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Government Code Section 27383

Recording requested by and  
when recorded mail to:  
City and County of San Francisco  
Mayor's Office of Housing  
and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Agnes Defiesta  
APN#: 1797/007  
Address: 1360 43<sup>rd</sup> Avenue

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

**DECLARATION OF RESTRICTIONS AND  
AFFORDABLE HOUSING COVENANTS**  
1360 43<sup>rd</sup> Avenue  
(Low Income)

**THIS DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING COVENANTS** (this "Declaration") is made as of \_\_\_\_\_, 2022, by **MP FRANCIS SCOTT KEY 2 ASSOCIATES, L.P.**, a California Limited Partnership ("Borrower"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (the "City").

**RECITALS**

A. The Borrower and the San Francisco United School District ("District") have entered that certain Ground Lease for the purpose of developing and constructing affordable housing for Educators and District Employees (each as defined in the Ground Lease). Under the Ground Lease, Borrower has acquired a leasehold interest in the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land and the leasehold interest, the "Property"). The City and District have concurrently entered into that certain Operations Memorandum of Understanding ("MOHCD MOU"). Both the Ground Lease and MOHCD MOU, among other things, establish various tenancy occupancy (initial and continuing) restrictions, including without limitation a continuous employment requirement for Educators and District Employees (each as defined in the Ground Lease).

B. The City is making a loan (the "Loan") to Borrower of Affordable Housing Inclusionary Funds to finance costs associated with the development of the Property as low-income affordable housing (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and Borrower dated as of the date of this Declaration, as it may be amended from time to time (the "Agreement").

The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

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

**AGREEMENT**

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

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

1.1. With the exception of one unrestricted Unit reserved for the manager of the Project, Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically ("Median Income" is defined in Section 1.1 of the Agreement and is determined by MOHCD):

<b>Unit Size</b>	<b>No. of Units</b>	<b>Maximum MOHCD Income Level</b>
0BR	2	40% of Median Income
1BR	2	40% of Median Income
2BR	2	40% of Median Income
3BR	2	40% of Median Income
0BR	4	50% of Median Income
1BR	4	50% of Median Income
2BR	2	50% of Median Income
3BR	2	50% of Median Income
2BR	9	60% of Median Income
3BR	5	60% of Median Income
2BR	1	Manager's Unit

1.2. All Units will be made available to Qualified Tenants; provided, however, that priority will be given to Educators (first priority) and District Employees (second priority) ("Educator and District Employee Priority") as defined and required under the Ground Lease and MOHCD MOU, and only then to other Qualified Tenants. Educator and District Employee Priority will apply during lease-up and to any post-lease up lotteries, as required by the Ground Lease and MOHCD

MOU with which Borrower agrees to comply with in good faith. In addition, Qualified Tenants will be subject to, and Borrower will implement, the “Continuous Employment Requirement” as defined in **Exhibit B** Principles for Employment-Based Housing, attached hereto and incorporated herein by reference; provided, however, such Continuous Employment Requirement will not apply to Educators or District Employees who are eligible for retirement and terminate their employment solely for retirement with good standing.

- 1.3. The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed the greater of:
  - i. thirty percent (30%) of the applicable maximum income level, adjusted for household size; or
  - ii. the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

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

- 1.4. To the extent the Borrower needs to repay the full outstanding loan balance by the Maturity Date, the rent restrictions above may be altered, but only to the extent necessary for the Project to refinance and repay the full outstanding loan balance by the Maturity Date, as determined in City’s reasonable discretion. One hundred percent (100%) of the Units must at all times be occupied by Qualified Households whose adjusted income does not exceed sixty percent (60%) of area median income as determined by TCAC, and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of sixty percent (60%) of area median income as determined by TCAC (b) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of area median income as determined by TCAC and shall be subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. In such event, Borrower will provide the City with a written request no less than one year prior to the Maturity Date, and the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower’s request to meet. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.
- 1.5. For the avoidance of any doubt, notwithstanding any repayment of the Loan or otherwise satisfied or if the Deed of Trust is reconveyed, Borrower will comply with the applicable terms of the Agreement as if fully set forth herein, including, without limitation, Article 6 (Marketing), Article 7 (Affordability and Other Leasing Restrictions), Article 8 (Maintenance and Management of the Project), Article 9 (Governmental Approvals and Requirements), Article 10 (Project Monitoring, Reports, Books and Records), Article 11 (Use of Income From Operations), Article 12 (Required Reserves), Article 16 (Transfers), Article 17

(Insurance and Bonds; Indemnity), Article 18 (Hazardous Substances), and Article 19 (Default).

2. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Declaration and the Agreement. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold interest and bind successors and assigns of Borrower and any non-borrower owner and lessee of the Property and will pass to and be binding upon Borrower's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions in this Declaration, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.
  
3. If Borrower fails to (i) comply with the Regulatory Obligations and this Declaration to the City's satisfaction, in its sole discretion, and (ii) cure such default as set forth in **Section 19.1(c)** of the Agreement, the City will have the right to pursue any available remedy at equity or in law, including as set forth in **Section 19.2** of the Agreement, to enforce this Declaration. Notwithstanding the foregoing, Borrower's limited partner shall have the right to cure any default hereunder, and the City shall accept or reject such cure on the same terms as if rendered by the Borrower. The City shall provide notice of any default hereunder to Borrower's limited partner pursuant to Section 21.3 of the Agreement. During the Compliance Term, the City may rely on the Deed of Trust and/or this Declaration, in the City's discretion, to enforce any of the City's rights under the City Documents. Borrower will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration and Regulatory Obligations, including, without limitation, the City's attorneys' fees and costs.

**SIGNATURES ON THE NEXT PAGE**

Borrower has executed this Declaration as of the date first written above.

**"BORROWER"**

MP FRANCIS SCOTT KEY 2 ASSOCIATES, L.P.,  
a California limited partnership

By: MP Francis Scott Key 2 LLC,  
a California limited liability company  
Its General Partner

By: Mid-Peninsula Hermanas, Inc.,  
a California nonprofit public benefit corporation,  
its sole member/manager

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

[ALL SIGNATURES MUST BE NOTARIZED.]

**EXHIBIT A**

(Legal Description of the Property)

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

Parcel \_ as shown on the map of Parcel Map \_\_\_ filed \_\_\_\_\_, 2022, Book \_\_\_ of Parcel Maps, Pages \_\_\_ and \_\_\_\_\_, San Francisco County Records.

The subject property consists of a single rectangular shaped assessor's parcel located mid-block on 42<sup>nd</sup> Avenue between Judah and Irving Streets. The site has approximately 250 feet of frontage along 42<sup>nd</sup> and 43<sup>rd</sup> Avenues and a depth between the streets of 240 feet. The total site area is approximately 60,000 square feet, based on public records.

Portion of Assessor's Lot 007; Block 1797

Street Address: 1360 43<sup>rd</sup> Avenue

**Exhibit B**  
**Principles for Employment-Based Housing**

All marketing information, including but not limited to the Resident Selection Criteria and Marketing Plan, and leases, for Educators and District Employees shall include language to the effective of, thereby ensuring compliance with the below central principles, and which the Borrower agrees to enforce in good faith:

1. Borrower and Educator and District Employee tenants shall acknowledge that the Project is to provide housing for District Educators and Employees who are currently employed by the District at commencement of his or her residency at the Project.
2. Educator and District Employee (or his or her household's) eligibility for a unit in the Project is dependent upon the Educator and District Employee tenant being a current District Educator or Employee at the time of application, commencement of his or her residency, and on each annual recertification, except when tenant is a Retired Educator and District Employee as defined below (“**Continuous Employment Requirement**”). A “Retired Educator and District Employee” means any Educator or District Employee who, after entering into a lease for a unit at the Property, has separated from District with the reason of retirement from work, including submitting a formal retirement request which was approved by the District. Compliance with the Continuous Employment Requirement is a substantial and material term of each lease for an Educator and District Employee tenant.
3. Borrower and Educator and District Employee tenants shall agree, except as may be provided by any applicable federal or state or local law, that if the Educator and District Employee tenant is no longer in compliance with the Continuous Employment Requirement, that the Educator and District Employee tenant (and his or her household if any) will vacate their unit within the remaining term of the existing lease or six months after the Educator and District Employee is no longer in compliance with the Continuous Employment Requirement, whichever is greater. The failure of any Educator and District Employee tenant (and his or her household, if any) to vacate their unit in accordance with such terms shall be “good cause” for landlord to terminate the tenancy of the Educator and District Employee tenant (and his or her household, if any) through eviction or other legal procedures. The Borrower, District and MOHCD agree that failure by an Educator or District Employee tenant to comply with the Continuous Employment Requirement would be considered a default of a substantial and material term under their lease, provided that the Borrower, District and MOHCD further acknowledge that a court order may be required to complete an eviction of a defaulting tenant.
4. Borrower and Educator and District Employee tenants shall acknowledge and agree that (a) nothing in Educator and District Employee tenant's lease

or occupancy of a Project unit will affect, impact, alter, or amend their employment relationship if any with the District and (b) that Educator and District Employee tenant's lease or occupancy of a Project unit will not act as any representation or promise to the Educator and District Employee tenant or otherwise confer any rights or guarantees on the Educator and District Employee tenant regarding their employment with the District, and (c) that Educator and District Employee tenant's lease or occupancy of a Project unit will not restrict, impair, or impact District's ability/authority to manage/terminate employment to the extent otherwise permitted by law or any other applicable agreements.

5. The Continuous Employment Requirement will not apply to any tenant who, on initial occupancy of a residential unit, is not a District Educator or Employee as permitted by the Ground Leases.
6. Any changes to these principles are subject to District review and approval.
7. The provisions of this Exhibit B will survive any repayment of the Loan or reconveyance of the Deed of Trust for the entire Compliance Term or term of the Ground Lease, whichever is longer, except as otherwise expressly agreed in writing by District.