

**AGREEMENT PRESERVING AFFORDABLE HOUSING UNITS AT SOUTH BEACH
MARINA APARTMENTS**

**BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND SOUTH BEACH MARINA, INC.**

TABLE OF CONTENTS

1.	GENERAL PROVISIONS	3
1.1	Incorporation of Preamble, Recitals and Exhibits	3
1.2	Definitions.....	3
1.3	Effective Date	5
1.4	Term.....	5
2.	AFFORDABLE HOUSING RESTRICTIONS	5
2.1	South Beach Obligations Satisfied.....	6
2.2	Preservation of the South Beach Project BMR Units	6
2.3	Maximun Monthly Rent.....	6
2.4	Certification of Tenants	6
2.5	Term of Restrictions	7
2.6	Covenants Running with the Land.....	7
2.7	Special Lease Provisions.....	7
3.	AFFORDABLE HOUSING CREDITS.....	7
3.1	South Beach BMR Credits.....	7
3.2	Rights to Credits	8
3.3	Application of Credits.....	8
3.4	Allocation of Credits to Unit Types.....	8
3.5	Transferability of Credits	9
3.6	Designation Procedure	9
3.7	Consideration of Proposed Projects	9
3.8	Termination of Agreement.....	10
3.9	City Option to Purchase	11
4.	SOUTH BEACH REPRESENTATIONS, WARRANTIES AND COVENANTS	11
4.1	Interest of South Beach; Due Organization and Standing	11
4.2	No Conflict with Other Agreements; No Further Approvals; No Suits.....	11
4.3	No Inability to Perform; Valid Execution.....	11
4.4	Conflict of Interest	12
4.5	Notification of Limitations on Contributions	12
4.6	Other Documents	12
4.7	No Suspension or Debarment	12
4.8	No Bankruptcy	12
4.9	Taxes	12
4.10	Notification.. ..	13
4.11	Nexus/Reasonable Relationship Waiver.....	13
4.12	Indemnification of City.....	13

5.	MUTUAL OBLIGATIONS.....	13
5.1	Estoppel Certificate.....	13
5.2	Cooperation in the Event of Third-Party Challenge	13
5.3	Good Faith and Fair Dealing.....	15
5.4	Agreement to Cooperate; Other Necessary Acts	14
6.	ENFORCEMENT OF AGREEMENT AND REMEDIES FOR DEFAULT.....	15
6.1	Enforcement.....	15
6.2	Default.....	15
6.3	Notice of Default.....	15
6.4	Remedies.....	156
6.5	Attorneys’ Fees	16
6.6	No Waiver	17
6.7	Joint and Several Liability	17
7.	MISCELLANEOUS PROVISIONS.....	17
7.1	Entire Agreement	17
7.2	Applicable Law and Venue.....	17
7.3	Construction of Agreement.....	17
7.4	South Beach Project Is a Private Undertaking; No Joint Venture or Partnership	178
7.5	Recordation	18
7.6	Obligations Not Dischargeable in Bankruptcy	18
7.7	Authority to Execute Agreement	18
7.8	Signature in Counterparts	18
7.9	Time of the Essence	18
7.10	Notices	18
7.11	Successors and Assigns.....	20
7.12	Severability	20
7.13	Sunshine.....	20

Exhibits

- A. List of 101 Apartment Units Identified as BMR Units by Unit Type and AMI Level**
- B. Calculation of Credits**
- C. Form of Notice of Special Restrictions**

**AGREEMENT PRESERVING AFFORDABLE HOUSING UNITS AT SOUTH BEACH
MARINA APARTMENTS
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND SOUTH BEACH MARINA INC., A CORPORATION, RELATIVE TO THE
DEVELOPMENT KNOWN AS
THE SOUTH BEACH MARINA APARTMENTS**

This AGREEMENT PRESERVING AFFORDABLE HOUSING UNITS AT SOUTH BEACH MARINA APARTMENTS (this "**Agreement**"), dated as of _____, 2016, is made by and between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**") acting by and through its Mayor's Office of Housing and Community Development ("**MOHCD**") and South Beach Marina, Inc., a Florida corporation ("**South Beach**"), in connection with the South Beach Marina Apartments, located at 2 Townsend Street, San Francisco, California ("**South Beach Project**"). All parties to this Agreement shall be referred to as the "**Parties**".

RECITALS

This Agreement is made with reference to the following facts:

A. On December 20, 1985, the Redevelopment Agency of the City and County of San Francisco issued a set of bonds in the amount of \$46,655,000 as part of the financing for the South Beach Project, which constructed 414 dwelling units, including commercial space and parking, on Assessor's Block 3789, Lot 26, in the Rincon Point/South Beach Redevelopment Project Area.

B. Use of the bonds described above required South Beach to comply with numerous affordability obligations. Specifically, the Amended and Restated Supplemental Regulatory Agreement as to Tax Exemption (Jan 1, 1994) ("**Regulatory Agreement**") required that 20% or more of the units, equivalent to 101 units at the South Beach Project ("**South Beach BMR Units**"), must be made available to occupants of low or moderate income until the date of January 1, 2015. Because this date has passed, the Regulatory Agreement does not currently impose any affordability or below market rate obligations on the South Beach Project.

C. Similarly, the Owner Participation Agreement dated December 13, 1985 ("**Owner Participation Agreement**") required a percentage of dwelling units be offered to low income and moderate income households for a period of no more than 21.5 years and separately until mortgage revenue bond financing has ended (but in any event no longer than 30 years from issuance of the first Certificate of Occupancy). The Parties have agreed that since more than 21.5 years have elapsed since those restrictions took effect and because mortgage revenue bond financing has ended, the Owner Participation Agreement does not currently impose any affordability or below market rate obligations on the South Beach Project. Thus, unless otherwise agreed to in this-Agreement or elsewhere or as may be required by applicable law,

South Beach is not currently required to provide below market rate housing or affordability protections at the South Beach Project.

D. Section 415 of the San Francisco Planning Code requires that new residential developments with 10 or more units participate in the Inclusionary Affordable Housing Program, and that project sponsors can fulfill this requirement by selecting one of three options: (1) payment of an inclusionary housing fee, which is calculated by unit type and bedroom count, (2) providing 12% on-site units, or (3) providing 20% of their units off-site as affordable to low- to moderate-income households.

E. MOHCD administers the Inclusionary Affordable Housing Program and Section 415 of the San Francisco Planning Code mandates that South Beach sell or rent a certain percentage of units in new developments at a "below market rate" ("**BMR**") pricing that is affordable to Low-income, Median-income, and Moderate-income households.

F. The current schedule, as of January 1, 2016, depending on the unit mix for the inclusionary housing fee is as follows:

Unit Size	Fee By Unit Size
Studio	\$198,008
1 bedroom	\$268,960
2 bedroom	\$366,639
3 bedroom	\$417,799
4 bedroom	\$521,431

In consideration of the foregoing, South Beach, and MOHCD agree to the following:

G. It is the intent of the Parties that all acts referred to in this Agreement are subject to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Enacting Resolution and all other applicable laws as of the Effective Date, as defined in below in Section 1.3 of this Agreement shall be accomplished in a way as to fully comply with these applicable laws. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action regarding any Proposed Project(s), as defined in Section 3.1 of this Agreement, or South Beach's obligation to comply with all applicable laws in connection with the operation of the South Beach Project and the development of any Proposed Project(s).

H. On _____, the Board, adopted Resolution No. _____, approving this Agreement and authorizing the Director of the Mayor's Office of Housing to execute this Agreement on behalf of the City (the "**Enacting Resolution**"). The Enacting Resolution took effect on _____, 2016.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 Incorporation of Preamble, 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.

1.2 Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 “**Administrative Code**” shall mean the San Francisco Administrative Code.

1.2.2 “**Affordable Housing Fee**” means the Affordable Housing Fee described in Section 415.5 of the Planning Code.

1.2.3 “**Affordable Housing Restrictions**” shall have the meaning set forth in Section 2.2 of this Agreement.

1.2.4 “**AMI**” means the Unadjusted Area Median Income for the HUD Metro Area Market Rent Area that contains San Francisco, as published by the San Francisco Mayor’s Office of Housing and Community Development, effective _____, 2016, as the same may be updated from time to time, but without regard to any future reductions in such median income levels.

1.2.5 “**BMR Units**” has the meaning set forth in Section 2.2 of this Agreement.

1.2.6 “**Board of Supervisors**” or “**Board**” shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.7 “**City**” shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the MOHCD Director, or as necessary, the Board of Supervisors. The City’s approval of this Agreement will be evidenced by the signature of the MOHCD Director.

1.2.8 “**City Agency**” or “**City Agencies**” shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.9 “**City Attorney’s Office**” shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.10 “**City Option**” shall have the meaning set forth in Section 3.9 of this Agreement.

1.2.11 "**City Parties**" shall mean the City, MOHCD, and all other City Agencies.

1.2.12 "**Credit Owner**" shall mean South Beach or any transferee (other than any City Party) receiving Credits through an Assignment and Assumption Agreement with South Beach pursuant to the terms in Section 3.5 of this Agreement.

1.2.13 "**Credits**" shall have the meaning set forth in Section 3.1 of this Agreement.

1.2.14 "**Enacting Resolution**" shall have the meaning set forth in Recital I of this Agreement. The Enacting Resolution is not subject to Section 14.102 of the San Francisco City Charter.

1.2.15 "**Effective Date**" shall have the meaning set forth in Section 1.3 of this Agreement.

1.2.16 "**Event of Default**" shall have the meaning set forth in Section 6.2 of this Agreement.

1.2.17 "**Existing BMR Tenants**" means those tenants lawfully occupying a BMR Unit at the time of execution of this Agreement.

1.2.18 "**Face Value**" shall mean the dollar amount of unused Credits.

1.2.19 "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.20 "**Initial Period**" shall have the meaning set forth in Section 3.3 of this Agreement.

1.2.21 "**Life of Project**" shall mean the period of time in which the South Beach Project continues to operate as a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units. In the event the South Beach Project is substantially damaged or destroyed by fire, the elements, an act of any public authority or other casualty, and is subsequently replaced by a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units, the life of such replacement project will be deemed to be a continuation of the Life of the Project.

1.2.22 "**Losses**" shall have the meaning set forth in Section 4.12 of this Agreement.

1.2.23 "**MOHCD Director**" shall mean the Director of the Mayor's Office of Housing and Community Development.

1.2.24 "**Notice of Default**" shall have the meaning set forth in Section 6.2 of this Agreement.

1.2.25 “**NSR**” shall mean Notice of Special Restrictions as defined in Section 2.6 and in the form of Exhibit C to this Agreement.

1.2.26 “**Official Records**” shall mean the official real estate records of the City and County of San Francisco, as maintained by the City’s Recorder’s Office.

1.2.27 “**Party**” means, individually or collectively as the context requires, the City and South Beach (and any Transferee or Credit Owner that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). “**Parties**” shall have a correlative meaning.

1.2.28 “**Planning Code**” shall mean the San Francisco Planning Code.

_____“**Planning Department**” shall mean the Planning Department of the City and County of San Francisco.

“**Proposed Project**” shall have the meaning set forth in Section 3.1 of this Agreement.

1.2.29 “**South Beach Project**” shall have the same meaning set forth in the opening paragraph of this Agreement.

1.2.30 “**Term**” shall have the meaning set forth in Section 1.4 of this Agreement.

1.2.31 “**Qualified Tenants**” shall have the meaning set forth in Section 2.4.2 of this Agreement.

1.3 Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Resolution (“**Effective Date**”). The Effective Date is _____.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect until such time that all Credits, as defined in Section 3.1 below, have been used by any Credit Owner for Proposed Project(s), as defined in Section 3.1 below, or sold to the City, unless extended or earlier terminated as provided herein (“**Term**”). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. AFFORDABLE HOUSING RESTRICTIONS

2.1 South Beach Obligations Satisfied. The Parties, including all City Agencies, acknowledge and agree that (i) South Beach has fulfilled all obligations under the Regulatory Agreement and Owner Participation Agreement.

2.2 Preservation of the South Beach Project BMR Units. The Parties agree that the City wishes to preserve the BMR Units as affordable units for the Life of the Project. South Beach agrees that it, and its successors or assigns, as owner(s) of record of the South Beach Project will maintain for the Life of the Project the 101 apartment units identified in Exhibit A at below market rental rates (the “**BMR Units**”) for the exclusive tenancy, use and occupancy by Existing BMR Tenants and Qualified Tenants, as defined in Section 2.4.2. below, subject to the terms and conditions of this Agreement (the “**Affordable Housing Restrictions**”), except as otherwise provided in Section 3.8.

2.3 Maximum Monthly Rent.

2.3.1 The maximum monthly rent that may be charged to Existing BMR Tenants is the AMI rents published from time to time as the “the “Maximum Rent by Unit Type” by the MOHCD based on the applicable AMI of either 80% or 120% in accordance with the unit type and count provided in Exhibit A.

2.3.2 The maximum monthly rent for Qualified Tenants for rental of the BMR Units shall not exceed the amount published from time to time as the “Maximum Rent by Unit Type” by the MOHCD for individual tenants and households the income of whom or which does not exceed 120% of AMI. In the event the Maximum Rent by Unit Type is increased by the MOHCD after the commencement of any lease to a Qualified Tenant, South Beach may charge such increased maximum rent upon any renewal of the lease to such Qualified Tenant.

2.4 Certification of Tenants.

2.4.1 Existing BMR Tenants will not be required to income certify at any time and shall be allowed to continue to rent their BMR Unit at the current rental rate unless: (1) the Existing BMR Tenant owns or leases a second home or (2) the Existing BMR Tenant does not have a valid lease. In both of the foregoing instances the Existing BMR Tenant will be required to comply with the income certification process, and each case will be reviewed to determine program eligibility. Renewal leases for Existing BMR Tenants shall contain a provision to be drafted with input from the City Parties in which the tenant warrants that the unit to be leased is his or her only residence. South Beach shall have no duty to investigate or confirm whether any Existing BMR Tenant has a second home and shall rely on the Existing BMR Tenant’s representation as to whether said tenant owns or leases any other residential real estate or condominium interests in any other real estate. Notwithstanding the foregoing, South Beach shall implement the BMR program consistent with the City’s Procedures Manual as published by the City pursuant to Section 415 of the Planning Code and as consistent with this Agreement.

2.4.2 Qualified Tenants must be income certified at initial occupancy and every two (2) years thereafter. The City may confirm income certification of Qualified Tenants at its discretion. Qualified Tenants must have an income at initial occupancy that is less than or equal to 120% AMI, adjusted for household size and no subsidy will be available when household income exceeds 150% AMI (“**Qualified Tenants**”). South Beach shall have no duty to investigate or confirm any Qualified Tenant’s income and shall rely on the Qualifying Tenant’s representation as to his or her income. South Beach shall apply the next available unit rule (the

“NAUR”) if an over-income resident elects to remain in their unit and pay market rent. The NAUR provides that if the income of the initially income-eligible tenant of a restricted unit exceeds 150% of AMI, the next available unit that is vacated in the building of comparable or smaller size must be rented to a household whose income does not exceed 120% of AMI in order for the owner to maintain its affordability obligations. The originally restricted unit in which the over-income tenant resides may then convert to market-rate.

2.5 Term of Restrictions. Unless sooner terminated as provided in Section 3.8 of this Agreement, the Affordable Housing Restrictions shall remain in force for the Life of the Project. Upon expiration of the Affordable Housing Restrictions, pursuant to the terms of this Agreement, South Beach may thereafter set rental rates and tenant qualification standards for the South Beach Project in its sole and absolute discretion, subject to compliance with California state law of general application, including, without limitation, the provisions of Section 65863.10 of the Government Code of California and any applicable local laws.

2.6 Covenants Running with the Land. The Affordable Housing Restrictions are hereby agreed and declared to be covenants running with the land which shall be binding upon South Beach and its successors in title to the South Beach Project, subject to the terms and conditions of this Agreement. A copy of this Agreement and a Notice of Special Restrictions (the “NSR”), in the form provided in Exhibit C, obligating South Beach to retain the BMR Units, shall be recorded in the records of the San Francisco, California’s Recorder’s Office promptly upon the execution and delivery hereof.

2.7 Special Lease Provisions. South Beach agrees to include a provision in all leases (including renewal of existing leases and new leases for the BMR Units) that recognizes that the affordability of the unit may terminate pursuant to the terms of this Agreement and the NSR.

3. AFFORDABLE HOUSING CREDITS

3.1 South Beach Project BMR Credits. In exchange for South Beach's obligation to preserve the BMR Units, the City agrees to provide South Beach with a credit in the amount of Sixty Million Dollars (\$60,000,000.00) as determined by the calculations in Exhibit B (the “Credits”) to be applied to satisfy the obligations of any Credit Owner under San Francisco Planning Code Section 415 and the Inclusionary Affordable Housing Program for future development projects in San Francisco (the “**Proposed Projects**”). The Credits are based upon an assumed 33% inclusionary housing percentage. If, when used by South Beach or a South Beach affiliate, any Proposed Project during the Initial Period (as defined below) requires a higher inclusionary housing percentage, then for purposes of applying the Credits to satisfy any applicable fees the inclusionary housing percentage for such Proposed Project shall be deemed to be 33%.

3.2 Rights to Credits. The Credits shall be perpetual until such time as all Credits have been applied in accordance with this Agreement. Subject only to the terms and conditions of this Agreement, Credit Owner shall retain the rights to the Credits, including, but not limited to, rights to apply them to Proposed Projects-, as enumerated in this Agreement notwithstanding

any changes made after the Effective Date to any of those rules, regulations, official policies and standards, including City ordinances, resolutions and codes, that may apply to or govern the Affordable Housing Fee, any other similar fee or charge imposed by the City, or the Inclusionary Affordable Housing Program that are in Effect on the Effective Date of this Agreement (collectively, the “Applicable Laws”). Notwithstanding the foregoing, Credit Owner may in its sole discretion elect to proceed pursuant to any such changes made to the Applicable Laws. The City shall not impair Credit Owner’s rights under this Agreement pursuant to the Contracts Clause of the U.S. Constitution, and shall not take any action or adopt, certify or approve any measure that would conflict with any of the Applicable Laws or this Agreement that would violate the intent or express provisions of this Agreement or that would reduce or impair Credit Owner’s rights to the Credits as provided by this Agreement.

3.3 Application of Credits. The Credits may be applied against the Affordable Housing Fee or any other similar fee or charge imposed by any of the City Parties that would otherwise be due and payable in connection with any Proposed Project that is subject to the payment of an Affordable Housing Fee. Notwithstanding the foregoing, when Credits are used by South Beach or an affiliate of South Beach, the applicable time period for utilization of the Credit to offset the Affordable Housing Fee calculated at the 2016 rates as provided in Recital F above and assuming a 33% inclusionary percentage is five (5) years from the date of execution of this Agreement (the “**Initial Period**”); provided, however, that the Initial Period shall be extended for a Proposed Project to which Credits will be applied if the Credits have failed to become final in the five (5) year period due to (1) the failure of such Credit Owner to obtain all governmental approvals and a final unconditional building permit for the Proposed Project or (2) any of the City Parties has defaulted in the performance of any obligation imposed upon it under the terms of this Agreement. Upon the occurrence of the circumstance described in (1) above, the 5 year period will be suspended with respect to the Credits involved in connection with the applicable Proposed Project until the later to occur of (i) final governmental approval and the unconditional issuance of a building permit and actual application of the relevant Credits, or (ii) the date the Proposed Project is disapproved, tabled, or otherwise removed from active consideration as a Proposed Project by the relevant City Parties, whereupon such five-year period shall resume. For avoidance of doubt, the fixed rate of the Initial Period applies only to South Beach and its affiliates and shall not apply to third party Credit Owners.

3.4 Allocation of Credits to Unit Types. In applying the Credits, the Parties agree that the amount of the Credits to be charged against and to reduce the remaining balance of the remaining Credits shall be based on the unit types that would have been included as BMR Units within the Proposed Project were it not for the payment of an Affordable Housing Fee. The schedule of the incremental amount that will be charged against the total outstanding Credits with respect to each distinct unit type is provided in Recital F and shall apply for the duration of the Initial Period and any extensions of the Initial Period (The “Allocated Fee Schedule”).

3.5 Transferability of Credits. The Parties agree that any portion of the Credits may be transferred to an affiliate of South Beach or may be sold to a third party at South Beach’s sole discretion, subject to the terms and conditions of this Agreement; provided, however, that, unless the Credits are to be transferred to an affiliate of South Beach, the City shall have a right of first

refusal to purchase any Credits at a price equal to the Face Value of such credits prior to the offer to a third party. Upon its decision to transfer any Credits, except where such transfer is to an affiliate, Credit Owner shall provide written notice to the City. Within thirty (30) days from its receipt of such notice, the City shall send written notice to Credit Owner of its decision to purchase or not purchase the Credits to be transferred. Failure to deliver such notice within such thirty (30) day period shall be deemed an election not to purchase. If the City elects to purchase, such purchase must close within thirty (30) days of the City's notice, and the City must pay for any Credits to be purchased in cash at Face Value. If the City elects not to purchase, South Beach shall have the right to sell such Credits to any third party at any price, free and clear of any right of first refusal for one (1) year after the date of the initial notice. If South Beach has not entered into a contract for sale of the Credits by the end of the one-year period, the Credits shall again be deemed subject to the City's right of first refusal. In connection with a transfer, South Beach and such transferee shall execute an instrument of assignment and assumption ("Transfer Instrument"), whereupon such transferee shall succeed to the rights and obligations of South Beach under this Agreement to the extent so assigned. Any such transferee shall be deemed to be a Credit Owner, provided however, any transferee's rights and obligations shall be limited pursuant to the terms of this Agreement, including such limitations included in Section 3.3 above. South Beach shall provide a copy of such instrument of transfer to the MOHCD Director within ten (10) business days of execution. Upon receipt of the Transfer Instrument, MOHCD shall issue a notice documenting the amount of Credits transferred to the respective Credit Owner as well as documenting the Credits, if any, remaining with South Beach.

3.6 Designation Procedure. A Credit Owner may designate one or more Proposed Projects with respect to which the Credit Owner elects to apply all or any portion of the Credits by written notice to the MOHCD, which notice shall specifically refer to this Agreement and shall designate the Proposed Project with respect to which it intends to apply all or a portion of the Credits owned by it. The designation shall include a calculation of the applicable Affordable Housing Fee and the Credit to be applied in accordance with this Article 3. No such designation shall result in any charge against the Credits held by such Credit Owner unless and until the Proposed Project has received all necessary governmental approvals and has received a final unconditional building permit. Once such Credits have been used pursuant to the terms of this Agreement, MOHCD shall issue a notice documenting the application of the Credits as well as documenting the remaining Credits for the respective Credit Owner.

3.7 Consideration of Proposed Projects.

3.7.1 City Discretion. The Parties acknowledge and agree that any Proposed Project to which Credit Owner may desire to apply Credits would be subject to the prior review and approval of the various City Parties, as the case may be, in accordance with the powers and discretion that any applicable federal, state, or local law or regulation bestows upon the City Parties. Notwithstanding anything to the contrary herein, the City Parties, and each of their respective boards, commissions, departments, bureaus and officials, each shall exercise their lawful authority and discretion over all matters relating to any such Proposed Project over which they have jurisdiction consistent with legal requirements, customary practices, and public health, safety, convenience, and welfare, and each shall retain, at all times, its respective authority to take any action under its jurisdiction consistent with the foregoing, applying criteria no more

stringent than the minimum legal requirements applied to other developers of similar residential projects at a similar site.

3.7.2 Environmental Review. Any final Proposed Project or phase of a Proposed Project ultimately proposed by South Beach shall be subject to a process of thorough public review and input and all necessary and appropriate approvals, provided that the same shall be no more stringent than the minimum legal requirements applied to other developers of similar residential projects at a similar site; that process must include environmental review under CEQA before a City Agency, Commission, Board, or any other City decision-maker may consider approving the Proposed Project to the extent that CEQA applies to the proposed actions concerning the Proposed Project; and the Proposed Project may require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit, the City or the City Agencies to approve or implement any Proposed Project, and they may not do so until environmental review of the Proposed Project under CEQA has been completed if CEQA applies to the actions contemplated for the Proposed Project. Accordingly, all references to the Proposed Projects in this Agreement shall mean the Proposed Projects subject to future environmental review and consideration by the City to the extent that CEQA or any other law requires any environmental review. The City and any other public agency with jurisdiction over any part of the Proposed Project shall, to the extent CEQA requires an environmental impact report for any part of the Proposed Project, have the absolute discretion that CEQA and other applicable law affords the City and any other public agency before approving the Proposed Project to: (i) make such modifications to the Proposed Project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific environmental impacts of the Proposed Project; (iv) balance the benefits of the Proposed Project against any significant environmental impacts before taking final action if such significant environmental impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the Proposed Project.

3.8 Termination of Agreement. Subject to Sections 3.9, 5.2.2, 5.2.3, and 6.4.1, the Parties agree that following the earlier to occur of (i) the expiration of the Initial Period, and (ii) six (6) years after the date of this Agreement, South Beach can terminate this Agreement and lease any BMR Units at rates decided by South Beach in its sole discretion if South Beach is unable to secure the necessary approvals from any of the City Parties for any Proposed Project which South Beach has designated to receive Credits consistent with the terms of this Agreement or South Beach has not been able to transfer such credits to a third party for the Face Value of the remaining Credits, or a lesser amount in South Beach's sole discretion, or the City has not purchased such credits at Face Value, or a lesser amount in South Beach's sole discretion; provided, however, that any termination would need to meet the following requirements: (1) a proportionate number of BMR Units would remain at the South Beach Project based on any Credits used or transferred prior to termination; (2) all requirements of Section 3.9, the City's Option to Purchase, shall be completed prior to any termination of the Agreement; and, (3) any termination of the BMR Unit leases would be subject to compliance with California state law of general application, including, without limitation, the provisions of Section 65863.10 of the Government Code of California and any applicable local laws. Upon any termination, the City

Parties shall execute such evidence of termination, in recordable form, as South Beach may reasonably request.

3.9. City Option to Purchase. Not less than one hundred and eighty (180) days prior to the termination of the Affordable Housing Restrictions, South Beach shall provide a written notice to MOHCD for a meeting to discuss a possible continuation of the Affordable Housing Restrictions through the preservation of affordability, except that no such written notice shall be required following an Event of Default by any City Party. The Parties agree that they will meet within fifteen (15) days of such a notice to discuss continuing the Affordable Housing Restrictions through the preservation of affordability, which continuation may include the City's purchase of any outstanding Credits at Face Value, or a lesser amount in South Beach's sole discretion (the "City Option"). Notwithstanding the foregoing, neither Party shall be obligated to enter into any agreement arising out of such discussions, and in no event shall South Beach be required to extend such discussions beyond sixty (60) days.

4. SOUTH BEACH REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Interest of South Beach; Due Organization and Standing. South Beach represents that it is the legal owner of the South Beach Project, and that all other persons with an ownership or security interest in the South Beach Project have consented to this Agreement. South Beach is a Florida corporation. South Beach has all requisite power to own its property and authority to conduct its business as presently conducted. South Beach has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

4.2 No Conflict with Other Agreements; No Further Approvals; No Suits. Each Party warrants and represents that it is not a party to any other agreement that would conflict with its obligations under this Agreement. Neither the articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of either Party to enter into and perform all of the terms and covenants of this Agreement. No further 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 each Party of this Agreement or any of the terms and covenants contained in this Agreement. To each Party's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting either Party or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect either Party's business, operations, or assets or either Party's ability to perform under this Agreement.

4.3 No Inability to Perform; Valid Execution. Each Party 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 each Party have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms.

4.4 Conflict of Interest. Through its execution of this Agreement, South Beach 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.

4.5 Notification of Limitations on Contributions. Through execution of this Agreement, South Beach 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 a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) 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.

4.6 Other Documents. No document furnished or to be furnished by South Beach to the City in connection with this Agreement contains or will contain to South Beach's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

4.7 No Suspension or Debarment. Neither South Beach, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

4.8 No Bankruptcy. South Beach represents and warrants to the City that South Beach has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of South Beach's knowledge, no such filing is threatened.

4.9 Taxes. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, South Beach shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the South Beach Project.

4.10 Notification. South Beach shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect South Beach or South Beach's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

4.11 Nexus/Reasonable Relationship Waiver. South Beach consents to, and waives any rights it may have now or in the future, to challenge with respect to the South Beach Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

4.12 Indemnification of City. South Beach ("**Indemnitor**") shall indemnify the City ("**Indemnitee**") and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from this Agreement and South Beach's performance (or nonperformance) of this Agreement, except to the extent that such an indemnity is void or otherwise unenforceable under applicable law, and except to the extent any Losses are the result of the default of the City by its negligence or willful misconduct. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and related costs. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

5. MUTUAL OBLIGATIONS

5.1 Estoppel Certificate. South Beach may, at any time, and from time to time, deliver written notice to the Director of MOHCD requesting that the MOHCD Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; and (iii) South Beach is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) confirming the amount of remaining Credits. The MOHCD Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the South Beach Project or any transferee of any portion of the Credits and such transferee's lenders, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

5.2 Cooperation in the Event of Third-Party Challenge.

5.2.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge.

The City shall promptly notify South Beach of any Third Party Challenge instituted against the City.

5.2.2 South Beach shall assist and cooperate with the City at its own expense in connection with any Third Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third Party Challenge, at the City Attorney's sole discretion. South Beach shall reimburse the City for its actual costs in defense of the action or proceeding, including, but not limited to the time and expenses of the City Attorney's Office and any consultants; provided, however South Beach shall have the right to receive monthly invoices for all such costs.-Provided that South shall bear no responsibility for any time, expenses, costs or other resources that the City Parties and their employees may incur or expend in connection with such a defense. To the extent permitted by applicable law, South Beach shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the negligence or willful misconduct of the City or its officers or employees. South Beach shall have the right, exercisable in its sole discretion to cease defending any Third Party Challenge and terminate this agreement in accordance with Section 3.8, regardless of whether such termination occurs before the expiration of the minimum time periods specified by Section 3.8 and provided, however, that South Beach's obligations under Section 4.12 shall remain in place subsequent to any such termination. This section shall survive any judgment invalidating all or any part of this Agreement.

5.2.3 Affordable Housing Fee Challenge. The Parties agree that if a Third- Party Challenge is initiated regarding the validity or enforceability of this Agreement, and so long as this Agreement has not been terminated pursuant to its terms (i) South Beach shall continue to preserve the BMR Unit Program in its current form until the validity and enforceability of this Agreement, including the granting of the Affordable Housing Credits, has been finally determined and upheld, and (ii) the Initial Period (as defined in Section 3.3 hereof) shall be extended for a period equal to the period commencing on the initiation of such challenge and ending upon the final determination or resolution thereof. If this Agreement or the Affordable Housing Credits are not upheld (on any final appeal), then the Agreement shall terminate and the South Beach's obligations will terminate accordingly. South Beach shall not be required to defend itself or the City in a Third Party Challenge. South Beach shall have the right, exercisable in its sole discretion to cease defending any Third Party Challenge and terminate this agreement in accordance with Section 3.8, regardless of whether such termination occurs before the expiration of the minimum time periods specified by Section 3.8 and in accordance with the terms in Section 4.12 and Section 5.2.2 above.

5.3 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. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the obligations within as contemplated by this Agreement.

5.4 Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the terms herein in accordance with this

Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

6. ENFORCEMENT OF AGREEMENT AND REMEDIES FOR DEFAULT

6.1 Enforcement. The only Parties to this Agreement are the City and South Beach. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever, other than any Credit Owner.

6.2 Default. For purposes of this Agreement, the following shall constitute an event of default (an “**Event of 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 (a “**Notice of Default**”); *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.

6.3 Notice of Default. Prior to the initiation of any action for relief specified in Section 6.4 below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 6.4.1 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 6.4.1. No such termination shall affect the validity of Credits that have previously been applied to Proposed Projects. Any such termination shall be in accordance with Section 3.8 of this Agreement, including the calculation of remaining BMR Units which calculation shall include the Credits applied to Proposed Projects. And provided further, that any such termination based on a default by any of the City Parties shall not be subject to or limited by the requirements for a City Option to purchase under Sections 3.8 and 3.9 hereof. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

6.4 Remedies.

6.4.1 Specific Performance; Termination. In the event of an Event of 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 (subject to the limitation

on damages set forth in Section 6.4.2 below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default, if South Beach is alleged to have defaulted, and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. South Beach will not be required to participate in a public hearing if City defaults. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. 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. No such termination shall affect the validity of Credits that have previously been applied to Proposed Projects. **Any such termination shall be in accordance with Section 3.8 of this Agreement, including the calculation of remaining BMR Units which calculation shall include the Credits applied to Proposed Projects.**

6.4.2 Actual Damages. To the extent permitted by applicable law, South Beach agrees that the City shall not be liable to South Beach for damages under this Agreement, and the City agrees that South Beach shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: either Party shall have the right to recover attorneys' fees and costs as set forth in Section 6.5, when awarded by an arbitrator or a court with jurisdiction.

6.5 Attorneys' Fees. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of outside counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who

practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

6.6 No Waiver. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event 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 Event of Default shall not operate as a waiver of any Event of 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.

6.7 Joint and Several Liability. If South Beach consists of more than one person or entity with respect to any real property within the South Beach Project or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

7. MISCELLANEOUS PROVISIONS

7.1 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.

7.2 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.

7.3 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 the City and South Beach. 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 or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

7.4 South Beach Project Is a Private Undertaking; No Joint Venture or Partnership.

7.4.1 The Agreement is to be undertaken by South Beach and the South Beach Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the South Beach Project. South Beach shall exercise full dominion and control over the South Beach Project,

subject only to the limitations and obligations of South Beach contained in this Agreement.

7.4.2 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 South Beach. Neither Party is acting as the agent of the other Party in any respect hereunder.

7.5 Recordation. A copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by South Beach.

7.6 Obligations Not Dischargeable in Bankruptcy. South Beach's obligations under this Agreement are not dischargeable in bankruptcy.

7.7 Authority to Execute Agreement. The Parties, and each of them, expressly represents that it has the authority to execute this Agreement and agrees that this Agreement as so executed will be binding upon each of the Parties.

7.8 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.

7.9 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.

7.10 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:

Olson Lee, Director
San Francisco Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Phone: (415) 701-5509
Email: olson.lee@sfgov.org

with a copy to:

San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Department of Real Estate and Finance

To South Beach:

Drue Fitzgerald
L&B REALTY ADVISORS LLP
8750 N. Central Expressway
Dallas, TX 72531
Phone: (214)989-0762
Email: dfitzgerald@lbrealty.com

To South Beach's Legal Counsel:

David Cincotta
Jeffer Mangels Butler and Mitchell LLP
2 Embarcadero Center, Suite 500
San Francisco, CA 94111
Phone: (415) 398-8080
Email: dc5@jmbm.com

Sutherland, Asbill & Brennan
999 Peachtree Street, NE, Suite 2300
Atlanta, Georgia 30309-3996
Attention: Ed Hales
Telephone: 404-853-8077
Facsimile: 404-853-8806
E-Mail: ed.hales@sutherland.com

Allen Matkins
3 Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074
Attention: David Blackwell
Telephone: 415-273-7463
Facsimile: 415-837-1516
E-mail: dblackwell@allenmatkins.com

Any notice of default must be sent by registered mail.

7.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of (i) the City Parties and any their successor agencies and departments that succeed to or obtain jurisdiction over any aspect of the subject matter of this Agreement and (ii) South Beach and their respective successors and assigns.

7.12 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, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, 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. Notwithstanding the foregoing, the South Beach and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

7.13 Sunshine. South Beach understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government 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. To the extent that South Beach in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, South Beach shall mark any such materials as such~~,-~~. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from South Beach. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify South Beach of that conclusion and that the information will be released by a specified date in order to provide South Beach an opportunity to obtain a court order prohibiting disclosure.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

By: _____
Heidi J. Gewertz
Deputy City Attorney

By: _____
Olson Lee
Director, Mayor's Office of Housing and
Community Development

**SOUTH BEACH MARINA
APARTMENTS, INC.,
a Florida limited liability company**

By: _____
Name: _____
Title: _____

Approved on _____
Board of Supervisors Resolution No. _____

EXHIBIT A

List of 101 Apartment Units Identified by Unit Type and AMI Level

EXISTING BMR TENANTS

Unit Type	Number of Units	Maximum Income Level Area Median Income
1BR	44	80% Median Income
2BR	42	80% Median Income
1BR	9	120% Median Income
2BR	6	120% Median Income
Total Units	101	

LONG TERM BMR UNIT DISTRIBUTION

Unit Type	Number of Units	Maximum Income Level Area Median Income
1BR	0	80% Median Income
2BR	0	80% Median Income
1BR	53	120% Median Income
2BR	48	120% Median Income
Total Units	101	

EXHIBIT B

Calculation of Credits

TABLE 7

**SOUTH BEACH APARTMENTS
PRESERVATION OF AFFORDABILITY
VALUATION ANALYSIS
April 20, 2018**

VALUATION ANALYSIS

A	B	C	D	E	F
	MARKET RENTAL INCOME ESTIMATE \$/UNIT/MO	FORMULATED RENTAL INCOME MOH SCHEDULE \$/UNIT/MO (NET OF UTS ALLOWANCE)	See Schedule	DIFFERENCE RENTAL INCOME PROJECTION \$/UNIT/MO	DIFFERENCE RENTAL INCOME PROJECTION \$/YR
86	RETIREDBMR - 80% AMI				
44	Total Affordable - 1 BR	\$4,528	\$1,600	\$2,928	\$3,022,344
42	Total Affordable - 2 BR	\$3,484	\$1,474	\$2,020	\$1,086,368
		\$4,232	\$1,731	\$2,501	\$1,280,578
15	RETIREDBMR - 120% AMI	\$3,883	\$2,102	\$1,782	\$317,078
9	Total Affordable - 1 BR	\$3,508	\$1,899	\$1,507	\$182,708
6	Total Affordable - 2 BR	\$4,400	\$2,258	\$2,144	\$154,368
	TOTAL RENTAL INCOME DIFFERENCE				\$2,644,020
	RUBS INCOME				
	RUB INCOME - 1 BR		\$60		\$114,840
	RUB INCOME - 2 BR		\$100		\$57,240
	GRAND TOTAL INCOME DIFFERENCE				\$2,768,860

INCOME CAPITALIZATION

VALUE \$	VALUE \$ / UNIT
\$78,824,571	\$780,441
\$73,569,600	\$728,412
\$68,971,500	\$682,886
\$64,914,353	\$642,716
\$61,308,000	\$607,010

SINGLE VALUE INDICATION - BEFORE ADJUSTMENTS

RE TAX ADJUSTMENT	AV	RATE	TAX	AV \$ / UNIT	TAX \$/R/UNIT	TAX \$/YF SAVINGS	NPV
PROJECTED		1.18%		\$662,801	\$7,838	101	4.5%
CURRENT	\$105,505,597	1.18%	\$1,282,890	\$253,011	\$3,099	\$478,681	\$4,117,814
DIFFERENCE				\$409,790	\$4,740		

1	2	3	4	5	6	7	8	9	10
478,681	488,285	488,031	507,891	518,151	528,514	539,084	549,868	560,863	572,081

RENT LOSS - UNTIL MARKET RENT CAN BE ACHIEVED (Requires 12 m
 # OF MONTHS NOTICE X DIFFERENCE (MARKET RENT - AFFORDABLE RENT) - # OF MOS X RENT
 MONTHS TO TRANSITION AFFORDABLE OCCUPANTS TO MARKET OCCUPANCY

RENT LOSS \$/MO	# OF MOS.
220,335	12
220,335	4

INDICATED VALUE TO PRESERVE AFFORDABLE UNITS \$ / UNIT

\$587,126

EXHIBIT C

Form of Notice of Special Restrictions

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

RECORDING REQUESTED BY

And When Recorded Mail To:

**Mayor’s Office of Housing and
Community Development
One South Van Ness Ave., 5th Floor
San Francisco, CA 94102**

Attn: Director

(Space Above This Line For Recorder's Use)

I (We) _____, the owner(s) of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (or see attached sheet marked “Exhibit A” on which property is more fully described):

BEING ASSESSOR'S BLOCK: 3789, LOTS 26 and 27;

**COMMONLY KNOWN AS: SOUTH BEACH MARINA APARTMENTS,
TWO TOWNSEND STREET;**

hereby give notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said Restrictions consist of conditions included in the “Agreement Preserving Affordable Housing Units at South Beach Marina Apartments” (the “Agreement”) authorized by the Board of Supervisors of the City and County of San Francisco on May 17, 2016, as set forth in Resolution No. _____ approving an agreement with South Beach Marina, Inc. to preserve 101 affordable housing units at South Beach Marina Apartments (the “Project”).

The restrictions and conditions of which notice is hereby given are:

Affordable Units

- 1. Number of Required Units.** Pursuant to the Agreement, the Project is required to provide 101 affordable dwelling units to qualifying households. Specifically the Agreement provides that South Beach Marina, Inc (the “Owner”), and its successors and assigns, will maintain for the life of the

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Project the 101 units identified in Exhibit A of the Agreement, and as attached hereto, at below market rates (the “BMR Units”) for the exclusive tenancy, use and occupancy by Existing BMR Tenants and Qualified Tenants, as defined in the Agreement (the “BMR Program”).

2. **Unit Location.** The BMR Units shall be those units currently occupied by the Existing BMR Tenants and may be replaced based on the Next Available Unit Rule and process outlined in Section 2.4.2 of the Agreement.

For information about compliance, contact the Mayor’s Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

3. **Duration.** The BMR Units shall remain affordable for the life of the Project, consistent with the terms of the Agreement; however, the BMR Unit program may be terminated earlier consistent with the terms of the Agreement.

For information about compliance, contact the Mayor’s Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

4. **Other Conditions.** The Project is subject to the requirements of the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual (“Procedures Manual”). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission. Terms used in this Notice of Special Restrictions and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the Mayor’s Office of Housing and Community Development (“MOHCD”) at 1 South Van Ness Avenue or on the Planning Department or MOHCD’s websites, including on the internet at: <http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>. As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for rental.

For information about compliance, contact the Mayor’s Office of Housing and Community Development at 415-701-5500, www.sf-moh.org.

- a. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average of ninety (90) percent of Area Median Income under the income table called “Maximum Income by Household Size derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco.” The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- b. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Project

NOTICE OF SPECIAL RESTRICTIONS UNDER THE PLANNING CODE

Sponsor must contact MOHCD at least six months prior to the beginning of for sale marketing for any unit in the building.

- c. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- d. The Owner's failure to comply with the requirements of this Notice of Special Restrictions shall constitute cause for the City to record a lien against the Project and to pursue any and all available remedies at law.

The use of said property contrary to these special restrictions shall constitute a violation of the Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco; except that in the event that the zoning standards above are modified so as to be less restrictive and the uses therein restricted are thereby permitted and in conformity with the provisions of the Planning Code, this document would no longer be in effect and would be null and void.

(Signature) (Printed Name)

Dated: _____, **20** at _____, **California.**
(Month, Day) (City)

(Signature) (Printed Name)

Dated: _____, **20** at _____, **California.**
(Month, Day) (City)

(Signature) (Printed Name)

Dated: _____, **20** at _____, **California.**
(Month, Day) (City)

Each signature must be acknowledged by a notary public before recordation; add Notary Public Certification(s) and Official Notarial Seal(s).