of San Mateo County (“**Official Records**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the DDA.

C. The DDA provides that for a period of not less than fifty-five (55) years, twenty percent (20%) of the residential units in the Grand-Cypress Project shall be rented at Affordable Rents to Eligible Households.

D. In addition, as further described in the DDA, and in order to assist in the construction of affordable units, the City is providing Owner a grant in the amount of Nine Hundred Twenty Thousand Dollars (\$920,000) from Affordable Housing Bond Proceeds to partially finance the Grand-Cypress Project on the Grand-Cypress Avenue Property (“**City Grant**”). Certain of the grant proceeds have been provided to Owner pursuant to the terms of the executed Exclusive Negotiation Rights Agreement (“**ENRA**”) for initial predevelopment expenses and the remainder of the grant proceeds will be provided pursuant to the DDA in order to assist with the completion of predevelopment activities and if any funds remain, toward construction of the Grand-Cypress Project.

F. As a condition to its agreement to provide the City Grants, the City requires the Property to be subject to the terms, conditions and restrictions set forth herein. The City requires residential rental units assisted with funds from the City’s low- and moderate-income housing fund to remain affordable for the longest feasible time.

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F. As a condition to its agreement to provide the City Grants, the City also requires the construction of the Grand-Cypress Project to comply with the requirements of the South San Francisco Municipal Code Chapter 20.380.

G. 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 Grand-Cypress Project's Restricted Units for the benefit of the Grand-Cypress Project occupants. 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.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits. Additional terms are defined in the Recitals and text of this Agreement.

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

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

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

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

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

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Safety Code Section 50093(c).

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

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

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

“**Low-Income**” or “**Lower Income**” means an annual gross household income that is less than or equal to the qualifying limits for households of Lower Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for San Mateo County. If HUD ceases to make such determination, “Lower Income” shall be defined as not greater than 80% of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of “Lower Income” used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

“**Moderate-Income**” means an annual gross household income that is less than or equal to 120% of AMI, adjusted for actual household size as determined periodically by HCD on the basis of gross annual household income and published in the Regulations for San Mateo County.

“**Regulations**” means Title 25 of the California Code of Regulations.

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

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

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a mixed-use, multifamily rental housing development in compliance with the DDA 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. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BLV for the Grand-Cypress Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees permitted under the DDA.

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2.1 Affordability Requirements.

2.1.1 Grand-Cypress Avenue Property. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Grand-Cypress Project on the Grand-Cypress Avenue Property, not less than eight (8) of the residential units on the Grand-Cypress Avenue Property shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than eighty percent (80%) of Area Median Income, and no fewer than one (1) additional units in the Grand-Cypress Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than one hundred twenty percent (120%) of Area Median Income.

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 Grand-Cypress Project to Eligible Household(s) until the required income mix is achieved.

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

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

2.3 Notice of Affordability Restrictions on Transfer of Property. The Parties shall execute a Notice of Affordability Restrictions on Transfer of Property substantially in the form attached hereto as Exhibit C, and shall cause such notice to be recorded substantially concurrently with the recordation of this Agreement.

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Grand-Cypress Project. Eligible Households of

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Restricted Units shall have access to all common facilities of the Grand-Cypress Project equal to that of Eligible Households of units in the Grand-Cypress Project that are not Restricted Units. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.5 Reserved.

2.6 No Condominium Conversion. Owner shall not convert the residential units in the Grand-Cypress Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Grand-Cypress Project or any part thereof for at least ten (10) years from the date of the Agreement, and provided Owner obtains the City's consent and meets the affordability requirements of Section 2.1. City's prior written consent shall be required with respect to the sale or condominium conversion of the retail/commercial portion of the Grand-Cypress Project or any part thereof.

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 law and consistent with the program regulations for funding sources used for development of the Grand-Cypress Project, at initial lease up, Owner shall give a preference in the rental of the residential units in the Grand-Cypress Project to Eligible Households that include at least one member who lives or works in the City. If there are fewer Eligible Households than the number of such units, the units will be made available to the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

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

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Eligible Households, lessees, subEligible Households, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all {S:/BRKWD/0001/AGR/01106028.DOCX}{S:/BRKWD/0001/AGR/01106028.DOCX}{S:/BRKWD/0001/AGR/01106028.DOCX}

deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

3. Reporting Requirements.

3.1. Eligible Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

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

Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall provide copies of such certificates to City and make the originals 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 Grand-Cypress Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Grand-Cypress Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

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

Owner shall permit representatives of City to enter and inspect the Property and the Grand-Cypress 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.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Grand-Cypress 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.

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3.4 Additional Information. Owner shall provide any additional information reasonably requested by City. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner which pertain to the Grand-Cypress Project during Owner's regular business hours.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Grand-Cypress Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Eligible Households. All Eligible Household lists, applications and waiting lists relating to the Grand-Cypress Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City 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 Restricted Units for a period of at least five (5) years, and for any period during which there is an audit undertaken by the City pursuant to the DDA.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Grand-Cypress Project, unless the term is extended by mutual agreement of the Parties.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Grand-Cypress Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Agency Note, or (iii) any reconveyance of the Agency Deed of Trust.

4.3 Reconveyance. Upon the termination 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 the termination of this Agreement upon the expiration of the term as such may be extended pursuant to Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Grand-Cypress 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 Grand-Cypress Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Grand-Cypress Project (other than the Eligible Households of the individual dwelling units or retail/commercial space within the Grand-Cypress Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Grand-Cypress

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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 Grand-Cypress Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Grand-Cypress Project, including without limitation the selection of Eligible Households, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Grand-Cypress Project.

6.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Grand-Cypress 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 Grand-Cypress Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Grand-Cypress Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Grand-Cypress Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Grand-Cypress Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, 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.

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6.2.2 Costs. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the City Deed of Trust, and 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 6% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.3 Marketing and Management Plan. Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's Eligible Household selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Grand-Cypress Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Grand-Cypress Project Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Grand-Cypress Project, and throughout the term of this Agreement.

6.4 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within thirty (30) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Grand-Cypress Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 6.5 is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the DDA with respect to the Property, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the DDA.

6.7 Property Damage or Destruction. If any part of the Grand-Cypress 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

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

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

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except for Permitted Transfers to Permitted Affiliates, defined herein, and except as permitted pursuant to the DDA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Grand-Cypress Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the DDA, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than forty percent (40%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, member or other equity partner, nor the transfer by such investor to subsequent limited partners, members or other equity partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent the following

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("Permitted Transfers"): (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the DDA; (iii) the lease of individual dwelling units to Eligible Households for occupancy as their principal residence in accordance with this Agreement and the lease of commercial space to retail and commercial Eligible Households, if applicable; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the DDA, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (v) a Transfer to BLV or other entity which is under the direct control of Owner so long as Owner is the managing member of such entity and maintains at least five percent (5%) equity interest in each such entity ("Permitted Affiliate").

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

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

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's and/or Agency's delivery of an invoice detailing such costs.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Grand-Cypress Project or part thereof for the benefit of a lender other than City ("Third-Party Lender") shall contain each of the following provisions: (i) Third-Party 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; (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 30 days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the

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right to foreclose City's Deed of Trust without acceleration of Third-Party Lender's debt. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within thirty (30) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Grand-Cypress 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 Grand-Cypress Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Grand-Cypress Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days;
- (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 Grand-Cypress Project or failure to pay any other charge that may result in a lien on the Property or the Grand-Cypress Project, and Owner's failure to cure such default within thirty (30) 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) A default arises under the DDA, the Agency Note, the City Deed of Trust, or any other City Document or Agency Document (as defined in the DDA) and remains uncured beyond the expiration of all applicable cure periods.
- (f) Owner's default in the performance of any 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 ten (10) days in the event of a monetary default or thirty (30) 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 30 days, Owner's failure to commence to cure the default within thirty (30) days

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and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than ninety (90) days from receipt of the notice of default.

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. Accelerate and declare the balance of the Agency Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the City Deed of Trust;
- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- D. 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 Grand-Cypress Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Owner that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the DDA.

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

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be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 **Notices.** Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

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

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(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;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

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

Facsimile: (650) 829-6609

Owner: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94117
Attn: Shepherd Heery

Tel: (415) 402-0800
Facsimile: (415) 399-9367

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11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

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

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

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

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the DDA, the Agency Note, the City Deed of Trust, the Agency Deed of Trust and the other City Documents and Agency Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through 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.

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SIGNATURES ON FOLLOWING PAGE.

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IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY

THE CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A-1

GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income (AMI) Levels

Grand-Cypress Avenue Property

| Maximum Household Income | 80% AMI | 120% AMI | Total |
|--------------------------|---------|----------|-------|
| Studio | 1 | 0 | 1 |
| 1-Bedroom | 4 | 1 | 5 |
| 2-Bedroom | 3 | 0 | 3 |
| 3-Bedroom | 0 | 0 | 0 |
| Total | 8 | 1 | 9 |

Exhibit C

**RECORDING REQUESTED BY
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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**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (this "Notice") is dated as of _____, 2015 with reference to that certain real property located at 201-219, 227 Grand Avenue, known as San Mateo County Assessor's Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-070 and more particularly described in Exhibit A-1 attached hereto (the "**Grand-Cypress Avenue Property**"). The Grand-Cypress Avenue Property and the Grand-Cypress Avenue Property are hereinafter collectively referred to as the "**Property**."

1. The City of South San Francisco, a municipal corporation ("**City**"), as Housing Successor to the former Redevelopment Agency of the City of South San Francisco and Brookwood Equities LLC, a Delaware limited liability company ("**Owner**") have entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") dated as of the date hereof and recorded in the Official Records of San Mateo County substantially concurrently herewith. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Regulatory Agreement for the Grand-Cypress Avenue Property.

2. The Regulatory Agreement also requires not less than eight (8) of the residential units in the Grand-Cypress Project on the Grand-Cypress Avenue Property shall be rented at affordable rents to households whose income is no greater than eighty percent (80%) of Area Median Income and no fewer than one (1) additional unit in the Grand-Cypress Project on the Grand-Cypress Avenue Property shall be rented at affordable rents to households whose income is no greater than one hundred twenty percent (120%) of Area Median Income, as more particularly set forth in the Regulatory Agreement.

3. The restrictions set forth in the Regulatory Agreement will be in effect for a period of fifty-five (55) years, commencing on the date of issuance of a final certificate of occupancy for the Grand-Cypress Project developed on the Property.

This Notice is intended to provide notice of documents that affect title to the Property. Reference should be made to the Regulatory Agreement for a more detailed description of all

matters described in this Notice. In the event of any conflict between the terms of this Notice and the terms of the Regulatory Agreement, the Regulatory Agreement shall prevail.

This Notice is being recorded and filed in compliance with California Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed by the City and the current owner of the Property.

IN WITNESS WHEREOF, City and Owner have executed this Notice as of the date first written above.

CITY:

**CITY OF SOUTH SAN FRANCISCO,
A MUNICIPAL CORPORATION**

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER:

**BROOKWOOD EQUITIES LLC, a Delaware
limited liability company**

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

Exhibit A-1

GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

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

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

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

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AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

BROOKWOOD EQUITIES LLC

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2015 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) as Housing Successor to the former Redevelopment Agency to the City of South San Francisco and Brookwood Equities LLC, a Delaware limited liability company (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco at 418 Grand-Cypress Avenue, located at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A-1 attached hereto (the “**Grand-Cypress Avenue Property**” or, the “**Property**”). Owner intends to create or has created a special purpose entity known as Brookwood Cypress Venture LLC (“**BCV**”) for the Grand-Cypress Avenue Property to serve as the ownership entity for the Property. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BCV for the Grand-Cypress Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees permitted under the DDA defined below.

B. Owner intends to construct, own and operate a mixed-use, multi-family residential project (the “**Grand-Cypress Project**”) on the Property in accordance with that certain Disposition and Development Agreement executed by and between the Parties and others dated as of the date hereof (the “**DDA**”), a memorandum of which shall be recorded substantially concurrently herewith in the Official Records of San Mateo County (“**Official Records**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the DDA.

C. The DDA provides that for a period of not less than fifty-five (55) years, twenty percent (20%) of the residential units in the Grand-Cypress Project shall be rented at Affordable Rents to Eligible Households.

D. In addition, as further described in the DDA, and in order to assist in the construction of affordable units, the City is providing Owner a grant in the amount of Nine Hundred Twenty Thousand Dollars (\$920,000) from Affordable Housing Bond Proceeds to partially finance the Grand-Cypress Project on the Grand-Cypress Avenue Property (“**City Grant**”). Certain of the grant proceeds have been provided to Owner pursuant to the terms of the executed Exclusive Negotiation Rights Agreement (“**ENRA**”) for initial predevelopment expenses and the remainder of the grant proceeds will be provided pursuant to the DDA in order to assist with the completion of predevelopment activities and if any funds remain, toward construction of the Grand-Cypress Project.

F. As a condition to its agreement to provide the City Grants, the City requires the Property to be subject to the terms, conditions and restrictions set forth herein. The City requires residential rental units assisted with funds from the City’s low- and moderate-income housing fund to remain affordable for the longest feasible time.

F. As a condition to its agreement to provide the City Grants, the City also requires the construction of the Grand-Cypress Project to comply with the requirements of the South San Francisco Municipal Code Chapter 20.380.

G. 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 Grand-Cypress Project's Restricted Units for the benefit of the Grand-Cypress Project occupants. 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.

1. **Definitions.** The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits. Additional terms are defined in the Recitals and text of this Agreement.

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

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

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

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

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

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Safety Code Section 50093(c).

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

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

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

“**Low-Income**” or “**Lower Income**” means an annual gross household income that is less than or equal to the qualifying limits for households of Lower Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for San Mateo County. If HUD ceases to make such determination, “Lower Income” shall be defined as not greater than 80% of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of “Lower Income” used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

“**Moderate-Income**” means an annual gross household income that is less than or equal to 120% of AMI, adjusted for actual household size as determined periodically by HCD on the basis of gross annual household income and published in the Regulations for San Mateo County.

“**Regulations**” means Title 25 of the California Code of Regulations.

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

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

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a mixed-use, multifamily rental housing development in compliance with the DDA 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. For purposes of this Agreement and where the context warrants, a reference to Owner shall be to BLV for the Grand-Cypress Avenue Property once such entity has been formed and assumes the obligations of Brookwood Equities LLC for the Property and to Permitted Affiliates or other transferees permitted under the DDA.

2.1 Affordability Requirements.

2.1.1 Grand-Cypress Avenue Property. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Grand-Cypress Project on the Grand-Cypress Avenue Property, not less than eight (8) of the residential units on the Grand-Cypress Avenue Property shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than eighty percent (80%) of Area Median Income, and no fewer than one (1) additional units in the Grand-Cypress Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) available at Affordable Rents to Eligible Households whose income is no greater than one hundred twenty percent (120%) of Area Median Income.

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 Grand-Cypress Project to Eligible Household(s) until the required income mix is achieved.

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

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

2.3 Notice of Affordability Restrictions on Transfer of Property. The Parties shall execute a Notice of Affordability Restrictions on Transfer of Property substantially in the form attached hereto as Exhibit C, and shall cause such notice to be recorded substantially concurrently with the recordation of this Agreement.

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Grand-Cypress Project. Eligible Households of

Restricted Units shall have access to all common facilities of the Grand-Cypress Project equal to that of Eligible Households of units in the Grand-Cypress Project that are not Restricted Units. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.5 Reserved.

2.6 No Condominium Conversion. Owner shall not convert the residential units in the Grand-Cypress Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Grand-Cypress Project or any part thereof for at least ten (10) years from the date of the Agreement, and provided Owner obtains the City's consent and meets the affordability requirements of Section 2.1. City's prior written consent shall be required with respect to the sale or condominium conversion of the retail/commercial portion of the Grand-Cypress Project or any part thereof.

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 law and consistent with the program regulations for funding sources used for development of the Grand-Cypress Project, at initial lease up, Owner shall give a preference in the rental of the residential units in the Grand-Cypress Project to Eligible Households that include at least one member who lives or works in the City. If there are fewer Eligible Households than the number of such units, the units will be made available to the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

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

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Eligible Households, lessees, subEligible Households, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all

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deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

3. Reporting Requirements.

3.1. Eligible Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Restricted Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

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

Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall provide copies of such certificates to City and make the originals 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 Grand-Cypress Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Grand-Cypress Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

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

Owner shall permit representatives of City to enter and inspect the Property and the Grand-Cypress 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.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Grand-Cypress Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

3.4 Additional Information. Owner shall provide any additional information reasonably requested by City. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner which pertain to the Grand-Cypress Project during Owner's regular business hours.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Grand-Cypress Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Eligible Households. All Eligible Household lists, applications and waiting lists relating to the Grand-Cypress Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City 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 Restricted Units for a period of at least five (5) years, and for any period during which there is an audit undertaken by the City pursuant to the DDA.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the 55th anniversary of the issuance of the final certificate of occupancy for the Grand-Cypress Project, unless the term is extended by mutual agreement of the Parties.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Grand-Cypress Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Agency Note, or (iii) any reconveyance of the Agency Deed of Trust.

4.3 Reconveyance. Upon the termination 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 the termination of this Agreement upon the expiration of the term as such may be extended pursuant to Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Grand-Cypress 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 Grand-Cypress Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Grand-Cypress Project (other than the Eligible Households of the individual dwelling units or retail/commercial space within the Grand-Cypress Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Grand-Cypress

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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 Grand-Cypress Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Grand-Cypress Project, including without limitation the selection of Eligible Households, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Grand-Cypress Project.

6.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Grand-Cypress 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 Grand-Cypress Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Grand-Cypress Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Grand-Cypress Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Grand-Cypress Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, 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, shall constitute an indebtedness secured by the City Deed of Trust, and 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 6% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.3 Marketing and Management Plan. Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's Eligible Household selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Grand-Cypress Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Grand-Cypress Project Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Grand-Cypress Project, and throughout the term of this Agreement.

6.4 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within thirty (30) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Grand-Cypress Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section 6.5 is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in the DDA with respect to the Property, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the DDA.

6.7 Property Damage or Destruction. If any part of the Grand-Cypress 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, if lenders or low-income housing tax credit investors providing financing for the Grand-Cypress Project impose requirements that differ from the requirements of this Section, the requirements of such lenders and investors shall prevail.

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

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except for Permitted Transfers to Permitted Affiliates, defined herein, and except as permitted pursuant to the DDA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Grand-Cypress Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the DDA, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than forty percent (40%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, member or other equity partner, nor the transfer by such investor to subsequent limited partners, members or other equity partners shall be restricted by this provision.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent the following

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("Permitted Transfers"): (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the DDA; (iii) the lease of individual dwelling units to Eligible Households for occupancy as their principal residence in accordance with this Agreement and the lease of commercial space to retail and commercial Eligible Households, if applicable; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the DDA, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (v) a Transfer to BLV or other entity which is under the direct control of Owner so long as Owner is the managing member of such entity and maintains at least five percent (5%) equity interest in each such entity ("Permitted Affiliate").

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

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

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's and/or Agency's delivery of an invoice detailing such costs.

8.3 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Grand-Cypress Project or part thereof for the benefit of a lender other than City ("Third-Party Lender") shall contain each of the following provisions: (i) Third-Party 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; (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 30 days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the

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right to foreclose City's Deed of Trust without acceleration of Third-Party Lender's debt. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within thirty (30) business days following Owner's receipt thereof.

8.4 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Grand-Cypress 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 Grand-Cypress Project or the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Grand-Cypress Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days;
- (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 Grand-Cypress Project or failure to pay any other charge that may result in a lien on the Property or the Grand-Cypress Project, and Owner's failure to cure such default within thirty (30) 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) A default arises under the DDA, the Agency Note, the City Deed of Trust, or any other City Document or Agency Document (as defined in the DDA) and remains uncured beyond the expiration of all applicable cure periods.
- (f) Owner's default in the performance of any 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 ten (10) days in the event of a monetary default or thirty (30) 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 30 days, Owner's failure to commence to cure the default within thirty (30) days

and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than ninety (90) days from receipt of the notice of default.

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. Accelerate and declare the balance of the Agency Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the City Deed of Trust;
- C. For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- D. 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 Grand-Cypress Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City do not and shall not waive any rights against Owner that they may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement or the DDA.

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

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be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (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;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

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

Facsimile: (650) 829-6609

Owner: Brookwood Equities LLC
One Embarcadero Center, Suite 500
San Francisco, CA 94117
Attn: Shepherd Heery

Tel: (415) 402-0800
Facsimile: (415) 399-9367

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

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

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

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

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the DDA, the Agency Note, the City Deed of Trust, the Agency Deed of Trust and the other City Documents and Agency Documents contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through 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.

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IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY

THE CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER

BROOKWOOD EQUITIES LLC, a Delaware
limited liability company

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A-1

GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

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

| Maximum Household Income | 80% AMI | 120% AMI | Total |
|--------------------------|---------|----------|-------|
| Studio | 1 | 0 | 1 |
| 1-Bedroom | 4 | 1 | 5 |
| 2-Bedroom | 3 | 0 | 3 |
| 3-Bedroom | 0 | 0 | 0 |
| Total | 8 | 1 | 9 |

Exhibit C

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

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

Space above this line for Recorder's use.

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (this "Notice") is dated as of _____, 2015 with reference to that certain real property located at 201-219, 227 Grand Avenue, known as San Mateo County Assessor's Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-070 and more particularly described in Exhibit A-1 attached hereto (the "**Grand-Cypress Avenue Property**"). The Grand-Cypress Avenue Property and the Grand-Cypress Avenue Property are hereinafter collectively referred to as the "**Property**."

1. The City of South San Francisco, a municipal corporation ("**City**"), as Housing Successor to the former Redevelopment Agency of the City of South San Francisco and Brookwood Equities LLC, a Delaware limited liability company ("**Owner**") have entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") dated as of the date hereof and recorded in the Official Records of San Mateo County substantially concurrently herewith. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Regulatory Agreement for the Grand-Cypress Avenue Property.

2. The Regulatory Agreement also requires not less than eight (8) of the residential units in the Grand-Cypress Project on the Grand-Cypress Avenue Property shall be rented at affordable rents to households whose income is no greater than eighty percent (80%) of Area Median Income and no fewer than one (1) additional unit in the Grand-Cypress Project on the Grand-Cypress Avenue Property shall be rented at affordable rents to households whose income is no greater than one hundred twenty percent (120%) of Area Median Income, as more particularly set forth in the Regulatory Agreement.

3. The restrictions set forth in the Regulatory Agreement will be in effect for a period of fifty-five (55) years, commencing on the date of issuance of a final certificate of occupancy for the Grand-Cypress Project developed on the Property.

This Notice is intended to provide notice of documents that affect title to the Property. Reference should be made to the Regulatory Agreement for a more detailed description of all

matters described in this Notice. In the event of any conflict between the terms of this Notice and the terms of the Regulatory Agreement, the Regulatory Agreement shall prevail.

This Notice is being recorded and filed in compliance with California Health and Safety Code Section 33334.3(f)(3) and (4), and shall be indexed by the City and the current owner of the Property.

IN WITNESS WHEREOF, City and Owner have executed this Notice as of the date first written above.

CITY:

**CITY OF SOUTH SAN FRANCISCO,
A MUNICIPAL CORPORATION**

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Krista Martinelli, City Clerk

APPROVED AS TO FORM:

By: _____
Jason Rosenberg, City Attorney

OWNER:

**BROOKWOOD EQUITIES LLC, a Delaware
limited liability company**

By: BROOKWOOD GROUP, INC., a California corporation,
its Manager

By: _____
Shepherd Heery
Chairman and Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

Exhibit A-1

GRAND-CYPRESS AVENUE PROPERTY

(Attach legal description.)

Recording requested by
and when recorded mail to:

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

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

Space above this line for Recorder's use.

**CERTIFICATE OF COMPLETION
(Linden Avenue)**

This Certificate of Completion (this “**Certificate**”) is made by the City of South San Francisco, a municipal corporation (“**City**”) effective as of _____, 20__.

RECITALS

A. City, the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“**Agency**”) and Brookwood Equities LLC, a Delaware limited liability company (“**Owner**”) entered into that certain Disposition and Development Agreement (the “**DDA**”) dated as of _____, 2015 concerning the redevelopment of certain real property located at 418 Linden Avenue in the City of South San Francisco, California, known as San Mateo County Assessor’s Parcel Nos. 012-314-010 and more fully described in Exhibit A attached hereto (the “**Property**”). A Memorandum of the DDA was recorded in the Official Records of San Mateo County (“**Official Records**”) as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 4.18 of the DDA, the City is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction of the Project in accordance with the DDA.

C. The City has determined that construction of the Project has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, City hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the DDA.

2. All use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Owner’s compliance with those covenants in the DDA that survive the issuance of this Certificate, including without limitation, compliance with the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into pursuant to the DDA and recorded in the Official Records as Instrument No. ___ Book___, Page___.

Exhibit A

PROPERTY
(Attach legal description.)

2447812.2

Recording requested by
and when recorded mail to:

Successor Agency to the Redevelopment Agency of the
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: Agency Chair

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

Space above this line for Recorder's use.

**CERTIFICATE OF COMPLETION
(Grand-Cypress Avenue)**

This Certificate of Completion (this "**Certificate**") is made by the Successor Agency to the Redevelopment Agency of the City of South San Francisco, a public agency ("**Agency**") effective as of _____, 20__.

RECITALS

A. Agency, the City of South San Francisco ("**City**") and Brookwood Equities, LLC, a Delaware limited liability company ("**Owner**") entered into that certain Disposition and Development Agreement (the "**DDA**") dated as of _____, 2015 concerning the redevelopment of certain real property located at 201-219 Grand Avenue, known as San Mateo County Assessor's Parcel Nos. 012-316-10-10, 012-316-100, 012-316-090 and 012-316-080 and more fully described in Exhibit A attached hereto (the "**Property**"). A Memorandum of the DDA was recorded in the Official Records of San Mateo County ("**Official Records**") as Instrument No. _____, Book _____, Page _____. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the DDA.

B. Pursuant to Section 4.18 of the DDA, the Agency is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction of the Project in accordance with the DDA.

C. The Agency has determined that construction of the Project has been satisfactorily completed in accordance with the DDA.

NOW, THEREFORE, Agency hereby certifies as follows:

1. Development of the Project has been satisfactorily completed in conformance with the DDA.

2. All use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable in accordance with the DDA. This Certificate does not constitute evidence of Owner's compliance with those covenants in the DDA that survive the issuance of this Certificate, including without limitation, compliance with the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into pursuant to the DDA and recorded in the Official Records as Instrument No. ___ Book ___, Page ___.

