

FREE RECORDING REQUESTED
PURSUANT TO GOVERNMENT CODE
SECTION 27383

WHEN RECORDED, MAIL TO:

San Francisco Planning Department
1650 Mission Street, Room 400
San Francisco, California 94103
Attn: Director

SPACE ABOVE FOR RECORDER'S USE ONLY

AGREEMENT TO RENT UNITS

by and amongst

Raintree 2051 Third Street LLC, a Delaware limited liability company

and

**The City and County of San Francisco, a municipal corporation, acting by and through its
Planning Department**

AGREEMENT TO RENT UNITS

THIS AGREEMENT TO RENT UNITS (“Agreement”) dated for reference purposes only as of this _____ day of _____, 2014, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California, acting by and through its Planning Department (the “City”), and RAINTREE 2051 THIRD STREET LLC, a Delaware limited liability company (“Developer”) with respect to the approved project at 2051 Third Street. City and Developer are also sometimes referred to individually as “Party” and together as “Parties.”

RECITALS

This Agreement is made with reference to the following facts:

A. Code Authorization. The Ellis Act (California Government Code Sections 7060 et. seq., hereinafter “Ellis Act”) prohibits public entities from compelling owners of real property to lease their property or continue to offer it for lease, with exception, including an exception for dwelling units where the public entity enters into an agreement with the developer to provide rental housing in exchange for a direct financial contribution (Gov’t. Code Sec. 7060.1(a)). Pursuant to Government Code Section 7060.1(a), the City’s Board of Supervisors has enacted as part of the Planning Code Housing Requirements for Residential Development Projects in the Urban Mixed Use (“UMU”) Zoning Districts of the Eastern Neighborhoods, Sections 419 et. seq. procedures and requirements for entering into an agreement with a private developer to provide an exception to the Ellis Act in order to require the provision of rental housing for continuous 30 year period for all units included in the developer’s project in exchange for certain financial contributions.

B. Property Subject to this Agreement. The property that is the subject of this Agreement consists of the real property in the City and County of San Francisco, California, at 2051 Third Street, Lots 001B, 001C and 006 in Assessor’s Block 3994 and located on a through lot with frontage on Third and Illinois Streets between Mariposa and 18th Street (hereinafter “Property”). The Property is located in the UMU Zoning District of the Eastern Neighborhoods District. The Property is more particularly described in Exhibit A attached hereto. The Property is owned in fee by Developer.

C. Development Proposal; Intent of the Parties. The Developer proposes to construct a residential project on the Property. The San Francisco Planning Commission approved a Large Project Authorization for the project in its Motion No. _____ dated _____, 2014 (the “Project Approval”), authorizing the development of approximately 94 residential dwelling units (the “Units”) within a six story building (the “Project”). The Units will consist of on-site inclusionary units representing thirteen percent (13%) of the Project’s total dwelling units, which based on the current Project, would be 12 dwelling units (the “Inclusionary Units”), and market rate units representing eighty-seven percent (87%) of the Project’s dwelling units (the “Market Rate Units”). This Agreement is intended to impose restrictions on all of the Units in the Project, and shall have no legal effect in the event that the Project is not constructed. The Parties acknowledge that this Agreement is entered into in consideration of the respective

burdens and benefits of the Parties contained in this Agreement and in reliance on their agreements, representations and warranties.

D. Inclusionary Affordable Housing Program. The Inclusionary Affordable Housing Program, San Francisco Planning Code Section 415 et seq. (the "Affordable Housing Program") provides that developers of any housing project consisting of ten or more units to pay an Affordable Housing Fee, as defined therein. The Affordable Housing Program provides that developers may be eligible to meet the requirements of the program through the alternative means of entering into an agreement with the City and County of San Francisco pursuant to Chapter 4.3 of the California Government Code for concessions and incentives, pursuant to which the developer covenants to provide affordable on-site units as an alternative to payment of the Affordable Housing Fee to satisfy the requirements of the Affordable Housing Program and in consideration of the City's concessions and incentives. In addition, under Planning Code Section 419.5(b), for projects within the UMU Zoning District of the Eastern Neighborhoods Plan area, developers are provided certain financial benefits in exchange for an agreement to provide all units as rental housing for not less than thirty (30) years from the issuance of a project's first certificate of occupancy.

E. Developer's Election to Provide On-Site Units as Rental Housing. As part of the Project Approval, the Developer agreed to comply with the Affordable Housing Program by providing units on-site and to provide the Inclusionary Units in lieu of payment of the Affordable Housing Fee. Accordingly, Developer and the City entered into that certain Agreement to provide On-Site Affordable Housing Units, dated _____, 2014. Pursuant to Planning Code Section 419.5(b), Developer has also voluntarily elected to enter into this Agreement to provide all of the Units as rental housing for not less than 30 years from the issuance of the first certificate of occupancy for the Project in exchange for the financial incentives contained herein.

F. Compliance with All legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq., "CEQA"), the Ellis Act, the San Francisco Planning Code, and all other applicable laws and regulations.

G. Project's Compliance with CEQA. Pursuant to section 15183 of the CEQA Guidelines, California Public Resources Section 21083.3, and Chapter 31 of the San Francisco Administrative Code, the Planning Department published a Certificate of Exemption ("CPE") from Environmental Review for the Project on December 3, 2013. The Planning Commission subsequently reviewed and concurred with the information contained in the CPE at a noticed public hearing on March 6th, 2014 (Motion No. _____).

H. CEQA and General Plan Findings. There have been no substantial changes in the Project which make it ineligible for the CPE or that require additional environmental review. This Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable area or specific plan, and the Priority Policies enumerated in Planning Code Section 101.1, as set forth in Planning Commission Motion No. _____.

AGREEMENT

The Parties acknowledge the receipt and sufficiency of good and valuable consideration and agree as follows:

1. GENERAL PROVISIONS.

1.1 Incorporation of Recitals and Exhibits. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

2. CITY'S FINANCIAL INCENTIVES FOR THE PROJECT.

2.1 Direct Financial Contribution. Pursuant to Planning Code Section 419.5(b), and subject to the rescission provisions in Section 3.4 below, the City agrees to provide the following direct financial contributions to Developer for the Developer's voluntary agreement to provide all of the Units as rental housing for not less than the Required Rental Term (as defined herein):

- i. a three percent (3%) reduction in the Project's on-site inclusionary housing requirement from 16% to 13%, which based on the current Project, would result in a total of 12 Inclusionary Units rather than 15 Inclusionary Units. Using the City's current Affordable Housing Fee calculations, the reduction of the three Inclusionary Units represents a cost savings to the Project of approximately \$739,732; and
- ii. a \$1 per gross square foot reduction in the Eastern Neighborhoods Public Benefit Fee that must be paid by the Developer pursuant to the Planning Code, which based on the current Project, represents a cost savings to the Project of approximately \$106,960, which portion of the fee shall be waived by City.

2.2 Rescission of Project Approval. The Developer has secured an entitlement for the Project. In the event the City rescinds the Project Approval prior to commencement of construction for the Project, Developer may terminate this Agreement, and, if the Agreement has been recorded against Developer's fee interest in the Property, the City agrees to take any action required of it to remove the Agreement from the title of the Property.

3. COVENANTS OF DEVELOPER IN EXCHANGE FOR CITY'S FINANCIAL CONTRIBUTIONS TO THE PROJECT.

3.1 Rental Units. In consideration of the City's financial contributions set forth in Section 2.1 and in accordance with the terms and conditions set forth in the Affordable Housing Program and the Project Approval, upon Developer obtaining its first certificate of occupancy of the residential component of the Project, Developer shall provide all of the Units on-site as rental units for a period of thirty (30) years following the issuance of said certificate of occupancy (the "Required Rental Term"). The Project Approval does not address whether the Project may be constructed in phases, and at this point Developer does not anticipate phasing the Project development. If in the future Developer seeks to develop the Project in phases, and the Planning Department determines that development of the Project in phases is in general conformance with

the Project Approval, then nothing in this Agreement shall prevent Developer from developing the Project, and providing the Units, in phases, provided the requisite percentage of Inclusionary Units must be developed in each phase and provided that all Units be rental units.

3.2 Ellis Act Does Not Apply to the Project. Through this Agreement, Developer hereby enters into an agreement with a public entity in consideration for the direct financial contributions set forth in Section 2.1 above. Developer agrees and acknowledges that the contributions set forth in Section 2.1 of this Agreement result in identifiable and actual cost reductions to the Project, in the form of reduced Project development costs and increased Project revenues. Accordingly, the Parties acknowledge that, under Section 7060.1(a) of the Ellis Act, the Units are not subject to the Ellis Act during the Required Rental Term. City would not be willing to enter into this Agreement and waive 3% of the on-site Affordable Housing Requirement and \$1 per gross square foot of the Eastern Neighborhoods Public Benefit Fee without the understanding and agreement that the Ellis Act does not apply to the Units as a result of the exemption set forth in Gov't Code Sec. 7060.1(a).

3.3 Developer's Waiver of Rights Under the Ellis Act. The Parties acknowledge that the Ellis Act prohibits public entities from compelling owners of real property to lease their property or continue to offer it for lease. The Parties also understand and agree that the Ellis Act does not and in no way shall limit or otherwise affect the rental requirement set forth herein because this Agreement falls within an express exception to the Ellis Act as a contract with a public entity in consideration for a direct financial contribution. However, should the exception be deemed to not apply to the Project and as a result the Project is deemed to be subject to the Ellis Act, then as a material part of the consideration for this Agreement, Developer, on behalf of itself and all successors and assigns to this Agreement, hereby expressly waives, now and forever, any and all rights it may have under the Ellis Act with respect to the Units consistent with Section 3.1 of this Agreement and during the Required Rental Term. Without limiting the foregoing, Developer, on behalf of itself and all successors and assigns to this Agreement, agrees not to bring any legal or other action against City seeking application of the Ellis Act to the Units for so long as the Units are subject to the rental requirement under this Agreement and Planning Code Section 419.5(b). The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers and agreements set forth in this Section 3.3. The Parties also acknowledge and agree that in the event the waiver set forth in this Section 3.3 is deemed invalid, the severability provision set forth in Section 9.8 below shall apply to this Section and the remaining provisions of this Agreement shall continue in full force and effect.

3.4 Rescission of Financial Contributions. In the event that at any time during the Required Rental Term, the Project is deemed subject to the Ellis Act despite the financial contributions and voluntary waivers set forth herein, the financial contributions set forth in Section 2.1 of this Agreement shall no longer apply to the Project, and the Project shall automatically be subject to the 16% inclusionary on-site percentage requirements (instead of 13%) and the full fee amounts for the Eastern Neighborhoods Public Benefit Fee. In such an event, Developer shall be required to take all acts necessary to promptly come into compliance with such requirements.

3.5 Project CC&R's. In the event that Developer creates Covenants, Conditions and Restrictions ("CC&R's") for the Project, Developer shall include a provision in such CC&R's requiring that all Units remain rental for the Required Rental Term.

3.6 No Obligation to Construct. By entering into this Agreement, Developer is not assuming any obligation to construct the Project, and the covenants of Developer hereunder become operative only in the event Developer elects to proceed with construction of the Project.

4. MUTUAL OBLIGATIONS.

4.1 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Project Approval.

4.2 Other Necessary Acts. Each Party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Project Approval, the Affordable Housing Program and applicable law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

4.3 Effect of Future Changes to Affordable Housing Program. The City hereby acknowledges and agrees that, in the event that the City adopts changes to the Affordable Housing Program after the date this Agreement is executed by both Parties, nothing in this Agreement shall be construed to limit or prohibit any rights Developer may have to modify Project requirements with respect to the Inclusionary Units to the extent permitted by such changes to the Affordable Housing Program.

5. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Interest of Developer. Developer represents that it is the legal and equitable fee owner of the Property, that it has the power and authority to bind the Property to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Units are to be bound by this Agreement. Developer is a limited liability company, duly organized and validly existing in the state of Delaware and authorized to do business and in good standing under the laws of the State of California. Developer has all requisite power and authority to own property and conduct business as presently conducted. Developer has made all filings and is in good standing in the State of California. Developer hereby agrees that in the event Developer sells, assigns, transfers or otherwise conveys its interest in the Project Approval, Developer will only do so after execution of an assignment and assumption of its rights, duties and obligations under this Agreement to such person or entity in the form attached hereto as **Exhibit B**. Without limiting the provisions set forth in Sections 7.1 and 9.2, the Parties understand and agree that the Project Approval is dependent on this Agreement, and any person or entity that wishes to rely on the Project Approval to develop some or all of the Project on the Property shall assume Developer's rights and obligations under this Agreement, either pursuant to an assignment and assumption as set forth in this Section or as a successor owner of the Property under Sections 7.1 and 9.2.

5.2 No Conflict With Other Agreements; No Further Approvals; No Suits. Developer warrants and represents that it is not a party to any other agreement that would conflict with the

Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement which Developer is a party to in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. To the best of Developer's knowledge, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

5.3 Priority of Agreement. Developer warrants and represents that there is no prior lien or encumbrance against the Property which, upon foreclosure, would be free and clear of the obligations set forth in this Agreement.

5.4 No Inability to Perform; Valid Execution. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

5.5 Conflict of Interest. Through its execution of this Agreement, the Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

5.6 Notification of Limitations on Contributions. Through execution of this Agreement, the Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

5.7 Nondiscrimination. In the performance of this Agreement, Developer agrees not to discriminate on the basis of the fact or perception of a person's, race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes, against any City employee, employee of or applicant for employment with the Developer, or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by the Developer. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by the Developer for the purpose of implementing this Agreement.

6. AMENDMENT; TERMINATION.

6.0 Amendment or Termination. Except as provided in Sections 6.2 (Automatic Termination) and 8.3 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties.

6.1 Amendment Exemptions. No amendment of a Project Approval or subsequent Project approval, or the approval of a subsequent Project approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and this Agreement (subject to any conditions set forth in the amendment or subsequent Project approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a subsequent Project approval, or between this Agreement and any amendment to the Project Approval or subsequent Project approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 6.1 above.

6.2 Automatic Termination. This Agreement shall automatically terminate upon expiration of the Required Rental Term.

7. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE.

7.1 Agreement Runs With The Land. City acknowledges that Developer may assign or transfer its rights, duties and obligations under the Project Approval and this Agreement and/or convey any interest it owns in the Property to another person or entity without City consent. Developer hereby agrees that in the event Developer sells, assigns, transfers or otherwise conveys its interest in the Project Approval, Developer will only do so after execution of an assignment and assumption of its rights, duties and obligations under this Agreement to such person or entity in the form attached hereto as **Exhibit B**. Any assignee or successor to Developer's rights to the Project Approval and/or Property shall be referred to herein as a "Transferee". Any Transferee may also subsequently assign or transfer its rights, duties and obligations under this Agreement and/or convey any interest it owns in the Property to another person or entity, subject to the provisions herein. As provided in Section 9.2, this Agreement runs with the land and any Transferee will be bound by all of the terms and conditions of this Agreement.

7.2 Rights of Developer. The provisions in this Section 7 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses or similar agreements to facilitate development of the Property, (ii) encumbering the Property or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Property or Project, (iii) granting one or more leasehold interests in all or any portion of the Property, or (iv) transferring all or a portion of the Property pursuant to a sale, transfer pursuant to foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage. None of the terms, covenants, conditions, or restrictions of this Agreement or the Project Approval shall be deemed waived by City by reason of the rights given to the Developer pursuant to this Section 7.2. Furthermore, although the Developer voluntarily agrees to operate the Project on a rental basis through the Required Rental Term, nothing in this Agreement shall prevent Developer from later selling all or part of the Project as condominium units once the Required Rental Term expires, provided that such sale is permitted by, and complies with, all applicable City and State laws including, but not limited to that, with respect to the Inclusionary Units, those shall only be sold pursuant to the City Procedures for sale of inclusionary units under the Affordable Housing Program.

7.3 Developer's Responsibility for Performance. If Developer transfers or assigns its interests in all or any portion of the Property or this Agreement to a Transferee, Developer shall continue to be responsible for performing the obligations under this Agreement until the date of transfer but not thereafter. Following the date of transfer, the City shall have the right to enforce each and every such obligation of Developer under this Agreement directly against the Transferee as if the Transferee were an original signatory to this Agreement. A Transferee shall have no defense based upon Developer's prior breach of any duty or obligation under this Agreement, or based upon Developer's breach of under any other agreement between the Developer and the Transferee.

7.4 Release Upon Transfer or Assignment. Upon the Developer's transfer or assignment of its interests in the Property, including the Developer's rights and interests under this Agreement, the Developer shall be released from any future obligations under this Agreement, provided Developer shall not be released from any obligations that arose or accrued before the date of transfer.

7.5 Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.

7.5.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee or beneficiary under a deed to trust, including any mortgagee or beneficiary who obtains title to the Property or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("Mortgagee"), shall not be obligated under this Agreement to construct or complete the Units required by this Agreement or to guarantee their construction or completion solely because the Mortgagee holds a mortgage or other interest in the Property or this Agreement. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of the Developer under this Agreement.

7.5.2 Subject to the provisions of Section 7.5.1, any person, including a Mortgagee, who acquires title to all or any portion of the mortgaged property by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise shall succeed to all of the rights and obligations of the Developer under this Agreement and shall take title subject to all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Property to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Project Approval and this Agreement.

7.5.3 If City receives a written notice from a Mortgagee or from Developer requesting a copy of any Notice of Default delivered to Developer and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any Notice of Default delivered to Developer under this Agreement. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to City at the address shown on the first page of this Agreement for recording, provided that no Mortgagee or trustee under a deed of trust shall incur any liability to the City for any failure to give any such notice of default or notice of sale except to the extent the City records a request for notice of default and notice of sale in compliance with Section 2924(b) of the California Civil Code (a "Request for Special Notice") with respect to a specific mortgage or deed of trust and the Mortgagee or trustee fails to give any notice required under Section 2924(b) of the California Civil Code as a result of the recordation of a Request for Special Notice.

7.5.4 A Mortgagee shall have the right, at its option, but no obligation, to cure any default or breach by the Developer under this Agreement within the same time period as Developer has to remedy or cause to be remedied any default or breach, plus an additional period of (i) thirty (30) calendar days to cure a default or breach by the Developer to pay any sum of money required to be paid hereunder and (ii) ninety (90) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion; provided that if the Mortgagee cannot cure a non-monetary default or breach without acquiring title to the Property, then so long as Mortgagee is diligently pursuing foreclosure of its mortgage or deed of trust, Mortgagee shall have until ninety (90) days after completion of such foreclosure to cure such non-monetary default or breach. Mortgagee may add the cost of such cure to the indebtedness or other obligation evidenced by its mortgage.

7.5.5 If at any time there is more than one mortgage constituting a lien on any portion of the Property, the lien of the Mortgagee prior in lien to all others on that portion of the mortgaged property shall be vested with the rights under this Section 7.5 to the exclusion of the holder of any junior mortgage; provided that if the holder of the senior mortgage notifies the City that it elects not to exercise the rights sets forth in this Section 7.5, then each holder of a mortgage junior in lien in the order of priority of their respective liens shall have the right to exercise those rights to the exclusion of junior lien holders. Neither any failure by the senior Mortgagee to exercise its rights under this Agreement nor any delay in the response of a Mortgagee to any notice by the City shall extend Developer's or any Mortgagee's rights under this Section 7.5. For purposes of this Section 7.5, in the absence of an order of a court of competent jurisdiction that is served on the City, a then current title report of a title company

licensed to do business in the State of California and having an office in the City setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority. Nothing in this Agreement shall impair the foreclosure rights of any mortgagee.

7.6 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be constructively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

8. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION.

8.1 Enforcement. The only parties to this Agreement are the City and the Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

8.2 Default. For purposes of this Agreement, the following shall constitute a default under this Agreement: the failure to perform or fulfill any material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance; provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter, but in no event later than one hundred twenty (120) days.

8.3 Remedies for Default. In the event of an uncured default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity. In addition, the non-defaulting Party may terminate this Agreement subject to the provisions of this Section 8 by sending a Notice of Intent to Terminate to the other Party setting forth the basis for the termination. The Agreement will be considered terminated effective upon receipt of a Notice of Termination. The Party receiving the Notice of Termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

8.4 No Waiver. Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

9. MISCELLANEOUS PROVISIONS.

9.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

9.2 Binding Covenants: Run With the Land. From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Regardless of whether the procedures in Section 7 are followed, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

9.3 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

9.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or the Project Approval shall be deemed to refer to the Agreement or the Project Approval as it may be amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

9.5 Project Is a Private Undertaking: No Joint Venture or Partnership.

9.5.1 The development proposed to be undertaken by Developer on the Property is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. The Developer shall exercise full dominion and control over the Property, subject only to the limitations and obligations of the Developer contained in this Agreement or in the Project Approval.

9.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and the Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. The Developer is not a state or governmental actor with respect to any activity conducted by the Developer hereunder.

9.6 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

9.7 Time of the Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

9.8 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Evan A. Gross, Dep. City Attorney

To Developer:

Raintree 2051 Third Street LLC
c/o Raintree Partners, LLC
Attn: Jason Check
2802 Cabot Road, Ste. 300
Laguna Niguel CA 92677

with a copy to:

Melinda A. Sarjapur, Esq.
Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

9.9 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.10 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.11 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

9.12 Sunshine. The Developer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure.

9.13 Effective Date. This Agreement will become effective on the date that the last Party duly executes and delivers this Agreement.

Exhibits

- A. Description of Property
- B. Assignment and Assumption Agreement

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

Approved as to form:
Dennis J. Herrera, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Evan A. Gross
Deputy City Attorney

DEVELOPER

RAINTREE 2051 THIRD STREET LLC,
a Delaware limited liability company

By: Raintree-Evergreen LLC
A Delaware limited liability company
its Sole Member

By: Raintree Partners Management LLC
A Delaware limited liability company
its Managing Member

By: _____



Name: Jeffrey B. Allen
Managing Member

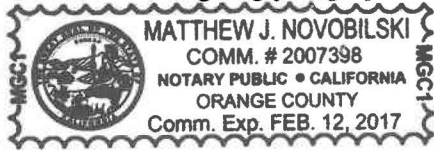
CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of ORANGE

On 2/27/2014 before me, MATTHEW J. NOVOBILSKI, Notary Public, personally appeared JEFFREY B. ALLEN, 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.

A handwritten signature in cursive script, appearing to read "Matthew J. Novobilski", written over a horizontal line.

Signature of Notary Public

(Notary Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of _____

On _____ before me, _____, Notary Public, 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 of Notary Public

(Notary Seal)

EXHIBIT A
Legal Description of Property

EXHIBIT A
TO GRANT DEED
LEGAL DESCRIPTION

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

PARCEL ONE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF 3RD STREET, AS WIDENED, DISTANT THEREON 192.78 FEET NORTHERLY FROM THE NORTHERLY LINE OF 18TH STREET; THENCE DEFLECTING 90° 17' 48" TO THE RIGHT AND RUNNING EASTERLY 143.00 FEET; THENCE NORTHERLY PARALLEL TO SAID EASTERLY LINE OF 3RD STREET 68.42 FEET; THENCE DEFLECTING 90° 15' 33" TO THE LEFT AND RUNNING WESTERLY 143.00 FEET TO SAID EASTERLY LINE OF 3RD STREET; THENCE SOUTHERLY ALONG SAID LINE OF 3RD STREET 67.03 FEET TO THE POINT OF BEGINNING. BEING A PORTION OF POTRERO NUEVO BLOCK NO. 413

PARCEL TWO:

LOT 6, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP, BEING A SUBDIVISION OF ASSESSOR'S LOT 5, BLOCK 3994, ALSO BEING A PORTION OF POTRERO NUEVO BLOCK NO. 413, SAN FRANCISCO, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, ON AUGUST 21ST, 1985 IN BOOK 31 OF PARCEL MAPS, AT PAGE 40.

EXCEPTING THEREFROM:

ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UNDERLYING THE PROPERTY, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE PROPERTY, AND IN SUCH A MANNER AS NOT TO DAMAGE THE SURFACE OF THE PROPERTY, OR TO INTERFERE WITH THE USE THEREOF BY GRANTEEES, THEIR HEIRS AND ASSIGNS AS RESERVED BY UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION BY INSTRUMENT RECORDED MAY 26, 2004, OFFICIAL RECORDS, RECORDERS SERIAL NUMBER 2004-H730520-00.

PARCEL THREE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF 3RD STREET, AS WIDENED, DISTANT THEREON 152.80 FEET NORTHERLY FROM THE NORTHERLY LINE OF 18TH STREET, RUNNING THENCE NORTHERLY AND ALONG SAID LINE OF 3RD STREET 39.98 FEET; THENCE DEFLECTING TO THE RIGHT 90° 17' 48" AND RUNNING EASTERLY 143 FEET; THENCE SOUTHERLY PARALLEL WITH SAID LINE OF 3RD STREET 39.24 FEET TO A LINE DRAWN AT RIGHT ANGLES TO THE EASTERLY LINE OF 3RD STREET FROM THE POINT OF COMMENCEMENT; THENCE WESTERLY ALONG THE LINE SO DRAWN 143 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF POTRERO NUEVO BLOCK NO. 413.

Lot: 001C, Block: 3994 (Affects: Parcel One); Lot: 006, Block: 3994 (Affects: Parcel Two) and Lot: 001B, Block: 3994 (Affects: Parcel Three)

EXHIBIT B

Assignment and Assumption Agreement

FREE RECORDING REQUESTED
PURSUANT TO GOVERNMENT CODE
SECTION 27383

WHEN RECORDED, MAIL TO:

San Francisco Planning Department
1650 Mission Street, Room 400
San Francisco, California 94103
Attn: Director

SPACE ABOVE FOR RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Assignment"), is dated for reference purposes as of this ___ Day of _____, 20 ___, by and between Raintree 2051 Third Street LLC ("Assignor"), and _____ ("Assignee"), with reference to the following facts:

A. Under that Certain Agreement to Rent Units dated as of _____, 2014 (the "Agreement"), Developer voluntarily elected, pursuant to Planning Code Section 419.5(b), to provide all of the Units for the development located at 2051 Third Street and approved by the San Francisco Planning Commission pursuant to Motion No. _____ (the "Project") as rental housing for not less than 30 years from the issuance of the first certificate of occupancy for the Project in exchange for the financial incentives contained therein. As set forth in the Agreement, Developer, on behalf of itself and its successors and assigns, agreed that the provisions of the Ellis Act do not and will not apply to the Units.

B. Concurrently herewith, Developer is transferring its rights and obligations relative to the Project Approval to Assignee. In accordance with Section 5.1 of the Agreement, Developer is now assigning to Assignee all of Developer's rights, duties, and obligations with respect to the Agreement.

C. Definitions and rules of interpretation set forth in the Agreement apply to this Assignment.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Assignment by Developer. Developer assigns to Assignee all of Developer's rights, interests, duties and obligations under the Agreement as of the date of the transfer of fee ownership of the Project from Assignor to Assignee (the "Effective Date").

2. Acceptance of Assignment. As of the Effective Date, Assignee accepts the above assignment and assumes all of Developer's rights, interests, duties and obligations under the Agreement and covenants and agrees to perform all of Developer's obligations under the Agreement arising or accruing after the Effective Date as if Assignee was an original party to the Agreement. Without limiting the foregoing, Assignee covenants and agrees, as set forth in Section 3.3 of the Agreement, that the Ellis Act does not and in no way shall limit or otherwise affect the rental requirement for the Units set forth in the Agreement, and further covenants and

agrees not to bring any legal or other action against the City and County of San Francisco ("City") seeking application of the Ellis Act to the Units for so long as the Units are subject to the rental requirement under the Agreement and Planning Code Section 419.5(b). From and after the Effective Date of this Assignment, any reference to Developer in the Agreement shall be deemed a reference to Assignee.

3. Release of Assignor. Assignee releases Developer from all future obligations imposed under the Agreement, provided that Developer shall not be released from any obligations that arose or accrued before the Effective Date of this Assignment.

4. Developer Representations. Developer represents and warrants that: (i) Developer has the power and authority to execute, deliver and perform its obligations under this Assignment; (ii) to the best of Developer's knowledge, the execution, delivery and performance of this Assignment do not violate any rule, regulation, statute, law, order, decree, judgment or the like, or any agreement or instrument to which Developer is a party, and Developer is not in breach or default under the Agreement; (iii) to the best of Developer's knowledge, Developer has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature against City relative to the Agreement; and (iv) Developer has not received any notice from any governmental agency relating to any alleged violation of law, ordinance, rule or regulation.

5. Assignee Representations. Assignee represents and warrants that: (i) Assignee is a duly organized, validly existing limited liability company in good standing under the laws of the State of California and is authorized to do business in the state of California, (ii) Assignee has the power and authority to execute, deliver and perform its obligations under the Agreement and this Assignment; (iii) to the best of Assignee's knowledge, the execution, delivery and performance of the Agreement and this Assignment do not violate any rule, regulation, statute, law, order, decree, judgment or the like, or any agreement or instrument to which Assignee is a party; (iv) to the best of Assignee's knowledge, Assignee has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature against City; (v) Assignee has not received any notice from any governmental agency relating to any alleged violation of law, ordinance, rule or regulation; (vi) Assignee shall comply with all of the terms and provisions of the Agreement; and (vii) Assignee has not filed, and currently has no intention to file, for any bankruptcy or debtor relief, and Assignee is not insolvent.

6. Reaffirmation of Agreement. Assignee hereby affirms and agrees that (i) the Agreement constitutes the valid, legally binding obligation of the Assignee as of the date of this Assignment, enforceable against Assignee in accordance with its terms, and (ii) City shall have the right to exercise any and all remedies against Assignee, including actions to realize or collect upon security, that City would have had against Developer but for this Assignment. Assignor and Assignee agree and acknowledge that the City is a third party beneficiary under this Assignment.

7. No Limitation of Remedies. Nothing in this Assignment is intended to limit any rights, powers or remedies of City in enforcing the Agreement. The Agreement is hereby confirmed and ratified in all respects.

8. Counterparts. This Assignment may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Assignment.

9. Additional Documents. Developer and Assignee agree to execute or provide such documents and instruments, as may be necessary to effectuate the intent of this Assignment.

10. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

11. Effective Date. This Assignment shall become effective on the date that it is duly executed and delivered by Developer and Assignee (the "Effective" Date of this Assignment").

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

DEVELOPER:

RAINTREE 2051 THIRD STREET LLC,
a Delaware limited liability company

By: Raintree-Evergreen LLC
A Delaware limited liability company
its Sole Member

By: Raintree Partners Management LLC
A Delaware limited liability company
its Managing Member

By: _____
Name: Jeffrey B. Allen
Managing Member

ASSIGNEE: _____

By: _____

Its: _____

Date: _____

ALL SIGNATURES TO BE NOTARIZED