

Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
Mayor's Office of Housing  
and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Agnes DiFiesta  
APN#:

Address: 2340 San Jose Avenue, San Francisco

-----Space Above This Line for Recorder's Use-----

**DECLARATION OF RESTRICTIONS AND  
AFFORDABLE HOUSING COVENANTS**

2340 San Jose Avenue, San Francisco

**THIS DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING COVENANTS** (this "Declaration") is made as of June \_\_\_\_\_, 2021, by **BALBOA PARK HOUSING PARTNERS, L.P.**, a California limited partnership ("Borrower"), owner of a leasehold interest in the land described in Exhibit A attached hereto (the "Property"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (the "City"), fee owner of the land described in Exhibit A. The restrictions and covenants stated herein shall bind the fee interest in the Property and future possessory interests in the Property and shall be enforceable by the City and its successors and assigns and as otherwise provided herein.

**RECITALS**

A. The City and Borrower have entered into that certain Ground Lease, dated June \_\_\_\_\_, 2021, and effective of even date herewith, (the "Ground Lease") and City is making a loan (the "Loan") to Borrower of Affordable Housing Fund Inclusionary Affordable Housing Program, 2015 General Obligation Bond For Affordable Housing, 2019 General Obligation Bond For Affordable Housing, and ERAF Funds to finance costs associated with the development of the leasehold interest in the real property described in **Exhibit A** attached hereto and incorporated herein by reference the land and the leasehold interest, the "Property") as low-income affordable housing (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and Borrower dated as of the date of this Declaration, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability covenants and other use and occupancy restrictions set forth in the Agreement (collectively, the "Regulatory Obligations"), commencing on the date the Deed of Trust is recorded in the Official Records of San Francisco County, and continuing for the Life of the Project (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

C. Pursuant to that certain Standard Agreement \_\_\_\_\_ dated \_\_\_\_\_ (the "Standard Agreement"), and Disbursement Agreement dated \_\_\_\_\_ ("Disbursement Agreement") by and between \_\_\_\_\_ and the State of California Department of Housing and Community Development ("HCD"), HCD has agreed to provide up to \$4,500,000 in Infill Infrastructure Grant Program ("IIG") grant funds (the "Grant") to be used for the benefit of the Project. The Standard Agreement and Disbursement Agreement are hereafter collectively referred to as "HCD Documents."

D. The HCD Documents require Mission Housing Development Corporation to use the Grant to complete or to ensure completion of certain housing related infrastructure as well as develop or ensure the development of a residential development containing affordable housing units. The affordable housing development requirements are described in Section 3 below ("HCD Obligations")

E. In lieu of recording an IIG Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing that would impose certain affordability and use restrictions on the Property for the benefit of HCD, the City and Borrower have agreed to this Declaration and to add HCD as a third party beneficiary to the Declaration as set forth more fully below.

## **AGREEMENT**

Now, therefore, in consideration of the City providing the Loan in accordance with the City Documents, Borrower agrees as follows:

1. Borrower will comply with the Regulatory Obligations and this Declaration through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

1.1 With the exception of one Unit reserved for the manager of the Project, Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

[Specific percentage AMI in the table below will be adjusted based on 2021 MOHCD income/rent tables and 2021 TCAC income/rent tables]

<b><u>HAP Contract Units</u></b>		
	<b># of Units</b>	<b>MOHCD</b>
1 BD – PBV	9	50% MOHCD AMI
2 BD – PBV	22	50% MOHCD AMI
3 BD – PBV	8	50% MOHCD AMI
<b>PBV Sub-Total</b>	<b>39</b>	
<b><u>DAHLIA Units</u></b>		
Studio	1	40.76% MOHCD AMI
1 BR	10	40.76% MOHCD AMI
2 BR	13	40.76% MOHCD AMI
3-BR	3	40.76% MOHCD AMI
<b>40% MOHCD AMI Subtotal</b>	<b>27</b>	
Studio	3	50% MOHCD AMI
1 BR	13	50% MOHCD AMI
2 BR	7	50% MOHCD AMI
3-BR	0	50% MOHCD AMI
<b>50% MOHCD AMI Subtotal</b>	<b>23</b>	
Studio	<b>0</b>	60% MOHCD AMI
1 BR	2	60% MOHCD AMI
2 BR	3	60% MOHCD AMI
3-BR	0	60% MOHCD AMI
<b>60% MOHCD AMI Subtotal</b>	<b>5</b>	
Studio	2	82% MOHCD AMI
1 BR	11	82% MOHCD AMI
2 BR	8	82% MOHCD AMI
3-BR	3	82% MOHCD AMI
<b>82% MOHCD AMI Subtotal</b>	<b>24</b>	
<b>Studio</b>	<b>0</b>	109% MOHCD AMI
1 BR	2	109% MOHCD AMI
2 BR	8	109% MOHCD AMI
3-BR	2	109% MOHCD AMI
<b>109% MOHCD AMI Subtotal</b>	<b>12</b>	
<b><u>STAFF Units</u></b>		
2-BR	1	N/A
<b>TOTAL</b>	<b>131</b>	
<b>PROJECT AVERAGE</b>		<b>59%</b>

In addition, thirty-nine (39) units must be rented at all times to holders of Section 8 certificates or vouchers or similar rental subsidy benefits through referrals from SHFA, subject to the terms of the PBV HAP Contract with SFHA and applicable law, for so long as such subsidies are available to the Project under the PBV HAP Contract. If the PBV HAP Contract is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that:

(a) Borrower diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(b) One hundred percent (100%) of the Units must at all times be occupied by Qualified Tenants whose Adjusted Income does not exceed [one hundred nine percent (109%)] of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of sixty percent (60%) of Median Income, (b) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

(c) If the Project continues to demonstrate financial infeasibility after the rent alterations above, to the extent financially feasible as determined in City's reasonable discretion, the City will waive the average income restriction of sixty percent (60%) of Median Income for all Residential Units, and increase rents to the extent necessary for Project to remain financially feasible (not past TCAC maximums); provided that one hundred percent (100%) of the Units must at all times be occupied by Qualified Tenants whose adjusted income does not exceed eighty percent (80%) of area median income, as published by TCAC (the "TCAC Median Income"), and the monthly rent paid by the Qualified Households may not exceed (a) thirty percent (30%) of eighty percent (80%) of TCAC Median Income (b) less utility allowance. On an annual basis, Borrower will convert to the TCAC Median Income and maximum rent to the corresponding published MOHCD maximum income level and maximum rent level, respectively, and provide MOHCD with supporting documentation. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of TCAC Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance.

In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. The relief provided by the foregoing will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by CDLAC, CTCAC, or under any other agreement. Borrower covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

[To the extent the Borrower needs to repay the full outstanding loan balance by the Maturity Date, the rent restrictions above may be altered, but only to the extent necessary for the Project to refinance and repay the full outstanding loan balance by the Maturity Date, as determined in City's reasonable discretion. In such event, Borrower will provide the City with a written request no less than one year prior to the Maturity Date, and the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.]

1.2 The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed the greater of:

(i) thirty percent (30%) of the applicable maximum income level, adjusted for household size; or

(ii) the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

Rents may be increased as permitted pursuant to Section 7.3 of the Agreement.

1.3 For the avoidance of any doubt, notwithstanding any repayment of the Loan or otherwise satisfied or if the Deed of Trust is reconveyed, Borrower will comply with the applicable terms of the Agreement as if fully set forth herein, including, without limitation, Article 6 (Marketing), Article 7 (Affordability and Other Leasing Restrictions), Article 8 (Maintenance and Management of the Project), Article 9 (Governmental Approvals and Requirements), Article 10 (Project Monitoring, Reports, Books and Records), Article 11 (Use of Income From Operations), Article 12 (Required Reserves), Article 16 (Transfers), Article 17 (Insurance and Bonds; Indemnity), Article 18 (Hazardous Substances), and Article 19 (Default).

2. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Declaration and the Agreement. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and ground lessee of the Property and will pass to and be binding upon Borrower's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions in this Declaration, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

3. If Borrower fails to (i) comply with the Regulatory Obligations and this Declaration to the City's satisfaction, in its sole discretion, and (ii) cure such default as set forth in **Section 19.1(c)** of the Agreement, the City will have the right to pursue any available remedy at equity or in law, including as set forth in **Section 19.2** of the Agreement, to enforce this Declaration. During the Compliance Term, the City may rely on the Deed of Trust and/or this Declaration, in the City's discretion, to enforce any of the City's rights under the City Documents. Borrower will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration and Regulatory Obligations, including, without limitation, the City's attorneys' fees and costs.

4. The parties hereto recognize and agree that the terms of this Declaration and the enforcement of those terms are entered into for the benefit of HCD. HCD shall accordingly have contractual rights in this Declaration and shall be entitled (but not obligated) to enforce the terms hereof and the terms of the HCD Documents. HCD is intended to be and shall be a third party beneficiary of this Declaration, provided however that HCD shall be entitled to enforce the terms of this Declaration, and any enforcement of the terms of this Declaration shall not adversely affect the interests of the City or its successors and assigns, and shall otherwise be subject to the terms, conditions and limitations otherwise applicable to the enforcement of remedies under this Declaration. Notwithstanding anything to the contrary contained herein, this provision shall terminate fifty-five years from the date of recordation of this Declaration, or by earlier agreement between HCD and the City if both parties agree that such third party beneficiary rights are no longer necessary.

**[SIGNATURES ON THE NEXT PAGE]**

City and Borrower have executed this Declaration as of the date first written above.

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development

By: \_\_\_\_\_  
Eric D. Shaw  
Director, Mayor's Office of Housing and  
Community Development

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
City Attorney

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

**[Signatures Continue on the Next Page]**

**BORROWER:**

**BALBOA PARK HOUSING PARTNERS, L.P.,**

a California limited partnership

By: Colosimo Apartments, Inc.,  
a California nonprofit public benefit corporation,  
its managing general partner

By: \_\_\_\_\_  
Sam Moss, Executive Director

By: Related/Balboa Park Development Co., LLC,  
a California limited liability company,  
its administrative general partner

By: \_\_\_\_\_  
Ann Silverberg, Vice President

[ALL AUTHORIZING SIGNATURES MUST BE NOTARIZED.]



**EXHIBIT A**

(Legal Description of the Property)

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Street Address:

2340 San Jose Avenue, San Francisco