

**ASSIGNMENT AGREEMENT**  
**(1979 Mission)**

This Assignment Agreement (the “**Agreement**”) is entered into as of \_\_\_\_\_, 2021, by and between **CH Acquisitions 2, LLC**, a Delaware limited liability company, and any of its successors and assigns (“**Assignor**”) and the City and County of San Francisco, a municipal corporation (“**Assignee**” or “**City**”), with reference to the following facts:

A. Assignor is the owner of certain real property located at 10 South Van Ness in San Francisco, California, and intends to construct a residential project thereon (the “**Principal Project**”).

B. San Francisco Planning Code (“**Planning Code**”) Section 415 *et seq.* requires residential projects to comply with certain requirements to create affordable housing in San Francisco (“**Affordability Requirement**”). Development projects within the Van Ness & Market Residential Special Use District may satisfy all or a portion of the Affordability Requirement by dedication of land to the City for the purpose of constructing affordable housing. Assignor desires to satisfy the Affordability Requirement for the Principal Project through a land dedication pursuant to Planning Code Section 249.33 (b)(16) (“**Land Dedication Option**”).

C. Assignor, as Buyer, and **Maximus-BP 1979 Mission Street LLC**, a Delaware limited liability company (“**Seller**”), as Seller, entered into that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2021 (the “**Purchase Agreement**”) pursuant to which Assignor agreed to purchase from Seller certain real and personal property located at 1979 Mission Street, San Francisco, California, as more particularly described in the Purchase Agreement (the “**Property**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Purchase Agreement.

D. By a letter dated September 1, 2020 (the “**MOHCD Letter**”), from the Mayor’s Office of Housing and Community Development (“**MOHCD**”), the City verified the Property as acceptable for dedication pursuant to the Land Dedication Option described above. Assignor and Assignee are entering into this Agreement in order to facilitate partial satisfaction of the Affordability Requirement for the Principal Project under the Land Dedication Option through a transfer to the City of the Property, which will be under the jurisdiction of MOHCD. The City acknowledges that Assignee’s acceptance of the Land Dedication Option has induced Assignor to purchase the Property and, absent such acceptance, Assignor would not have otherwise entered into the Purchase Agreement.

E. Assignor and Seller are prepared to close escrow pursuant to the Purchase Agreement (“**Closing**”). At Closing, Assignor shall designate Assignee as Permitted Assignee pursuant to Section 11.5 of the Purchase Agreement and Seller shall transfer title to the Property to Assignee pursuant to the Deed and the other Seller Closing Deliverables.

F. Assignor desires to assign, and Assignee desires to assume, as Permitted Assignee under Section 11.5 of the Purchase Agreement, all of Assignor’s rights, interest and obligations under the Purchase Agreement that relate to the period from and after the Closing or survive the Closing including, but not limited to, the right to be named in the Deed and the other Seller Closing

Deliverables, and the obligation to execute and deliver the Assignment and Assumption Agreement, but expressly excluding the obligation of Assignor to deliver the balance of the Purchase Price or pay any other closing costs at Closing, which shall remain the obligation of Assignor (the “**Assigned Rights and Obligations**”), effective as of the Closing Date (the “**Effective Date**”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

- 1. Assignment and Assumption.** As of the Effective Date, Assignor hereby assigns and delegates to Assignee the Assigned Rights and Obligations. As of the Effective Date, Assignee hereby accepts and assumes such Assigned Rights and Obligations.
- 2. City Commitment to Take Title.** If Assignor and Seller have each satisfied all conditions to consummate the purchase and sale of the Property required under the Purchase Agreement, and Assignor and Seller are prepared to proceed with the Closing, the City hereby covenants and agrees that it will accept title to the Property pursuant to recordation of the Grant Deed in substantially the form attached to the Purchase Agreement upon authorization of the Closing by Assignor and Seller. Notwithstanding the foregoing, the City shall not be obligated to accept title to the Property at Closing solely if the City is prohibited from accepting title to the Property as a result of an order issued by a court of law which prohibits Seller’s ability to convey title or the City’s ability to accept title to the Property due to a lawsuit filed by an unrelated third-party. For purposes of clarity, the City shall not be permitted to refuse acceptance of title to the Property simply because there is litigation seeking to prevent Seller’s ability to convey or the City’s ability to accept title to the Property; rather, there must be an order issued by a court of law which expressly prevents such transfer to or acceptance by the City.

To the extent the City is in default of its obligation to accept title to the Property as provided herein, Assignor shall have all rights and remedies available to it at law or in equity including, without limitation, the right to seek specific performance and/or the right to bring an action against the City seeking any and all damages, liabilities and expenses incurred by Assignor as a result of the City’s breach of its obligations set forth in this Agreement.

- 2. Indemnity.** Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys’ fees), arising out of Assignor’s obligations under the Purchase Agreement prior to the Effective Date.
- 3. Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Agreement or the Purchase Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) sent via electronic mail (if e-mail address is provided below) and deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, or (b) hand delivered. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor and Assignee may designate a new address for purposes of this Section by notice to the other signatories to this Agreement.

If to Assignor:

CH Acquisitions 2, LLC  
c/o Jonathan Newberg  
2200 Biscayne Blvd.  
Miami, FL 33137  
E-Mail: [jnewberg@crescentheights.com](mailto:jnewberg@crescentheights.com); [jbuchberg@crescentheights.com](mailto:jbuchberg@crescentheights.com);  
[eblum@rainesfeldman.com](mailto:eblum@rainesfeldman.com)

If to Assignee:

City and County of San Francisco  
Real Estate Division  
25 Van Ness, #400  
San Francisco, CA 94102  
Attn: Director  
E-Mail: [andrico.penick@sfgov.org](mailto:andrico.penick@sfgov.org)

With Copy to:

Mayor's Office of Housing and Community Development  
1 South Van Ness, Fifth Floor  
San Francisco, CA 94103  
Attn: Director  
E-Mail: [eric.shaw@sfgov.org](mailto:eric.shaw@sfgov.org)

## **5. Government Requirements.**

A. Assignor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Assignor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

B. Through its execution of this Agreement, Assignor acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Assignor becomes aware of any such fact during the term of this Agreement, Assignor shall immediately notify City.

C. Through its execution of this Agreement Assignor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by

such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Assignor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Assignor further acknowledges that the (i) prohibition on contributions applies to Assignor; each member of Assignor's board of directors, and Assignor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Assignor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Assignor; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Assignor is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Assignor certifies that Assignor has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**6. Unconditional Approval of the Affordability Requirement.** Notwithstanding anything to the contrary in the MOHCD Letter, the City hereby acknowledges and agrees that the transfer of title to the Property to the City in accordance with this Agreement shall be deemed to be the unconditional acceptance of the dedication of the Property pursuant to the Land Dedication Option and full satisfaction of the Affordability Requirement with respect to the Principal Project.

**7. Miscellaneous.**

A. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

B. This Agreement contains the entire agreement between the parties pertaining to the terms hereof and all prior written or oral negotiations, understandings and agreements are merged herein.

C. Subject to the terms of the Purchase Agreement, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as otherwise provided herein, nothing in this Agreement shall be construed to give any person or entity (other than Assignor and Assignee and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

D. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile or email, and a copy distributed by facsimile or by email as a pdf shall be deemed an original.

**[SIGNATURES ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the undersigned hereby execute this Agreement as of the date first written above.

**“ASSIGNOR”**

**“ASSIGNEE”**

CH Acquisitions 2, LLC, a Delaware limited liability company

City and County of San Francisco, a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney