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San Francisco, CA 94103  
Attn: Rich Hillis, Director

City and County of San Francisco  
Joaquin Torres, Assessor – Recorder

9/26/2022	12:04:38 PM	Fees	\$0.00
Pages 46	Title 013 ES	Taxes	\$0.00
Customer 001		Other	\$0.00
		SB2 Fees	\$0.00
		Paid	\$0.00

**ASSESSOR'S BLOCK: 3776; LOTS: 34, 38, 39, 40, 42, 43, 44**

**REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS FOR STATE DENSITY BONUS PROGRAM AND AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND BRYANT PROPERTY, LLC, a Delaware limited liability company, RELATIVE TO THE DEVELOPMENT KNOWN AS 555-585 BRYANT STREET**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS FOR STATE DENSITY BONUS PROGRAM AND AGREEMENT TO PROVIDE ON-SITE AFFORDABLE HOUSING UNITS (this “Agreement”) dated for reference purposes only as of this 9<sup>th</sup> day of August, 2022, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California (the “City”), acting by and through its Planning Department, and BRYANT PROPERTY, LLC, a Delaware limited liability company (“Owner”), with respect to the project approved at 555-585 BRYANT STREET (the “Project”). The City and the Owner are also sometimes referred to individually as a “Party” and together as the “Parties.” Capitalized terms not otherwise defined shall have the meanings ascribed such terms in Section 1 of this Agreement.

**RECITALS**

This Agreement is made with reference to the following facts:

A. Pursuant to the City’s Affordable Housing and Educator Housing Programs (Section 206 *et. seq.* of the Planning Code of the City and County of San Francisco Municipal Code), the City is authorized to enter into this Agreement.

B. The Affordable Housing and Educator Housing Programs sets forth the Individually Requested State Density Bonus Program (Planning Code section 206.6, or the “**IRSDB Program**”) which provides benefits to project sponsors of housing projects that set aside residential units on site at below market rate rent or sales in accordance with California Government Code section 65915 *et seq.* (“**State Density Bonus Law**”)

C. State Density Bonus Law directs public agencies to grant additional density concessions and incentives, and waivers to private developers who agree to set aside certain

amounts of residential units on site for the production of housing for lower, very-low, or moderate income households.

D. The Inclusionary Affordable Housing Program, San Francisco Planning Code Section 415 *et seq.* (the “**Inclusionary Program**”) provides that developers of any housing project consisting of ten or more units must pay an Affordable Housing Fee, as defined therein. The Inclusionary Program provides that developers may be eligible to meet the requirements of the program through the alternative means, including entering into an agreement with the City and County of San Francisco pursuant to Chapter 4.3 of the California Government Code for a density bonus, waivers and/or concessions and incentives, pursuant to which the developer provides affordable on-site units instead of paying the Affordable Housing Fee to satisfy the requirements of the Inclusionary Program.

E. The Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 *et seq.*, hereafter the “**Costa-Hawkins Act**”) imposes limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public entity in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). The City has enacted as part of the Inclusionary Program, Planning Code Section 415 *et seq.* (“Inclusionary Program”), and the Affordable Housing and Educator Housing Programs, procedures and requirements for entering into an agreement with a developer to memorialize the density bonus, waivers, concessions and incentives granted by the City and thereby confirm the nonapplicability of the Costa-Hawkins Act limitations to the inclusionary units in a project.

F. The property that is the subject of this Agreement consists of the real property in the City and County of San Francisco, California, at Assessor’s Block 3776, Lot(s) 34, 38, 39, 40, 42, 43, 44 more particularly described in Exhibit A attached hereto (the “**Property**”). The Property is owned in fee by the Owner.

G. In order to ensure that the Project (as defined below) will be acquired, constructed, equipped, used and operated in accordance with the IRSDB Program and Inclusionary Program, the City and the Owner have determined to enter into this Agreement in order to set forth certain terms and conditions relating to the number of Restricted Units and the number of Inclusionary Units (as such terms are defined below), their size, location, terms and conditions of affordability, and production schedule all as set forth in this Agreement.

H. The Owner proposes the construction of 501 residential units in a single 16-story building with two levels of subgrade parking (collectively, the “**Project**”). The Owner has elected to offer all of the units built as part of the Project as rental units and to provide inclusionary affordable housing units on-site. The Owner is seeking a density bonus pursuant to California Government Code § 65915, and is entitled to a **42.5%** density bonus over the base project’s 359 Units (the “**Base Project**”), or 142 bonus units, because it is agreeing to dedicate **13%** of the Base Project’s units or 47 units) to qualifying very low income households (the “**Restricted Units**”).

The Base Project is equal to 304,707 gross residential square feet and the Project including density bonus is comprised of 425,381 gross residential square feet.

I. In December 2018, Ordinance No. 281-18 was adopted, amending the Business and Regulations and Planning Codes to create the Central South of Market Housing Sustainability District (HSD) under Planning Code Section 343. The HSD designates the Planning Department as the approving authority for Project eligible for the HSD and designates a ministerial approval process, whereby the Project is approved without discretion if it compiles with the requirements of Section 343, all other requirements of the Planning Code, and all applicable mitigation measures of the Central SoMa EIR. On June 17, 2021 an informational hearing, was held by the Planning Commission. Subsequently, a Notice of Approval of a Housing Sustainability District Project for the Project under Planning Code Section 343 was signed by Planning Director, Rich Hillis, on June 30, 2021. In order to achieve the 42.5% density bonus, the Planning Commission waived the following physical development controls of the Planning Code: Waivers from the Setback and Street Wall (Planning Code Section (Sec. 132.4), Permitted Obstruction for Bay Window (Sec. 136), Ground Floor Ceiling Height (Sec. 145.1 and 249.78), Residential Open Space (Sec. 135), Lot Coverage (Sec. 249.78), Wind (Sec. 249.78), Height Limit (Sec. 260), Narrow Street and Alley (Sec. 261.1), Apparent Mass Reduction (Sec. 270), Horizontal Mass Reduction (Sec. 270.1), and Mid-block Alley (Sec. 270.2) controls of the Planning Code. The Project received the following Incentives / Concessions from the Central SoMa SUD Living Roof Standards (Sec. 149 and 247.78) and Curb Cut on Transit Preferential Street (Sec. 155) requirements of the Planning Code.

J. The Owner agrees to provide no fewer than 74 dwelling units (inclusive of the Restricted Units) in the Base Project as on-site inclusionary units (the “**Inclusionary Units**”) and the remainder will be market rate units (the “**Market Rate Units**”). Accordingly, if the Base Project includes 359 dwelling units and the Project includes 501 dwelling units, 74 would be Inclusionary Units and 427 would be Market Rate Units. The provision of 74 Inclusionary Units on-site satisfies 60% of the Owner’s obligations under the Inclusionary Program, and the Owner has elected to apply South Beach Project Credits pursuant to the “Agreement Preserving Affordable Housing Units at South Beach Marina Apartments,” dated as of June 20, 2016 between the City and County of San Francisco and South Beach Marina Apartments, Inc., authorized by the Board of Supervisors of the City and County of San Francisco on May 17, 2016 as set forth in Resolution No. 197-16, to satisfy the remaining 40 % of the obligations under the Inclusionary Program. The Affordable Housing Fee is defined in Planning Code 415.5.

K. This Agreement is not intended to impose restrictions on the Market Rate Units or any portions of the Project other than (in accordance with the Inclusionary Program (defined below)) the Restricted Units. 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.

L. The Owner has elected to: (1) enter into this Agreement to provide the Inclusionary Units on-site in lieu of payment of the Affordable Housing Fee in satisfaction of its obligation under the Inclusionary Program; (2) seek a density bonus under the Individually Requested State Density Bonus Program; and (3) to provide for an exception to the rent restrictions of the Costa-Hawkins Act for the Inclusionary Units only.

M. 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”), Chapter 4.3 of the California Government Code, the Costa-Hawkins Act, the San Francisco Planning Code, and all other applicable laws and regulations.

N. Pursuant to California Public Resources Code 21155.11, California Government Code Section 66200 and San Francisco Planning Code Section 343, the City Board of Supervisors upheld the certification of the Environmental Impact Report for the Central SoMa Area Plan on November 13, 2018, and the Project has adopted all applicable mitigation measures from the EIR.

O. 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.

## 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; Definitions and Interpretation. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

Capitalized terms used herein have the meanings assigned to them in Planning Code Section 206.1 and this Section 1, unless the context in which they are used clearly requires otherwise. All references to the Planning Code shall be to the Planning Code of the City and County of San Francisco.

“**Area Median Income**” or “AMI” is the unadjusted median income level as published by MOHCD using data from the Department of Housing and Urban Development (“HUD”) on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost.

“**Authorized Owner Representative**” means any person who at the time and from time to time may be designated as such, by written certificate furnished to the City containing the specimen signature of such person and signed on behalf of the Owner by its Manager, which certificate may designate an alternate or alternates.

“**Household**” means any person or persons who reside or intend to reside in the same housing unit.

“**Housing Act**” means 42 U.S.C. §1437, known as the United States Housing Act of 1937, as amended.



“**Inclusionary Units**” is defined in Recital J of this Agreement.

“**Life of the Project**” means the time during which the Project, authorized by the Planning Department or Commission, or any modification said Project, remains in existence in or upon the Property and thereby confers benefit upon the subject property, including the time during which the Project is rebuilt on the Property within seven (7) years from the date all or a portion of the Project was demolished or destroyed.

“**Low Income**” means annual income of a household that does not exceed 65% of Median Income of the Area as determined by MOHCD on an annual basis. Rental Units for low-income households shall have an affordable rent set at 55% of Area Median Income.

“**Maximum Monthly Rent**” means the maximum rent that a housing developer may charge any tenant occupying an affordable unit on a monthly basis within the 12 months of the lease term. Published by MOHCD, Maximum Monthly Rent is determined by taking the maximum AMI for applicable unit in the year in the year of initial occupancy or upon subsequent re-rental, and assumes that Household sizes are one person larger than the number of bedrooms in the Unit and that Households pay no more than 30% of their Annual Gross Income on rent, and dividing by 12 for each month of the lease term. A utility allowance reduction is applied, if applicable. The monthly rent charged for all the rental Restricted Units and Inclusionary Units shall not exceed the lower of: (i) one-twelfth of the amount obtained by multiplying 30% times Very Low Income, or (ii) one-twelfth of the amount obtained by multiplying 30% times Low Income.

“**Middle Income**” means annual income of a household earning from 90% to 130% of Median Income of the Area as determined by MOHCD on an annual basis. Rental Units for Middle Income households shall have an affordable rent set at 110% of Area Median Income. For any affordable units with rental rates set at 110% of Area Median Income, the units shall have a minimum occupancy of two persons.

“**Moderate Income**” means annual income of a household earning from 65% to 90% of Median Income of the Area as determined by MOHCD on an annual basis. Rental Units for Moderate Income households shall have an affordable rent set at 80% of Area Median Income.

“**MOHCD**” means the Mayor’s Office of Housing and Community Development and any successor agency of the City and County of San Francisco.

“**Permitted Encumbrance**” means any construction loan used to finance construction of the Project or any portion thereof, but shall not include any loan issued subsequent to the issuance of the first certificate of occupancy for the Project.

“**Procedures Manual**” means the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as amended from time-to-time

“**Program Administrator**” is defined in Section 5.3 of this Agreement.

“**Project**” is defined in Recital H.

“**Property**” is defined in Recital F.

“**Restricted Unit**” means a dwelling unit within a Project which will be Affordable to Very Low, Lower or Moderate Income Households, as defined in Planning Code Section 206.2 for the Life of the Project. Restricted Units shall meet all of the requirements under State Density Bonus Law. All Restricted Units shall also comply with the requirements of Planning Code Section 415 and the Procedures Manual unless otherwise provided for in this Agreement.

“**Section 8**” means Section 8 of the Housing Act and Section 3009a of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat 2654) or, if said Section 8 is terminated, as prescribed pursuant to said Section 8 immediately prior to its termination or as otherwise required under Planning Code section 415 and the Procedures Manual, including adjustments for household size and high housing cost area.

“**State Density Bonus Law**” means California Government Code section 65915 *et seq.*, as amended from time to time.

“**Very Low Income Tenant(s)**” means annual income of a household that does not exceed 50% of area median income as defined in California Health and Safety Code section 50105. If the State law definitions of this terms change, the definitions of Very Low Income Tenant shall mirror the State law changes.

Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender used in this Agreement shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

## **2. CITY’S DENSITY BONUS, CONCESSIONS AND INCENTIVES, AND WAIVERS FOR THE INCLUSIONARY UNITS.**

2.1. Eligibility. The Owner hereby acknowledges and agrees that the Project will be owned, managed and operated in accordance with the IRSDB Program. To that end, and for the term of this Agreement, the Owner hereby represents, as of the date hereof, and covenants, warrants and agrees as follows:

2.1.1 The Project contains five or more residential units, as defined in Planning Code Section 102;

2.1.2 The Owner is not seeking and receiving a density or development bonus under Planning Code Section 207; the HOME-SF Program, Planning Code Section 206.3; the 100 Percent Affordable Housing Bonus Program, Planning Code Section 206.4; Planning Code Section 304, or any other local or state bonus program that provides development bonuses other than Planning Code Section 206.6 and the State Density Bonus Law, Government Code section 65915;

2.1.3 The Project provides Restricted Units, including but not limited to Inclusionary Units, at minimum levels as set forth in Planning Code Table 206.6A;

2.1.4 The Project provides replacement units for any units demolished or removed that are subject to the San Francisco Rent Stabilization and Arbitration Ordinance, San Francisco Administrative Code Section 37, or are units qualifying for replacement as units being occupied by households of low or very low income, consistent with the requirements of Government Code section 65915(c)(3); and,

2.1.5 The Project is not in a zoning district for RH-1 or RH-2 unless the Planning Code permits the development of a project of five units or more on a site or sites.

## 2.2. Development Bonus.

It is hereby acknowledged and agreed by the Parties that any restrictions imposed on the operation of the Project herein and which are in addition to those imposed pursuant to the Inclusionary Program are at the request of the Owner for the purpose of the IRSDB Program, and that the Owner has voluntarily agreed to such additional restrictions in order to qualify under the IRSDB Program.

The Owner has received the following waivers and concessions pursuant to Planning Code Section 206.6:

Waivers from the Setback and Street Wall (Planning Code Section (Sec. 132.4), Permitted Obstruction for Bay Window (Sec. 136), Ground Floor Ceiling Height (Sec. 145.1 and 249.78), Residential Open Space (Sec. 135), Lot Coverage (Sec. 249.78), Wind (Sec. 249.78), Height Limit (Sec. 260), Narrow Street and Alley (Sec. 261.1), Apparent Mass Reduction (Sec. 270), Horizontal Mass Reduction (Sec. 270.1), and Mid-block Alley (Sec. 270.2) controls of the Planning Code. The Project received the following Incentives / Concessions from the Central SoMa SUD including Living Roof Standards (Sec. 149 and 247.78) and Curb Cut on Transit Preferential Street (Sec. 155) requirements of the Planning Code.

2.2.1 **Setback and Street Wall Waiver.** Planning Code Section 132.4 requires that Mid-Rise Buildings must provide a 15-foot setback for 60% of the street- and alley-facing property lines and all interior property lines at a height of 85 feet and above. The Project provides no setback along property lines and requires a waiver.

2.2.2 **Permitted Obstruction for Bay Window Waiver.** Per Planning Code Section 136, bay windows may encroach beyond a street- or alley-facing property line so long as

the bay window meets the certain size and pattern limitations. The Project proposes a bay window design that does not comply with the glazing on two sides and horizontal dimension requirements and therefore requires a waiver.

**2.2.3 Ground Floor Ceiling Height Waiver.** Per Planning Code Section 145.1, the minimum height limit for ground floors in the CMOU zoning district is 17 feet with ground floor PDR use or 14 feet without PDR use. The Project proposes a ground floor height of 13.33 feet and therefore requests a waiver.

**2.2.4 Residential Open Space Waiver.** Per Planning Code Section 135, the minimum residential open space requirement is 80 square feet per dwelling unit. The Project proposes 500 dwelling units and therefore 40,000 square feet of residential open space is required. The Project will provide approximately 8,235 square feet of code-compliant open space on the roof and therefore requires a waiver.

**2.2.5 Lot Coverage Waiver.** Per Planning Code Section 249.78(d)(6), the Central SoMa SUD sets a lot coverage limit of 80% unless all dwelling units face onto a public street. The proposed project does not comply and exceeds the maximum by providing 86 % lot coverage; thus, a waiver for lot coverage is required to accommodate the residential habitable floor area.

**2.2.6 Wind Comfort Waiver.** Per Planning Code Section 249.78(d)(9), the Central SoMa SUD establishes that a project may not result in wind speeds that exceed the Comfort Level nor causes a Substantial Increase in wind speeds at any location. The proposed project causes a Substantial Increase in wind speeds at two locations. The Project has incorporated landscaping into its design that will eliminate both Substantial Increase locations. Also, the Central SoMa SUD establishes that a project may not result in wind speeds that exceed the One-Hour Hazard Criterion at any location. The Project causes an exceedance of the One-Hour Hazard Criterion at two locations. When landscaping is incorporated into the Project, it eliminates one of those exceedances. The remaining exceedance is well below the Nine-Hour Hazard Criterion established by the Central SoMa SUD and has been determined to have no significant impact under CEQA.

The Project Sponsor has also conducted a series of testing to evaluate the impact of extensive alternative wind control measures on the proposed development in combination with landscaping. The various canopies and architectural fins for wind control on the proposed development were found to have a relatively negligible impact on the average wind comfort and hazard wind speeds across all test locations. Reducing wind speeds further would substantially detract from the building design or unduly restrict the square footage of the project; thus, the Project is seeking a waiver for Wind Comfort and Wind Hazard Controls.

**2.2.7 Height Limit Waiver.** Per Planning Code Section 250, the maximum height limit for the subject property is 130 feet. The Project proposes a height of 160 feet to accommodate the additional floor area. 160 feet is the maximum height allowed in the Housing

Sustainability District. Exceeding the underlying 130-foot height and bulk district requires a height waiver.

**2.2.8 Narrow Street and Alley Setbacks Waiver.** The Planning Code Section 261.1 and 270(h) require that the Project's massing along Welsh Street comply with the Apparent Mass Reduction requirement of Section 270(h) for a reduced massing at 85% above 35 feet in height. The proposed project only provides 1.95% of reduction, which does not comply with the Apparent Mass Reduction requirement and thus a waiver is necessary.

**2.2.9 Apparent Mass Reduction Waiver.** The Apparent Mass Reduction requirement of Planning Code Section 270(h) requires a reduced massing at 67% above 85 feet in height for a Mid-Rise Building. The proposed project only provides 1.95% of reduction, and thus a waiver is necessary.

**2.2.10 Horizontal Mass Reduction Waiver.** The Planning Code Section 270.1 requires certain mass reduction measures to be incorporated into a project that has a street frontage of more than 200 linear feet. The proposed project does not provide this mass reduction and thus a waiver is necessary.

**2.2.11 Mid-block Alley Waiver.** The Planning Code Section 270.2 requires a Mid-Block Alley be provided on project sites with more than 200 linear feet of frontage where such alley would connect to existing streets or alleys. The proposed project does not provide a mid-block alley and thus a waiver is necessary.

**2.2.12 Central SoMa SUD Living Roof Standards Incentive.** The Project is required to provide a living roof area equal to 50% of the roof area, or 12,353 square feet. The Project will provide a total of 8,235 square feet of living roof area, equal to 33% of the roof area. The provision of additional living roof area would cause the amount of usable open space to be decreased, causing an in-lieu fee of \$971.81 per square foot for the open space not provided. Additionally, the Project Sponsor states that constructing an additional living roof would increase the cost of constructing the roof surface and structural support. As such, a Concession from the Central SoMa living roof requirements of the Planning Code decreases the cost of constructing the Project.

**2.2.13 Curb Cut on Transit Preferential Street Incentive.** Planning Code Section 155(r) requires that no curb cuts accessing off-street parking or loading shall be created or expanded on street frontages identified along any Transit Preferential Street as designated in the Transportation Element of the General Plan.

The Project proposes to locate a garage entrance on Bryant Street, a Transit Preferential Street between 2nd and 6th Streets, in order to provide more efficient ingress and egress, which reduces the cost of off-site work and non-residential space in the building, and allows the Project to provide more housing. The only other option for a garage entrance would be on Welsh Street, in place of ground-floor residential units. The Welsh Street alternative would require significant curb ramp realignments on surrounding streets where there are conflicts that prevent adequate truck turning radii. These conflicts do not exist for the proposed Bryant Street entrance location. The Welsh Street alternative would also result in more non-residential space and fewer



units, thus increasing the cost per unit to deliver market-rate and affordable housing. Reconfiguring each curb ramp would cost approximately \$35,000 each which would equate to a financing impact of \$175,000 considering 5 curbs would need to be reconfigured to accommodate the property truck turning radius, thereby increasing the cost of delivering both the market rate and affordable housing.

2.3. State Density Bonus Requirements. The Owner hereby represents, as of the date hereof, and covenants, warrants and agrees that not less than 13% of the units in the Base Project, or 47 units, shall be designated as Restricted Units as set forth in Section 4 of this Agreement. The Restricted Units shall be restricted for the Life of the Project and shall comply with all of the requirements of the Procedures Manual authorized in Planning Code Section 415.

2.4 Waiver of the Affordable Housing Fee. The City has agreed to waive 60% the Affordable Housing Fee for the Project as to the Inclusionary Units only in return for the Owner's commitments set forth in this Agreement, including the provision of the Inclusionary Units on site.

The Owner acknowledges that this waiver by the City is limited to the Affordable Housing Fee for the Inclusionary Units and does not stop the City from levying and collecting any other fee that may be imposed by the City in connection with the Project. The Owner acknowledges and agrees that the Affordable Housing Fee for the Restricted Units as described in Section 4.2 of this Agreement has been waived.

The City would not be willing to enter into this Agreement, waive the Affordable Housing Fee as to the Inclusionary Units or provide the additional density, concessions and incentives, and waivers set forth above without the understanding and agreement that Costa-Hawkins Act provisions set forth in California Civil Code section 1954.52(a) do not apply to the Inclusionary Units consistent with the exemption set forth in California Civil Code section 1954.52(b).

2.5 Costa-Hawkins Act Inapplicable to Inclusionary Units Only.

2.4.1 Inclusionary Units. The Parties acknowledge that, under Section 1954.52(b) of the Costa-Hawkins Act, the Inclusionary Units are not subject to the restrictions and limitations of the Costa-Hawkins Act. Through this Agreement, the Owner hereby enters into an agreement with a public entity in consideration for additional density, concessions and incentives, and waivers from physical development controls as permitted in California Government Code Sections 65915 et seq.

2.4.2 Market Rate Units. The Parties hereby agree and acknowledge that this Agreement does not alter in any manner the way that the Costa-Hawkins Act or any other law, including the City's Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code) apply to the Market Rate Units.

### 3. COVENANTS OF THE OWNER

3.1 On-Site Inclusionary Affordable Units. In consideration of the additional density, concessions and incentives, and waivers set forth in Section 2.1 and in accordance with the terms and conditions set forth in the Inclusionary Program and the Project Approvals, upon the Owner

obtaining its first certificate of occupancy for the Project, the Owner shall provide 74 units or twenty one percent (21%) of the dwelling unit count in the Base Project as on-site Inclusionary Units for the Project. Upon identification of the Inclusionary Units (including the Restricted Units), and before any occupancy of the Inclusionary Units (including the Restricted Units), the Owner shall record a notice of restriction against the Inclusionary Units (the “NSRs”) in the form required by the Inclusionary Program and approved by City.

3.2 Owner’s Waiver of Rights Under the Costa-Hawkins Act Only as to the Inclusionary Units. The Parties acknowledge that under the Costa-Hawkins Act, the owner of newly constructed residential real property may establish the initial and all subsequent rental rates for dwelling units in the property without regard to the City’s Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco Administrative Code). The Parties also understand and agree that the Costa-Hawkins Act does not and in no way shall limit or otherwise affect the restriction of rental charges for the Inclusionary Units because this Agreement falls within an express exception to the Costa-Hawkins Act as a contract with a public entity in consideration for a direct financial contribution or other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code including but not limited to the density bonus, waivers, and/or concessions and incentives specified in Section 2. In addition, the Owner, on behalf of itself and all Transferees (as defined in Section 11.1) expressly waives, now and forever, any and all rights it may have under the Costa-Hawkins Act with respect only to the Inclusionary Units (but only the Inclusionary Units and not as to the Market Rate Units) consistent with Section 3.1 of this Agreement, and agrees not to bring any legal or other action against City seeking application of the Costa-Hawkins Act to the Inclusionary Units for so long as the Inclusionary Units are subject to the restriction on rental rates pursuant to the Inclusionary Program. 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 3.2.

3.3 Owner’s Waiver of Right to Seek Waiver of Inclusionary Program. The Owner specifically agrees to be bound by all of the provisions of the Inclusionary Program applicable to on-site inclusionary units with respect to the Inclusionary Units. The Owner covenants and agrees that it will not seek a waiver of the provisions of the Inclusionary Program applicable to the Inclusionary Units.

3.4 No Obligation to Construct. By entering into this Agreement, the Owner is not assuming any obligation to construct the Project, and the covenants of the Owner hereunder become operative only in the event the Owner elects to proceed with construction of the Project and in the event the Owner elects to proceed with Construction of the Project, it shall proceed with due diligence to complete the construction of the Project.

#### **4. RESTRICTIONS.**

The Owner hereby represents, as of the date hereof, and warrants, covenants and agrees as follows:

4.1 Income and Rent Restrictions. In addition to the requirements of Section 5, hereof, the Owner shall comply with the income and rent restrictions of this Section 4, and any

conflict or overlap between any two or more of such provisions shall be resolved in favor of the most restrictive of such provisions, that is, in favor of the lowest income and rent restrictions.

4.2. State Density Bonus Requirements; Inclusionary Unit Restrictions.

(a) Not less than 74 units **or twenty one (21%)** of the dwelling units in the Base Project as defined in Recital H of this agreement (74 units) shall be classified as shown:

<b>Unit Size and Designation</b>	<b>No. of Units</b>	<b>Maximum Income Level (Affordable Unit Category)</b>	<b>Unit Classification</b>
<b>Studio</b>	<b>7</b>	<b>50% of AMI (Very Low in State Health &amp; Safety Code / Low Income in the Inclusionary Program)</b>	<b>Restricted Units (concurrently designated as Inclusionary Units)</b>
<b>One-Bedroom</b>	<b>23</b>		
<b>Two-Bedroom; One-Bath</b>	<b>3</b>		
<b>Two-Bedroom; Two-Bath</b>	<b>14</b>		
<b>Studio</b>	<b>4</b>	<b>80% of AMI (Moderate)</b>	<b>Inclusionary Units (does not include Restricted Units)</b>
<b>One-Bedroom</b>	<b>4</b>		
<b>Two-Bedroom; One-Bath</b>	<b>2</b>		
<b>Two-Bedroom; Two-Bath</b>	<b>4</b>		
<b>Studio</b>	<b>4</b>	<b>110% of AMI (Middle)</b>	<b>Inclusionary Units (does not include Restricted Units)</b>
<b>One-Bedroom</b>	<b>3</b>		
<b>Two-Bedroom; One-Bath</b>	<b>3</b>		
<b>Two-Bedroom; Two-Bath</b>	<b>3</b>		

(b) The Restricted Units and Inclusionary Units shall be those described and depicted on Exhibit B to this Agreement and shall also be recorded in a Notice of Special Restrictions (NSR) to be recorded prior to the issuance of the architectural addendum. In the event

that there is conflict between Exhibit B of this Agreement and the NSR, the descriptions of Inclusionary Units and Restricted Units in the NSR shall prevail. The Restricted Units shall be restricted to and occupied by Households at the lower of Low Income or Very Low Income at initial rental and re-rental. The monthly rent charged for all the rental Restricted Units and Inclusionary Units shall not exceed the lower of: (i) one-twelfth of the amount obtained by multiplying 30% times Very Low Income, or (ii) one-twelfth of the amount obtained by multiplying 30% times Low Income.

(c) The Inclusionary Units shall be restricted for the Life of the Project, and the 47 Restricted Units that satisfy both the State Density Bonus Law and the Inclusionary Program shall be rented to Very Low-Income Households. The income table used to determine the rent and income levels for the Restricted Units shall be the table required by the State Density Bonus Law. If the resultant rent or income levels at 50% of AMI under the table required by the State Density Bonus Law are higher than the rent and income levels at 55% of AMI under the Inclusionary Program, the rent and incomes levels shall default to the Maximum Annual Rent and income levels for affordable units under the Inclusionary Program. After such Restricted Units have been rented for a term of 55 years, the subsequent rent and income levels of such units may be adjusted to Low Income as required by the Inclusionary Program, using 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," and shall remain affordable for the remainder of the Life of the Project.

(d) Inclusionary Units and Restricted Units shall comply with all of the requirements of the Procedures Manual, including but not limited to rules for qualifying tenants, restrictions on units and buyers/tenants, lease and sale requirements, annual rent increases, rental subsidies and additional fees, application process and income review, monitoring, eviction and non-renewal of lease allowances, re-rental procedures, and conversion of units from rental to ownership.

(e) The income table used for pricing Restricted Units and Inclusionary Units is the table published annually by MOHCD called the "Maximum Income by Household Size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco" and is posted on MOHCD's website annually in April. In determining the pricing for Restricted Units, MOHCD shall incorporate the income table for San Francisco County published by the California Department of Housing and Community Development.

(f) MOHCD shall calculate initial rent levels of the Restricted Units and Inclusionary Units according to the following assumptions: (1) the income limits specified herein; (2) total payments of no more than thirty (30) percent of gross monthly income, based on the income limits required herein (and not based on an individual Household's income); and (3) a utility allowance reduction where applicable. MOHCD shall assume a one-person larger Household than the number of bedrooms in the unit when establishing the rent levels of all units except for studio units, which assume a one person Household, and SRO Units, which shall be priced based on three-fourths (3/4ths) of the Maximum Monthly Rent for a studio unit.

(g) Subsequent rent adjustments for existing tenants or upon re-rental of the Restricted Unit and Inclusionary Unit shall follow the procedures set forth in the Procedures Manual.

(h) The Owner shall adjust (up or down) the Maximum Monthly Rent allowed for each qualified Tenant no more than once per year. Each year's adjusted rent may not exceed the amount determined by MOHCD annually.

(i) Rent adjustments may only occur upon or after (i) recertification of the Tenant, and (ii) the end of a Tenant's annual lease and commencement of a new lease. Tenants whose leases have not reached a one-year period on July 1 of a given year may have their rent levels increased in the following year after completed a recertification process.

(j) The Owner agrees to follow all applicable federal, state and local laws when introducing rent adjustments. Furthermore, the Owner may adjust rents annually and may not take advantage of any increases that were not applied in prior years. In cases where the "Maximum Monthly Rent" level has decreased, the Owner agreed to decrease the rent for each qualified.

(k) All Restricted Units and Inclusionary Units must be marketed at a price that is at least 20% less than the current market rate for that unit size and neighborhood.

4.3. Annual Monitoring Requirement, Procedures for Lease Renewals and Non-Renewals.

(a) Restricted Units shall be monitored on an annual basis to determine the continued eligibility of each Tenant pursuant to the provisions set forth in the Procedures Manual. The Owner or its agent charged with the management of the Restricted Units satisfying the requirements of this Agreement shall submit an annual monitoring and enforcement report on a date and at a location determined by MOHCD on a form provided by MOHCD consistent with the timelines and procedures set forth in the Procedures Manual. The report may include information regarding rents, household and income characteristics of tenants of designated Restricted Units, services provided as part of the housing service such as security, parking, utilities, and any other information MOHCD may reasonably require for monitoring compliance with this Agreement.

(c) Upon recertification, existing Tenants must meet the qualification standards for Tenants as contained in the Procedures Manual, including but not limited to continuing to be income qualified, and adhering to the minimum household size, occupancy and other requirements set forth in the Procedures Manual.

(d) The Owner shall require that all qualified Tenants provide annual household income documentation to the Owner upon request and such other information as MOHCD may reasonably require to monitor compliance with this Agreement in order to certify continued qualification HOME-SF. Failure to provide such information may result in the inability to renew the lease of a Tenant.



4.4 Allowable Income Increases upon Recertification. For Inclusionary and Restricted units, the allowable income increases upon recertification shall be as set forth in the Procedures Manual and described in Section 4.2. Any household that experiences a change in household composition (for example adding a new adult resident) must recertify with a total income below this cap in order for the household to be considered a qualified Tenant. Households that change composition within the first 12 months of occupancy of a Restricted Unit must recertify with an income at or below the maximum income allowed in the Use Restrictions.

4.5 Tenants Who Fail to Recertify. The Owner shall not renew the lease of any Tenant who fails to recertify for a Restricted Unit. Non-renewal of the lease for a Tenant shall require at least a ninety (90) day notice to the Tenant of the lease non-renewal.

4.6 Lease Provisions Regarding Income Certification Reliance. Unless otherwise agreed to by MOHCD, the Owner agrees to use a form of lease approved by MOHCD for all Inclusionary Units and Restricted Units. All leases shall contain clauses, among others, wherein each Tenant who occupies a Restricted Unit: (i) certifies the accuracy of the statements made in the Income Certification Form substantially (as revised by MOHCD from time-to-time), (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such Tenant, that such Tenant will comply promptly with all requests for information with respect thereto from the Owner or the Program Administrator on behalf of the City, and that the failure to provide accurate information in the Income Certification Form or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenancy of such Tenant; (ii) acknowledges that the Owner has relied on the Income Certification Form (provided by MOHCD) and supporting information supplied by the Tenant in determining ongoing qualification for occupancy of the Restricted Unit, and that any material misstatement in such recertification (whether intentional or otherwise) will be cause for immediate termination of such lease or rental agreement; and (iv) agrees that the Tenant's income is subject to annual recertification in accordance with Section 4.4 hereof and that failure to cooperate with the annual recertification process reasonably instituted by the Owner as provided in this Agreement may provide grounds for termination of the lease.

4.6 Maintenance of Tenant Lists and Applications. Owner shall at all times keep and maintain all tenant lists and applications relating to the Project (a) separate and identifiable from any other business which is unrelated to the Project, and (b) in a reasonable condition for proper audit and subject to examination during normal business hours by representatives of the Project and the City. Owner's failure to keep such lists and applications or to make them available to the City shall be a default hereunder.

4.7 Subordination. All deeds, including grant deeds and deeds of trust, tenant leases or rental agreements shall be subordinate and subject to this Agreement.

4.8 No Demolition or Non-Residential Use of Inclusionary Units or Restricted Units. The Owner shall not take any of the following actions:

(i) demolish any part of an Inclusionary Unit or Restricted Unit or substantially subtract from any real or personal property of the Restricted Units (other than in the ordinary course of business); or

(ii) permit the use of an Inclusionary Unit or Restricted Unit of the Project for any purpose except rental residences or condominium residences.

(iii) except for the Permitted Encumbrances, encumber any portion of the Project or grant commercial leases of any part thereof or permit the conveyance, transfer or encumbrance of any part of the Project (except for apartment leases), except (i) pursuant to the provisions of this Agreement and on a basis subordinate to the provisions of this Agreement, to the extent applicable, or (ii) upon a sale, transfer or other disposition of the Project in accordance with the terms of this Agreement.

## **5. ADDITIONAL REQUIREMENTS OF THE CITY.**

5.1 Minimum Lease Term. The term of the lease for any Inclusionary Unit or Restricted Unit shall be not less than one (1) year unless a shorter lease term is authorized or required by MOHCD.

5.2 Preference Programs and Marketing. To the fullest extent permitted by law, the Owner shall comply with the City's Preferences pursuant to San Francisco Administrative Code Chapter 47, as well as MOHCD's Marketing, Preferences and Lottery Procedures Manual, as amended from time to time.

5.4 Nondiscrimination Based on Section 8, Household Size, or Source of Income. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under Section 8 of the Housing Act, or any successor program or similar federal, State or local governmental assistance program. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants and the Owner shall not refuse to rent to any tenant on the basis of household size as long as such household size does not exceed the applicable requirements set forth in the San Francisco Building Code. The Owner shall not collect any additional fees or payments from such a tenant except security deposits or other deposits required of all tenants. The Owner shall not collect security deposits or other deposits from Section 8 certificate or voucher holders in excess of that allowed under the Section 8 program. The Owner shall not discriminate against tenant applicants on the basis of legal source of income (e.g., TANF, Section 8 or SSI), and the Owner shall consider a prospective tenant's previous rent history of at least one year as evidence of the ability to pay the applicable rent (i.e., ability to pay shall be demonstrated if such a tenant can show that the same percentage or more of the tenant's income has been consistently paid on time for rent in the past as will be required to be paid for the rent applicable to the unit to be occupied, provided that such tenant's expenses have not increased materially). Further, Owner shall comply with all notice provisions set forth in the Housing Act prior to terminating any lease to which any Tenant previously certified by the Owner as a qualified Tenant is a party. The Owner

acknowledges that (i) federal notice requirements under the Housing Act are distinct from those under State law or City law and the Owner shall comply with all federal, State and local laws in connection with any such notice requirements, and (ii) compliance with the law of one jurisdiction shall not be deemed compliance with the laws of all jurisdictions.

5.5 Amendment or Waiver by City; Conflicting Provisions. The requirements of Section 4.1 and of this Section 5 hereof may be amended, modified or waived (but not increased or made more onerous), at the City's sole discretion, by written amendment signed by the City and the Owner, or expressly waived by the City in writing.

5.6 Marketing and Tenant Selection Plan. Owner will only market the Restricted Units and Inclusionary Units in accordance with the Marketing Plan approved by the City and agrees to utilize a MOHCD approved form of lease. MOHCD shall be responsible for overseeing and monitoring the marketing of affordable units. The Owner shall contact MOHCD at least eight (8) months prior to the beginning of marketing for any unit in the building. In addition, Owner agrees to comply with the obligations and requirements set forth in the MOHCD Housing Preferences and Lottery Procedures Manual and the Inclusionary Manual, each as amended by MOHCD from time to time.

5.7 Restricted Income Units of Comparable Quality. In general, the Inclusionary Units and Restricted Units shall be of comparable overall construction quality and offer a range of sizes and number of bedrooms comparable to those units which are available to other tenants and shall be evenly distributed throughout the building. For buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, the affordable units may be distributed throughout the lower 2/3 of the building, as measured by the number of floors. The interior features in Inclusionary Units and Restricted Units should be generally the same as those of the Market Rate Units in the principal project, but need not be the same make, model or type of such item as long as they are of good and new quality and are consistent with then-current standards for new housing. The Inclusionary Units and Restricted Units are not required to be the same size as the Market Rate Units. For buildings over 120 feet in height, as measured under the requirements set forth in the Planning Code, the average size of the unit type may be calculated for the lower 2/3 of the building, as measured by the number of floors. All Inclusionary Units and Restricted Units shall be no smaller than the minimum unit sizes set forth by the California Tax Credit Allocation Committee as of May 16, 2017, and no smaller than 300 square feet for studios. The total residential floor area devoted to the Inclusionary Units and Restricted Units shall not be less than the applicable percentage applied to the total residential floor area of the principal project, provided that a 10% variation in floor area is permitted.

6. **ADDITIONAL REQUIREMENTS OF STATE LAW.** In addition to the requirements set forth herein, the Owner hereby agrees that it shall also comply with each of the following requirements, in each case, for the term of this Agreement:

6.1 Tenants Under Section 8 of the Housing Act. The Owner shall accept as tenants, on the same basis as all other prospective tenants, low-income persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing program under

Section 8 of the Housing Act, and shall not permit any selection criteria to be applied to Section 8 certificate or voucher holders that is more burdensome than the criteria applied to all other prospective tenants.

6.2 Availability on Priority Basis. The Restricted Units shall remain available on a priority basis for occupancy at all times by a qualified Tenants or buyers.

6.3 Binding Covenants and Conditions. The covenants and conditions of this Agreement shall be binding upon successors in interest of the Owner.

6.4 Recordation of Agreement. This Agreement shall be recorded in the office of the county recorder of the City and County of San Francisco, California, and shall be recorded in the grantor-grantee index under the name of the Owner as grantor and to the name of the City as grantee.

## 7. INDEMNIFICATION.

The Owner hereby releases the City and its respective officers, members, directors, officials and employees from, and covenants and agrees to indemnify, hold harmless and defend the City and the officers, members, directors, officials, agents and employees of the City (collectively, the “**Indemnified Parties**,” and each an “**Indemnified Party**”) from and against any and all claims, losses, costs, damages, demands, expenses, taxes, suits, judgments, actions and liabilities of whatever nature, joint and several (including, without limitation, costs of investigation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), directly or indirectly: (a) by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project or the execution or amendment of any document relating thereto; (b) arising from any act or omission of the Owner or any of its agents, servants, employees or licensees, in connection with the Project; and (c) arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, or construction of, the Project or any part thereof; provided, however, that this provision shall not require the Owner to indemnify the City for any claims, costs, fees, expenses or liabilities arising solely from the willful misconduct of the City. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the engagement of counsel approved by the Indemnified Party; and the Owner shall assume the payment of all reasonable fees and expenses related thereto (provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all attorneys’ fees and expenses related thereto), with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

Additionally, the Owner also shall pay and discharge and shall indemnify and hold harmless the City from (i) any lien or charge upon payments by the Owner to the City hereunder

and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the City shall give prompt notice to the Owner, and the Owner shall have the sole right and duty to assume, and the Owner will assume, the defense thereof, including the engagement of counsel approved by the Indemnified Party in such party's reasonable discretion, provided that if the Indemnified Party is the City, the selection of counsel rests in the sole discretion of the City Attorney and the Owner shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. If a potential conflict exists between the Owner's defense and the interests of an Indemnified Party, then such Indemnified Party shall have the right to engage separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Owner shall pay the fees and expenses of such separate counsel.

The provisions of this Section 7 shall survive the term of the Agreement, including the termination of this Agreement pursuant to the second paragraph of Section 10 hereof.

The obligations of the Owner under this Section are independent of any other contractual obligation of the Owner to provide indemnity to the Indemnified Parties or otherwise, and the obligation of the Owner to provide indemnity hereunder shall not be interpreted, construed or limited in light of any other separate indemnification obligation of the Owner. The Indemnified Parties shall be entitled simultaneously to seek indemnity under this Section and any other provision under which they are entitled to indemnity.

In addition thereto, the Owner will pay upon demand all of the fees and expenses paid or incurred by the Indemnified Parties in enforcing the provisions hereof.

## **8. MUTUAL OBLIGATIONS**

8.1 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 Approvals.

8.2 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 Approvals, the Inclusionary Program (as applied to the Inclusionary Units) and applicable law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8.3 Effect of Future Changes to Inclusionary Program. The City acknowledges and agrees that, if City adopts changes to the Inclusionary Program after the date this Agreement, nothing in this Agreement shall be construed to limit or prohibit any rights the Owner may have to modify Project requirements with respect to the Inclusionary Units to the extent permitted by such changes to the Inclusionary Program.



## 9. OWNER REPRESENTATIONS AND WARRANTIES.

9.1 Interest of the Owner. The Owner represents that it is the legal and equitable fee owner of the Property, that it has the power and authority to bind all other persons with legal or equitable interest in the Restricted Units and the Inclusionary Units to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Restricted Units and the Inclusionary Units are to be bound by this Agreement. The Owner is duly organized and validly existing in the State of California and in good standing and qualified to do business in the State of California. The Owner has all requisite power and authority to own property and conduct business as presently conducted.

9.2 No Conflict With Other Agreements; No Further Approvals; No Suits. The Owner warrants and represents that it is not a party to any other agreement that would conflict with the Owner's obligations under this Agreement. Neither the Owner's articles of incorporation, 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 the Owner to enter into and perform all of the terms and covenants of this Agreement. 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 the Owner of this Agreement or any of the terms and covenants contained in this Agreement. To the Owner's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting the Owner or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect the Owner's business, operations, or assets or the Owner's ability to perform under this Agreement.

9.3 Priority of Agreement. The Owner 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, other than a Permitted Encumbrance.

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

9.5 No Bankruptcy. The Owner represents and warrants to City that the Owner 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 the Owner's knowledge, no such filing is threatened.

9.6 Nondiscrimination. In the performance of this Agreement, the Owner 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 Owner, 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 Owner. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by the Owner for the purpose of implementing this Agreement.

## 10. AMENDMENT

10.1 Amendment. This Agreement may only be amended with the mutual written consent of the Parties. No amendment of a Project Approval shall require an amendment to this Agreement; provided, if the percentage of Inclusionary Units changes for any reason, the Parties agree to reflect such change in the NSRs recorded against the Property. If there is any conflict between this Agreement and the NSRs (as it relates to the number of Inclusionary Units), the NSRs shall govern.

10.1.1 Amendment Exemptions. No amendment of the 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). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and any amendment to the Project Approval, then the terms of this Agreement shall prevail and any amendment to this Agreement shall be accomplished as set forth in Section 10.1 above.

## 11. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

11.1 Agreement Runs With The Land; Release Upon Transfer or Assignment. The Owner shall notify all persons interested in purchasing the Property of this Agreement before any transfer of the Property. As provided in Section 13.2, this Agreement runs with the land and any successor owner of all or part of the Property (each, a “**Transferee**”, and all references in this Agreement to “Owner” shall mean the Owner and each Transferee during its period of ownership of all or part of the Property) will be bound by all of the terms and conditions of this Agreement. Upon any such transfer, the Owner shall be released from any obligations required to be performed under this Agreement from and after the date of transfer; provided that each Transferee will assume and remain responsible for the obligations, covenants, and restrictions under this Agreement. Following any transfer, a Transferee shall cure any default under this Agreement arising before or after the transfer of the Property. By no later than thirty (30) days after completion of a transfer of the Property, Transferee shall complete and submit to MOHCD an Inclusionary Housing Change of Owner or Agent, attached hereto as Exhibit C, which may be amended from time to time.

11.2 Rights of Owner. The provisions in this Section 11 shall not be deemed to prohibit or otherwise restrict the Owner from (i) granting easements or licenses 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 a leasehold interest 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 other Project Approvals shall be deemed waived by City by reason of the rights given to the Owner pursuant to this Section 11.2.

11.3 Ownership Conversion. Although the Owner initially intends to operate the Project on a rental basis, nothing in this Agreement shall prevent the Owner from later selling all or part of the Project on a condominium basis, 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 any Inclusionary Units, those shall only be sold in accordance with the Procedures Manual and Inclusionary Program. The Owner shall enter into a new Regulatory Agreement prior to the conversion of the Inclusionary Units and the Restricted Units from rental to ownership tenure.

11.3 Owner's Responsibility for Performance. If the Owner transfers all or any part of the Property, the Owner shall continue to be responsible for performing the obligations under this Agreement up to the date of transfer. The City is entitled to enforce each and every such obligation directly against the Transferee following a transfer as if the Transferee were an original signatory to this Agreement with respect to the transferred portion of the Property. The transferor shall remain responsible for the performance of all of its obligations under the Agreement prior to the date of transfer, and shall remain liable to the City for any failure to perform such obligations prior to the date of the transfer.

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

(a) 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 of 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 Inclusionary 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. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance, or other action in lieu thereof, or other remedial action, obtains title to the Property or a portion thereof from or through the Mortgagee or any other purchaser at a foreclosure sale other than the Mortgagee itself. 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 Owner under this Agreement.

(b) Subject to the provisions of the first sentence of Section 11.4.1, 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 Owner 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 Approvals and this Agreement.

(c) If City receives a written notice from a Mortgagee or from the Owner requesting a copy of any Notice of Default delivered to the Owner and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to the Owner, any Notice of Default delivered to the Owner 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 set forth in Section 9.8 of this Agreement.

(d) A Mortgagee shall have the right, at its option, to cure any default by the Owner under this Agreement within the same time period as the Owner has to remedy or cause to be remedied any default, plus an additional period of (i) thirty (30) calendar days to cure a default by the Owner 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 and thereafter to pursue such cure diligently to completion; provided that if the Mortgagee cannot cure a non-monetary default 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 commence to cure such non-monetary default. Mortgagee may add the cost of such cure to the indebtedness or other obligation evidenced by its mortgage. Nothing in this Section or elsewhere in this Agreement shall be deemed to require a Mortgagee, either before or after foreclosure or action in lieu thereof or other remedial measure, to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect improvements or construction already made).

(e) 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 11.4 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 11.4, 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 the Owner's or any Mortgagee's rights under this Section 11.4. For purposes of this Section 11.4, 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 setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority.

#### 11.5 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.

## 12. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

12.1 Enforcement. The only parties to this Agreement are the City and the Owner (and, as set forth in Sections 11.1 and 11.2, each Transferee). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

12.2 Default. Any material breach by the Owner of any covenant, agreement, provision or warranty contained in this Agreement that remains uncured upon the expiration of any applicable notice and cure periods will constitute an “**Event of Default**,” including the following:

(a) Any lien is recorded against all or any part of the Property without the City’s prior written consent, that is prior to this Agreement, and the lien is not removed from title or otherwise remedied to the City’s satisfaction within thirty (30) days after the Owner’s receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, the Owner will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* the Owner commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(b) The Owner fails to perform or observe any other term, covenant or agreement contained in this Agreement, and the failure continues for thirty (30) days after the Owner’s receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, the Owner will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* the Owner commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Any representation or warranty made by the Owner in this Agreement proves to have been incorrect in any material respect when made; or

(d) The Owner is dissolved, liquidated or merged with or into any other entity; or, if the Owner is a corporation, partnership, limited liability company or trust, the Owner ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if the Owner is an individual, the Owner dies or becomes incapacitated; or all or substantially all of the assets of the Owner are sold or otherwise transferred; or

(e) Without the City’s prior written consent, the Owner assigns or attempts to assign any rights or interest under this Agreement, whether voluntarily or involuntarily; or

(f) The Owner is in default of its obligations with respect to any obligation relating to the Property or the Project, and the default remains uncured following the expiration of any applicable cure periods; or

12.4 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.

12.5 Remedies. During the pendency of an uncured event of default, the City may exercise any right or remedy available under this Agreement or at law or in equity. All of the City's rights and remedies following an event of default are cumulative, including:

12.5.1 The City may perform any of the Owner's obligations in any manner, in the City's reasonable discretion, and seek reimbursement from the Owner.

12.5.2 The City, either directly or through an agent or court-appointed receiver, may take possession of the Restricted Units and the Inclusionary Units and enter into contracts and take any other action the City deems appropriate to satisfy the Owner's obligations set forth in this Agreement.

12.5.3 The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct the Owner's noncompliance with this Agreement.

12.5.4 The Owner has determined that it may be extremely difficult and impractical to fix or determine the actual damages suffered by the City as a result of a Default by Owner for failure to comply with the provisions of this Agreement as it applies to the Restricted Units or Planning Code Section 415 as it applies to the Inclusionary Units; accordingly, equitable remedies and remedies at law such as specific performance may be particularly appropriate for enforcement of this Agreement; however both Parties acknowledge and agree that said remedies may not make City whole or fulfill the commitments and obligations made by the Owner under this Agreement. Consequently, the Owner agrees that the City shall have the right to recover liquidated damages for the Owner's failure to comply with the provisions of this Agreement and the Planning Code with respect to the restrictions placed on the Inclusionary and Restricted Units. Said liquidated damages shall be calculated in an amount that captures the actual costs incurred by City in providing a replacement unit for each unit the Owner fails to provide under this Agreement, or an amount equal to the Affordable Housing Fee set forth in Planning Code Section 415.5 and in the Inclusionary Housing Program Fee Schedule prepared annually by MOHCD for each unit the Owner fails to provide under this Agreement, whichever is greater. In addition, City shall have the right to recover reasonable attorneys' fees and costs, administrative costs and the right to administrative penalties, as well as any other remedies available under state, federal or local law.

In addition, the Owner acknowledges and agrees that the costs incurred by the City for monitoring the Restricted Units and the Inclusionary Units are high and said units that are subject to but not in compliance with this Agreement and the applicable provisions of the Planning Code drastically limit housing opportunities for eligible households and reduces the value of the fees waived and concessions provided in this Agreement. Accordingly, the Owner agrees to pay to the City for any Restricted Unit or Inclusionary Unit found by the City to not be in compliance with this Agreement or the Planning Code all amounts, monies or funds collected by the Owner or Owner's tenant in violation of the applicable affordability restrictions.

12.5.5 The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from the Owner are past due. The City shall have the right to withhold a final certificate of occupancy for the Project until all of the provisions of Section 415 of the Planning Code, including the Procedures Manual, are met by the Owner.

12.5.6 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

12.5.7 If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney'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.

### 13. MISCELLANEOUS PROVISIONS

13.1 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.

13.2 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. 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.

13.3 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.

13.4 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 the Owner. 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 any of the Project Approvals 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.

13.5 Project Is a Private Undertaking; No Joint Venture or Partnership.

13.5.1 The Project proposed to be undertaken by the Owner on the Property is a private development. The City has no interest in, responsibility for, or duty to third persons concerning the Project or the Property. The Owner shall exercise full dominion and control over the Property, subject only to the limitations and obligations of the Owner contained in this Agreement or in the Project Approvals and applicable law.

13.5.2 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 Owner. Neither Party is acting as the agent of the other Party in any respect hereunder. The Owner is not a state or governmental actor with respect to any activity conducted by the Owner hereunder.

13.6 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.

13.7 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.

13.8 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:**

Rich Hillis  
Director of Planning  
San Francisco Planning Department  
1650 Mission Street  
San Francisco, CA 94103

with a copy to:

David Chiu, Esq.  
City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Real Estate/Finance Team  
Re: **555-585 BRYANT STREET** Density Bonus Regulatory Agreement

Eric Shaw  
Mayor's Office of Housing and Community Development  
1 Van Ness Ave. #5  
San Francisco, CA 94103  
Attn: Homeownership and Below Market Rate Housing Programs  
Re: **555-585 BRYANT STREET** Density Bonus Regulatory Agreement

**To Owner:**

Michael Cohen  
Authorized Agent  
Bryant Property, LLC  
201 Spear St, Suite 1650  
San Francisco, CA 94105

With a copy to:

John Kevlin  
Reuben, Junius, Rose  
One Bush Street, Suite 600  
San Francisco, CA 94104

13.9 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.

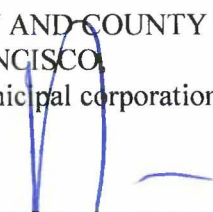
13.10 Effective Date. This Agreement will become effective on the date that the last Party duly executes and delivers this Agreement. This Agreement shall remain in effect for the Life of the Project.



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

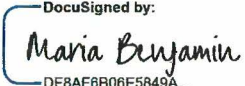
By:   
Rich Hillis  
Director of Planning

[SIGNATURE ABOVE MUST BE NOTARIZED]

Approved as to form:  
David Chiu, City Attorney

By:  7/27/2022  
7C608639D022490...  
Deputy City Attorney Keith Nagayama

Approved:

By:  7/29/2022  
DF8AF8B06E5849A...  
Maria Benjamin,  
Deputy Director, MOHCD

[SIGNATURES CONTINUE BELOW]

# ACKNOWLEDGMENT

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

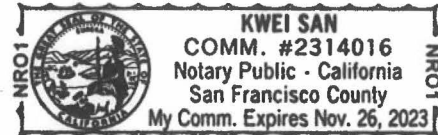
State of California  
County of San Francisco )

On August 9th, 2022 before me, Kwei San, Notary Public  
(insert name and title of the officer)

personally appeared -----Rich Hillis-----   
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.



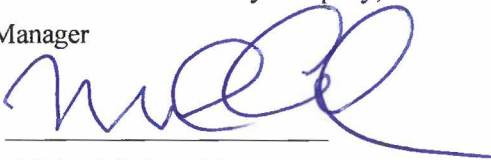
Signature Kwei San (Seal)

**OWNER**

BRYANT PROPERTY, LLC,  
a Delaware limited liability company

By: StradaCal I, LLC,  
a Delaware limited liability company,  
its sole Member

By: Strada Cal I Manager, LLC,  
a Delaware limited liability company,  
its Manager

By:   
Michael Cohen, Manager

[SIGNATURE ABOVE MUST BE NOTARIZED]

ACKNOWLEDGMENT

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

State of California County of SAN FRANCISCO )

On Sept. 21, 2022 before me, RHONDA MCRAE, NOTARY PUBLIC  
(insert name and title of the officer)

personally appeared MICHAEL COHEN,  
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 Rhonda McRae (Seal)



**EXHIBIT A**

**Legal Description of Property**

**555 Bryant Street, San Francisco, CA**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON 125 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF ZOE STREET; THENCE SOUTHWESTERLY AND ALONG SAID LINE OF BRYANT STREET 50 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 15 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF WELSH STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY AND ALONG SAID LINE OF WELSH STREET 65 FEET THENCE A RIGHT ANGLE NORTHWESTERLY 160 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA LOTS NOS. 163

AND 169. APN: LOT 040, BLOCK 3776

**565, 575 and 585 Bryant Street; 48, 50 and 56 Welsh Street, San Francisco, CA**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON 110 FEET NORTHEASTERLY FROM A NORTHEASTERLY LINE OF 4TH STREET; RUNNING THENCE NORTHEASTERLY AND ALONG SAID LINE OF BRYANT STREET 80 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 20 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET TO THE NORTHWESTERLY LINE OF WELSH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF WELSH STREET 100 FEET; THENCE AT A RIGHT NORTHWESTERLY 160 FEET TO THE POINT OF BEGINNING.

BEING A PART OF 100 VARA BLOCK NO. 367.

APN: LOTS 034 AND 044, BLOCK 3776

PARCEL II:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF BRYANT STREET, DISTANT THEREON 190 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 4TH STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF BRYANT STREET 75 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 75 FEET; THENCE AT RIGHT



ANGLE NORTHWESTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 367.

APN: LOTS 038 AND 039, BLOCK 3776.

PARCEL III:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF WALSH STREET, DISTANT  
THEREON 210  
FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF 4TH STREET; RUNNING THENCE  
NORTHEASTERLY AND ALONG SAID LINE OF WELSH STREET 40 FEET; THENCE AT A RIGHT  
ANGLE  
NORTHWESTERLY 80 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 40 FEET; THENCE  
AT A  
RIGHT ANGLE SOUTHEASTERLY 80 FEET TO THE POINT OF BEGINNING.

BEING PART OF 100 VARA LOT NO. 169 IN BLOCK NO. 367.

APN: LOTS 042 AND 043, BLOCK 3776

**EXHIBIT B**

**PROJECT DESCRIPTION AND DEPICTION OF RESTRICTED UNITS**

B-1 Production Schedule, Description/Depiction  
of Restricted Units

555-585 BRYANT ST

## **PROJECT DESCRIPTION**

- The Project at 555-585 Bryant St (BLOCK: 3776; LOTS: 34, 38, 39, 40, 42, 43, 44) is a ~0.75-acre, 501-unit multifamily development comprised of a single 16-story mid-block, 160-ft high-rise located in San Francisco's Central SoMa district. The project site is bound by Bryant St to the north and Welsh St to the south.

### AFFORDABLE UNIT DESIGNATION

Planning Code Section 415 requires that the Inclusionary Units (including the Restricted Units) be recorded on a reduced set of plans and attached to a Notice of Special Restrictions. The units below have been designated as the Inclusionary Units in the project. In the event that there is conflict between the unit designation below and the unit designation in the Notice of Special Restrictions (NSR), then the NSR shall prevail.

Unit # 100% DD	Unit Type (100% DD)	Bedrooms	Bathrooms	SF	AMI
125	TH2	1	1	615	80% AMI
211	A1.1	1	1	695	50% AMI
215	B3	2	2	885	50% AMI
217	A6	1	1	530	50% AMI
235	B6.2	2	1	795	50% AMI
231	B2.0	2	2	865	50% AMI
223	B7.2	2	2	910	80% AMI
306	S3	0	1	580	80% AMI
301	B3	2	2	885	50% AMI
305	A1.1	1	1	695	50% AMI
309	A1.0	1	1	725	50% AMI
330	A4	1	1	600	50% AMI
337	S1.1	0	1	445	50% AMI
333	B1.3	2	2	885	50% AMI
327	B2.0	2	2	865	50% AMI
402	B4	2	1	815	50% AMI
403	A1.0	1	1	725	50% AMI
407	A1.0	1	1	725	50% AMI
412	A2.0	1	1	565	50% AMI
436	S1.0	0	1	420	50% AMI
431	B2.1	2	2	850	50% AMI
425	B1.0	2	2	910	50% AMI
426	A2.1	1	1	515	80% AMI
501	B3	2	2	885	50% AMI
505	A1.1	1	1	695	50% AMI
511	A1.1	1	1	695	50% AMI
530	A5	1	1	550	50% AMI
534	S1.0	0	1	420	50% AMI
537	S1.1	0	1	445	110% AMI
533	B1.0	2	2	910	80% AMI
527	B2.1	2	2	850	50% AMI
604	B2.0	2	2	865	50% AMI
615	B3	2	2	885	110% AMI

B-3      Production Schedule, Description/Depiction  
of Restricted Units

555-585 BRYANT ST

636	S1.0	0	1	420	80% AMI
635	B6.0	2	1	815	80% AMI
631	B2.1	2	2	850	50% AMI
625	B1.0	2	2	910	80% AMI
622	B8	2	1	775	50% AMI
620	A7	1	1	610	50% AMI
702	B4	2	1	815	110% AMI
705	A1.1	1	1	695	50% AMI
714	A2.0	1	1	565	50% AMI
717	A6	1	1	530	110% AMI
732	S1.0	0	1	420	110% AMI
733	B1.0	2	2	910	50% AMI
727	B2.1	2	2	850	50% AMI
812	A2.0	1	1	565	50% AMI
821	A4	1	1	600	50% AMI
834	S1.0	0	1	420	50% AMI
831	B2.1	2	2	850	50% AMI
826	A2.1	1	1	515	80% AMI
818	S5	0	1	510	50% AMI
904	B2.0	2	2	865	80% AMI
915	B3	2	2	885	110% AMI
917	A6	1	1	530	110% AMI
932	S1.0	0	1	420	80% AMI
936	S1.0	0	1	420	50% AMI
924	A2.0	1	1	565	50% AMI
928	S2	0	1	445	50% AMI
1016	B4	2	1	815	80% AMI
1012	A2.0	1	1	565	50% AMI
1030	A5	1	1	550	50% AMI
1034	S1.0	0	1	420	80% AMI
1035	B6.0	2	1	815	110% AMI
1020	A7	1	1	610	50% AMI
1115	B3	2	2	885	110% AMI
1110	A3	1	1	580	50% AMI
1121	A4	1	1	600	50% AMI
1137	S1.1	0	1	445	110% AMI
1122	B8	2	1	775	110% AMI
1126	A2.1	1	1	515	80% AMI
1118	S5	0	1	510	110% AMI
1230	A5	1	1	550	50% AMI
1220	A7	1	1	610	110% AMI

B-4 Production Schedule, Description/Depiction  
of Restricted Units

555-585 BRYANT ST



**[INSERT FLOOR PLANS FROM UNIT DESIGNATION**

**EXHIBIT C**

**Inclusionary Housing Change of Owner or Agent Request for Rental Below Market Rate (BMR) Units**

Please complete the following information in the case of projects with BMR rental units that have changed ownership or agents. This form applies to affordable rental units produced through the Inclusionary Affordable Housing Program, other sections of the San Francisco Planning Code, or through agreements with the Office of Community Investment and Infrastructure (OCII).

*Please submit this form both in Word form and as a signed PDF.*

**I. GENERAL BUILDING INFORMATION**

Today's Date	
Name of Building	
Address	
City/State/Zip	
MOHCD Project ID (MOHCD can provide)	

**II. PROJECT AND BUILDING REPRESENTATION**

***Building Owner Information***

Name of Building Owner	
Building Owner Contact Person	
Building Owner Address (City/State/Zip)	
Building Owner Phone	
Building Owner Email	
What date did the owner assume ownership of the building?	

**Property Management Information**

*Property management firms must have experience in marketing to and working with low- and moderate income renters; language capacity in all City official languages (Spanish, Chinese, Filipino, English); cultural sensitivity and demonstrated awareness of the needs of San Francisco's diverse populations; and have experience with Microsoft Office Suite and similar technology.*

Name of Property Management Firm	
Property Management Contact Person	
Property Management Address (City/State/Zip)	
Property Management Phone	
Property Management Email	
Date of Hire of Property Management Firm	

**III. BUILDING COMPOSITION**

Please list the information below for all BMR units owned by this building owner:

	<b>Unit Number</b>	<b>Bedroom Count</b>	<b>Square Feet</b>	<b>Floor #</b>
1	<i>Example: 1A</i>	<i>1 Bedroom</i>	<i>632</i>	<i>1</i>
2	<i>Example: 1B</i>	<i>0 Bedroom</i>	<i>432</i>	<i>6</i>
3				
4				
5				
6				
7				
8				
9				
10				

Please submit this form to:  
 Sonia Delgado-Schaumberg  
 Mayor's Office of Housing and Community Development  
 1 South Van Ness Avenue, 5<sup>th</sup> Floor  
 San Francisco, CA 94103  
 By email: [sonia.delgado-schaumberg@sfgov.org](mailto:sonia.delgado-schaumberg@sfgov.org)  
 Phone: (415) 701-5540

**IV. CERTIFICATION**

As the owner of the BMR units listed in this document, I certify that the information in this document is correct and true to my knowledge and that I have read and reviewed the City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual and the MOHCD Housing Preferences and Lottery Procedures Manual. This information is also available at <http://sfmohcd.org/pricing-and-marketing-inclusionary-units>.

Building Owner (sign) \_\_\_\_\_

Building Owner (print) \_\_\_\_\_

Company (print) \_\_\_\_\_

Date (print) \_\_\_\_\_

## EXHIBIT D

### CITY AND COUNTY OF SAN FRANCISCO MANDATORY CONTRACTING PROVISIONS

The following provisions shall apply to this Regulatory Agreement as if set forth in the body thereof. Capitalized terms used but not defined in this Exhibit shall have the meanings given in this Regulatory Agreement (referred to in this Exhibit D as “Agreement”).

**1. Conflict of Interest.** Through its execution of this Agreement, Owner acknowledges that it is familiar with the provision of Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes 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.

**2. Proprietary or Confidential Information of City and Owner.** Owner and City understand and agree that, in the performance of the work or services under this Agreement or in contemplation thereof, each party may have access to private or confidential information which may be owned or controlled by the other party and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging.

Owner agrees that all information disclosed by City to Owner shall be held in confidence and used only in performance of the Agreement. Owner shall exercise the same standard of care to protect such information as a reasonably prudent Owner would use to protect its own proprietary data.

At the request of Owner, the City, to the extent permitted by law, shall keep confidential any items that have been identified by Owner to City in writing as confidential. However, such confidentiality cannot be assured and City will not be liable for the public disclosure of any such items.

**3. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Owner acknowledges and agrees that he or she has read and understood this section.

**4. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges Owner not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.



**5. Compliance with Americans with Disabilities Act.** Owner acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an Owner, must be accessible to the disabled public. Owner shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Owner agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Owner, its employees, agents or assigns will constitute a material breach of this Agreement.

**6. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, Owners' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

**7. Limitations on Contributions.** Through execution of this Agreement, Owner acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Owner acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Owner further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Owner's board of directors; Owner's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Owner; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Owner. Additionally, Owner acknowledges that Owner must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Owner further agrees to provide to City the names of each person, entity or committee described above.

**8. Preservative-treated Wood Containing Arsenic.** Owner may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term

“preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Owner may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Owner from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**9. Compliance with Laws.** Owner shall keep itself fully informed of the City’s Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.