

**GRANT AGREEMENT FOR THE PRESERVATION OF AFFORDABLE HOUSING
UNITS AT BAYSIDE VILLAGE APARTMENTS**

**BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND BAYSIDE VILLAGE ASSOCIATES, L.P.**

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UNITS AT BAYSIDE VILLAGE APARTMENTS
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND BAYSIDE VILLAGE ASSOCIATES, L.P., RELATIVE TO THE DEVELOPMENT
KNOWN AS
THE BAYSIDE VILLAGE APARTMENTS**

This GRANT AGREEMENT FOR THE PRESERVATION OF AFFORDABLE HOUSING UNITS AT BAYSIDE VILLAGE APARTMENTS (this "**Agreement**"), dated as of December 1, 2016, is made by and between the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "**City**") acting by and through its Mayor's Office of Housing and Community Development ("**MOHCD**") and Bayside Village Associates, L.P., a California limited partnership ("**Bayside**"), in connection with the Bayside Village Apartments, located at 3 Bayside Village Place, San Francisco, California ("**Bayside Project**"). All parties to this Agreement shall be referred to as the "**Parties**".

RECITALS

This Agreement is made with reference to the following facts:

A. On December 1, 1986, the Redevelopment Agency of the City and County of San Francisco (the "**Agency**") issued a series of bonds in the amount of \$50,000,000 as part of the financing for the Bayside Project, and on April 28, 1988, the Agency issued another series of bonds in the amount of \$30,000,000 as part of the financing for the Bayside Project (collectively, the "**Bonds**"), which constructed 862 dwelling units, including parking, on Assessor's Block 3773, Lots 100A, 200A and 300A, in the Rincon Point/South Beach Redevelopment Project Area (the "**Bayside Project Site**").

B. In connection with the issuance of the Bonds, the Agency, Owner and the Bond trustees entered into (i) that certain Regulatory Agreement and Declaration of Restrictive Covenants, relating to the \$50,000,000 Variable Rate Demand Multifamily Housing Revenue Bonds, 1985 Issue D, Series A, dated as of December 1, 1986, as amended by that certain First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants, dated November 1, 2004; and (ii) that certain Regulatory Agreement and Declaration of Restrictive Covenants, relating to the \$30,000,000 Variable Rate Demand Multifamily Housing Revenue Bonds, 1985 Issue D, Series B, dated as of April 28, 1988, as amended by that certain First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants, dated November 1, 2004. The original Regulatory Agreements, together with the amendments, are hereinafter referred to collectively, as the "**Regulatory Agreements**".

C. Use of the proceeds of the bonds described above required Owner to comply with numerous affordability obligations, as set forth in the Regulatory Agreements. Specifically, the Regulatory Agreements required that twenty percent (20%) or more of the units, equivalent to 172 units at the Bayside Project, must be made available to occupants of low or moderate income

until the occurrence of several events, all ending as of December 1, 2016. Accordingly, effective December 1, 2016, the Regulatory Agreements terminate and expire, and, therefore, will no longer impose any affordability or below market rate obligations on the Bayside Project.

D. Similarly, the Owner Participation Agreement dated December 17, 1985, as amended by that certain First Amendment to Owner Participation Agreement, dated March 11, 1986 and by that certain Second Amendment to Owner Participation Agreement, dated December 29, 1986 (collectively, the "**Owner Participation Agreement**"), required that twenty percent (20%) of dwelling units be offered to low income and moderate income households for the longer of (i) ten (10) years or (ii) as long as mortgage revenue bond financing is in place. The Parties have agreed that because more than 10 years have elapsed since those restrictions took effect and because mortgage revenue bond financing ended when the bonds were redeemed on December 1, 2009, the Owner Participation Agreement has expired and no longer imposes any affordability or below market rate obligations on the Bayside Project. Thus, unless otherwise agreed to in this Agreement or elsewhere, Owner is not currently required to provide below market rate housing or affordability protections at the Bayside Project under the Owner Participation Agreement. Nevertheless, because Bayside has elected to continue to operate the Bayside Project on a rental basis, under the Owner Participation Agreement the City has the right to rent up to twenty percent (20%) of the units at market rent, and cause the units to remain at below market rental rates by providing a subsidy to Bayside in the amount of the difference between the below market rental rate and the market rate rent for each selected unit.

E. It is the intent of the Parties that all acts referred to in this Agreement that are subject to CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code, the Enacting Resolution and all other applicable laws as of the Effective Date, as defined in below in Section 1.3 of this Agreement shall be accomplished in a way as to fully comply with these applicable laws. Except as expressly set forth herein, this Agreement does not limit the Bayside's obligation to comply with all applicable laws in connection with the operation of the Bayside Project.

F. On [_____], 2016, the Board adopted Resolution No. [___]-16, approving this Agreement and authorizing the Director of MOHCD to execute this Agreement on behalf of the City (the "**Enacting Resolution**"). The Enacting Resolution took effect on [_____], 2016.

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

AGREEMENT

1. GENERAL PROVISIONS

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

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

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

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

1.2.3 “**AMI**” means the Unadjusted Area Median Income for the HUD Metro Area Market Rent Area that contains San Francisco, as published by the San Francisco Mayor’s Office of Housing and Community Development, effective March 28, 2016, as the same may be updated from time to time, but without regard to any future reductions in such median income levels.

1.2.4 “**Amortized Amount**” shall be calculated as follows: the Annual Value as calculated over the Amortization Period x the number of Permanently Affordable BMR Units. A sample calculation of the Amortized Amount reflecting an Amortization Period of ten (10) years is attached to this Agreement for illustrative purposes only at Exhibit E.

1.2.5 “**Amortization Period**” is the number of calendar years or partial calendar years that have elapsed, as of the Determination Date, since the Funding Date. Any partial month shall be prorated on the basis of a thirty (30) day month.

1.2.6 “**Annual Value**” shall mean, as of the Effective Date, (i) for each Permanently Affordable BMR Unit that is a studio unit the amount of \$3,403, (ii) for each Permanently Affordable BMR Unit that is a one bedroom unit the amount of \$5,273, and (iii) for each Permanently Affordable BMR Unit that is a two bedroom unit the amount of \$14,268. Starting [December 1, 2017], the Annual Value for each unit type shall be increased by two and one-half percent (2.50%) each calendar year, effective [December 1] of each calendar year.

1.2.7 “**Bayside Project**” shall have the same meaning set forth in the opening paragraph of this Agreement.

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

1.2.9 “**BMR Units**” shall mean the 172 below market rate units in the Bayside Project.

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

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

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

1.2.13 “**City Parties**” shall mean the City, MOHCD, and all other City Agencies.

1.2.14 “**Default Interest**” shall have the meaning set forth in Section 3.5(a) of this Agreement.

1.2.15 “**Determination Date**” shall mean the date on which the Grant Balance is paid.

1.2.16 “**EofD Date**” shall have the meaning set forth in Section 3.5(a) of this Agreement.

1.2.17 “**Enacting Resolution**” shall have the meaning set forth in Recital F of this Agreement. The Enacting Resolution is not subject to Section 14.102 of the San Francisco City Charter.

1.2.18 “**Effective Date**” shall have the meaning set forth in Section 1.3 of this Agreement.

1.2.19 “**Event of Default**” shall have the meaning set forth in Section 6.2 of this Agreement.

1.2.20 “**Existing BMR Tenants**” means those tenants lawfully occupying a BMR Unit at the time of execution of this Agreement.

1.2.21 “**Funding Date**” shall mean the later of (i) December 1, 2016 or (ii) the date that is ten (10) business days after the date on which the Board of Supervisors has authorized the City to enter into this Agreement, but in no event shall the Funding Date be later than February 1, 2017.

1.2.22 “**Grant Amount**” or “**Grant**” means the amount of Twenty-One Million Six Hundred and Eighty Thousand and No/100 Dollars (\$21,680,000.00).

1.2.23 “**Grant Balance**” shall mean the Grant Amount (plus any applicable Default Interest) less the Amortized Amount, if any.

1.2.24 “**Identification Date**” means the date that is no later than the last day of the thirty-sixth (36th) full calendar month after the Effective Date.

1.2.25 “**Indemnify**” shall mean to indemnify, defend, reimburse, and hold harmless.

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

1.2.27 “**Losses**” shall have the meaning set forth in Section 4.12 of this Agreement.

1.2.28 “**MOHCD Director**” shall mean the Director of the Mayor’s Office of Housing and Community Development.

1.2.29 “**NAUR**” shall have the meaning set forth in Section 2.4.2 of this Agreement.

1.2.30 “**Notice of Default**” shall have the meaning set forth in Section 6.2 of this Agreement.

1.2.31 “**Note**” shall mean the Promissory Note in the form of Exhibit C to this Agreement.

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

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

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

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

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

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

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

1.2.39 “**Rent Default Amount**” shall mean the sum of (1) the difference between the monthly rent that Bayside was actually charging for the Permanently Affordable BMR

Unit(s) and the "Maximum Rent by Unit Type" that Bayside should have been charging for the applicable unit(s) pursuant to Article 2 of the Agreement, as to each applicable unit for the period of time such unit(s) was/were not available as a Permanently Affordable BMR Unit(s) (with any partial month prorated on the basis of a thirty (30) day month) and (2) interest on such difference, at an annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest.

1.2.40 "**Subordinations**" shall have the meaning set forth in Section 3.2 of this Agreement.

1.2.41 "**Term**" shall have the meaning set forth in Section 1.4 of this Agreement.

1.2.42 "**Third Party Challenge**" shall have the meaning set forth in Section 5.2.1 of this Agreement

1.3 Effective Date. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Resolution ("**Effective Date**"). The Effective Date is December 1, 2016.

1.4 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect until the end of the Life of the Project, unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. AFFORDABLE HOUSING RESTRICTIONS

2.1 Bayside Obligations Satisfied. The Parties, including all City Agencies, acknowledge and agree that, as of the Effective Date: (i) Bayside has fulfilled all obligations under the Regulatory Agreements and Owner Participation Agreement and (ii) that the Regulatory Agreements and the Owner Participation Agreement have expired and are no longer in effect. The City agrees to promptly execute, acknowledge and deliver to Bayside any documents, in a commercially reasonable form, that Bayside requests the City to provide in order to confirm the expiration of the foregoing agreements, including, without limitation, a release and termination, quitclaim deed or similar instrument.

2.2 Preservation of Certain of the BMR Units. As contemplated in the Owner Participation Agreement, the City wishes to preserve certain of the BMR Units as affordable units for the Life of the Project. Bayside agrees that, on the terms and conditions set forth in this Agreement, it, and its successors or assigns, as owner(s) of record of the Bayside Project will maintain for the Life of the Project not less than seventy (70) apartment units of the same type as identified in Exhibit A at below market rental rates (the "**Permanently Affordable BMR Units**") for the exclusive tenancy, use and occupancy by Existing BMR Tenants and Qualified Tenants, as defined in Section 2.4.2. below, subject to the terms and conditions of this

Agreement (the “**Affordable Housing Restrictions**”), except as otherwise provided in Section 3.3. As to the remaining one hundred two (102) BMR Units, the Affordable Housing Restrictions shall not apply thereto. However, Bayside agrees to maintain such remaining units as BMR Units for use by the applicable Existing BMR Tenant at their current rental rates (subject to any lawful adjustments in such rental rate as would be allowed as if such units were still subject to the applicable provisions of the Regulatory Agreements) until the occurrence of any of the following: (i) the expiration of the lease pursuant to its terms due to such tenant's election not to renew; (ii) the applicable unit is vacated, (iii) the applicable Existing BMR Tenant can no longer income certify at the level required to maintain the below market rate rent (as if such unit were still subject to the applicable provisions of the Regulatory Agreements), (iv) it is determined that the Existing BMR Tenant owns or leases a second home, (v) it is determined that the Existing BMR Tenant does not have a valid lease, or (vi) the Existing BMR Tenant violates its lease in such manner as to result in the termination of the lease. Bayside shall identify, and give the City notice of, the unit numbers for the Permanently Affordable BMR Units no later than the Identification Date. Such notice shall include a completed Schedule A to this Agreement, which Schedule A shall thereafter be part of this Agreement. Notwithstanding such period of time to identify the Permanently Affordable BMR Units by unit number, Bayside shall at all times maintain seventy (70) units as Permanently Affordable BMR Units with the unit mix as specified in Exhibit A. Bayside shall have the right to relocate the Permanently Affordable BMR Units throughout the Bayside Project from time-to-time to a similar-sized unit with comparable finishes and fixtures in order to perform maintenance, repairs, refurbishing, or other capital improvements. In connection with any such re-location, if the original unit is available (e.g., has not been physically altered in such a way as to make it materially different in size or layout or demolished), then Bayside shall offer the tenant the right to return to the unit following completion of the work or remain in the substitute unit. Notwithstanding such relocation rights, Bayside shall keep the Permanently Affordable BMR Units spread throughout the Bayside Project. Bayside shall provide the City with an updated Schedule A following any re-location that becomes permanent and shall provide the City with annual updates by no later than December 31 of each year identifying all current Permanently Affordable BMR Units and other remaining BMR Units by Unit number and size..

2.3 Maximum Monthly Rent.

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

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

2.4 Certification of Tenants.

2.4.1 Existing BMR Tenants of Permanently Affordable BMR Units that have undergone income certification within the twenty-four (24) month period prior to the date of this Agreement will not be required to income re-certify for a period of twelve (12) months after the date of this Agreement, and shall be allowed to continue to rent their BMR Unit at the AMI rents published from time to time as the “Maximum Rent by Unit Type” by the MOHCD based on the applicable AMI of eighty percent (80%) in accordance with the unit type unless: (1) the Existing BMR Tenant owns or leases a second home, (2) the Existing BMR Tenant does not have a valid lease, (3) any future income certification indicates that such Existing BMR Tenant has an income that is equal to or exceeds one hundred fifty percent (150%) of applicable AMI, or (4) the Existing BMR Tenant violates its lease in such manner as to result in the termination of the lease. Renewal leases for Existing BMR Tenants of Permanently Affordable BMR Units shall contain a provision to be drafted with input from the City Parties in which the tenant warrants that the unit to be leased is his or her only residence. Bayside shall have no duty to investigate or confirm whether any Existing BMR Tenant of any Permanently Affordable BMR Unit has a second home and shall rely on the Existing BMR Tenant’s representation as to whether said tenant owns or leases any other residential real estate or condominium interests in any other real estate. Notwithstanding the foregoing, Bayside shall implement the BMR program consistent with the City’s Procedures Manual as published by the City pursuant to Section 415 of the Planning Code and as consistent with this Agreement.

2.4.2 Qualified Tenants (as defined herein below) must be income certified at initial occupancy and every two (2) years thereafter. The City may confirm income certification of Qualified Tenants at its discretion. Qualified Tenants of the Permanently Affordable BMR Units must have an income at initial occupancy which is less than one hundred twenty percent (120%), and at all times thereafter, that is less than one hundred fifty percent (150%) of applicable AMI, adjusted for household size and no subsidy will be available when household income equals or exceeds one hundred fifty percent (150%) of applicable AMI (“**Qualified Tenants**”). Bayside shall have no duty to investigate or confirm any Qualified Tenant’s income and shall rely on the Qualifying Tenant’s representation as to his or her income. Bayside shall apply the next available unit rule (the “**NAUR**”) if an over-income resident elects to remain in their unit and pay market rent. The NAUR provides that if the income of the initially income-eligible tenant of a restricted unit equals or exceeds one hundred fifty percent (150%) of applicable AMI, then the next available unit that is vacated in the Bayside Project of comparable or smaller size must be rented to a household whose income is less than one hundred twenty percent (120%) of applicable AMI in order for Bayside to maintain its affordability obligations. The originally restricted unit in which the over-income tenant resides may then convert to market-rate.

2.5 Term of Restrictions. Unless sooner terminated as provided in Section 3.3 of this Agreement, the Affordable Housing Restrictions shall remain in force until the end of the Life of the Project. Upon expiration of the Affordable Housing Restrictions, pursuant to the terms of

this Agreement, Bayside may thereafter set rental rates and tenant qualification standards for the Permanently Affordable BMR Units in its sole and absolute discretion, subject to compliance with California state law of general application, including, without limitation, the provisions of Section 65863.10 of the Government Code of California and any applicable local laws.

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

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

3. GRANT; TERMINATION OF AGREEMENT

3.1 Grant for the Preservation of Affordable Housing. In exchange for Bayside's obligation to preserve the Permanently Affordable BMR Units, consistent with the terms of the NSR, attached to this Agreement as Attachment B, the City agrees to provide to Bayside a Grant in the amount of Twenty-One Million Six Hundred and Eighty Thousand and No/100 Dollars (\$21,680,000.00) (the “**Grant Amount**”). Prior to the City funding the Grant Amount, Bayside shall execute and deliver the Note to the City.

3.2 Disbursement of Funds. City shall disburse the Grant Amount no later than the Funding Date by means of a wire transfer to an account owned or controlled by Bayside; provided, however, that all required subordinations allowing the NSR to enjoy priority over any existing deed of trust or similar liens (the “**Subordinations**”) must be submitted to the City prior to disbursement of the Grant Amount.

3.3 Compliance Term; NSR. Bayside must comply with all provisions of this Agreement and the NSR relating to the Bayside Project, for the Life of the Project.

3.4 Default Requires Repayment. Following the occurrence of an Event of Default that remains uncured following the process described in Section 6.4 below under this Agreement, the City will have the right to terminate this Agreement and receive repayment of the Grant Amount in the full amount from Bayside, together with liquidated damages, as provided below.

3.5. Liquidated Damages.

(a) Upon the occurrence of an Event of Default under this Agreement that remains uncured following the process described in Section 6.4 below (the "**EofD Effective Date**"), and the City's termination of this Agreement as a result thereof, interest ("**Default Interest**") will be deemed to have accrued on the Grant Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, in either case commencing on the EofD Effective Date to and including the date on which the full amount of the Grant Amount, and any Default Interest due thereon, is repaid to the City.

(b) Bayside acknowledges and agrees that the Default Interest that must be paid in the event of an Event of Default under this Section represents a reasonable sum considering all the circumstances existing on the date of this Agreement and represents a fair and reasonable estimate of the costs that will be sustained by the City if Bayside defaults. Bayside further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to the City's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under this Agreement.

3.6 Termination of Agreement. Bayside may terminate this Agreement as follows: (i) at any time on not less than five (5) days notice to the City, if the City fails to provide the Grant on or before the Funding Date; (ii) following an Event of Default by the City; (iii) should Bayside's ability to receive market rate rents on the remaining units in the Project be reduced or impaired due to applicable local or state law; or (iv) at any time, on not less than thirty (30) days notice to the City (the "Notice"), during the pendency of any Third Party Challenge specifically challenging the Affordable Housing Restrictions at the Bayside Project and provided that such challenge was initiated no less than eight (8) months prior to Notice and that the Parties have met and conferred regarding such challenge and to determine an equitable approach to addressing the challenge and maintaining the Affordable Housing Restrictions. In the event of a termination pursuant to any of the foregoing, Bayside shall no longer be obligated to comply with the Affordable Housing Restrictions. Notwithstanding the foregoing, in the event of a termination pursuant to clauses (iii) or (iv) above where Bayside has received the Grant, such termination shall be effective upon Bayside's repayment of the Grant Balance to the City. The foregoing provisions shall survive the termination of this Agreement and any judgment invalidating all or any part of this Agreement.

4. **BAYSIDE REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1 Interest of Bayside; Due Organization and Standing. Bayside represents that it is the legal owner of the Bayside Project. Bayside is a California limited partnership. Bayside has all requisite power to own its property and authority to conduct its business as presently conducted. Bayside has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

4.2 No Conflict with Other Agreements; No Further Approvals; No Suits. Each Party warrants and represents that it is not a party to any other agreement that would conflict with its obligations under this Agreement. Neither the limited partnership agreement, articles of organization, bylaws, or operating agreement of Bayside or its general partner, as any of the same may have been amended, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of either Party to enter into and perform all of the terms and covenants of this Agreement. No further consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by each Party of this Agreement or any of the terms and covenants contained in this Agreement. To each Party's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting either Party or any of its members or partners before any court, governmental agency, or arbitrator which might materially adversely affect either Party's business, operations, or assets or either Party's ability to perform under this Agreement.

4.3 No Inability to Perform; Valid Execution. Each Party warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by each Party have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms, except as enforceability thereof may be subject to (A) the exercise of judicial discretion in accordance with general equitable principles, and (B) applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied and consistent with Bayside's obligations under Section 7.6 of this Agreement, and except that enforceability of indemnification and contribution provisions may be limited, in whole or in part, by applicable security laws or public policy.

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

4.5 Notification of Limitations on Contributions. Through execution of this Agreement, Bayside acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the

possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

4.8 No Bankruptcy. Bayside represents and warrants to the City that Bayside has neither filed nor, to Bayside's knowledge, 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 Bayside's current actual knowledge, no such filing is threatened.

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

4.10 Notification. Bayside shall use commercially reasonable efforts to promptly notify City in writing of the occurrence of any event which might materially and adversely affect Bayside's ability to perform its obligations under this Agreement.

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

4.12 Indemnification of City. Bayside ("**Indemnitor**") shall indemnify the City ("**Indemnitee**") and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from Bayside's failure to perform its obligations under this Agreement with the applicable time periods provided for such performance, except to the extent any Losses are the result of the default of the City, its gross negligence or its willful misconduct. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and related

costs. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

5. MUTUAL OBLIGATIONS

5.1 Estoppel Certificate. Bayside may, at any time, and from time to time, deliver written notice to the Director of MOHCD requesting that the MOHCD Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; and (iii) Bayside is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults. The MOHCD Director shall execute and return such certificate within thirty (30) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Bayside Project or any transferee of all or any portion of the Bayside Project or Bayside's direct or indirect interests therein, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

5.2 Cooperation in the Event of Third-Party Challenge

5.2.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement (a "Third Party Challenge"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Bayside of any Third Party Challenge instituted against the City.

5.2.2 Bayside shall assist and cooperate with the City at its own expense in connection with any Third Party Challenge. Bayside may retain its own counsel to represent Bayside. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third Party Challenge, at the City Attorney's sole discretion. Bayside shall reimburse the City for its actual costs in defense of the action or proceeding, including, but not limited to the time and expenses of the City Attorney's Office and any consultants; provided, however Bayside shall have the right to receive monthly invoices for all such costs, provided that Bayside shall bear no responsibility for any time, expenses, costs or other resources, beyond those of the City Attorney's Office, that the City Parties and their employees may incur or expend in connection with such a defense. To the extent permitted by applicable law, Bayside shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the negligence or willful misconduct of the City or its officers or employees. Bayside shall have the right, exercisable in its sole discretion to cease defending any Third Party Challenge and terminate this agreement in accordance with Section 3.6, whereupon Bayside shall make payment to the City in the amount of the Grant Balance and the City shall accept such payment; provided, however, that Bayside's obligations under Section 4.12 shall remain in place subsequent to any such termination. This section shall survive any judgment invalidating all or any part of this Agreement.

5.2.3 Third-Party Challenge. The Parties agree that if a Third Party Challenge is initiated regarding the validity or enforceability of this Agreement, and so long as this Agreement has not been terminated pursuant to its terms, Bayside shall continue to maintain the BMR Units as affordable units pursuant to past practices until the validity and enforceability of this Agreement has been finally determined and upheld or this Agreement is terminated. If this Agreement is not upheld (on any final appeal), then (1) this Agreement shall terminate, (2) Bayside's obligations hereunder will terminate accordingly, (3) Bayside shall no longer have any obligation to provide below market rate units at the Bayside Project, and (4) Bayside shall make payment to the City in the amount of the Grant Balance and the City shall accept such payment. Bayside shall not be required to defend itself or the City in a Third Party Challenge. Bayside shall have the right, exercisable in its sole discretion to refuse to defend, or, if Bayside has commenced defending, to thereafter cease defending any Third Party Challenge and terminate this agreement in accordance with Section 3.6, and in accordance with the terms in Section 4.12 and Section 5.2.2 above.

5.3 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the obligations within as contemplated by this Agreement.

5.4 Agreement to Cooperate; Other Necessary Acts. The Parties agree to cooperate with one another to expeditiously implement the terms herein in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

6. ENFORCEMENT OF AGREEMENT AND REMEDIES FOR DEFAULT

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

6.2 Default. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: the failure to perform or fulfill any material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

6.3 Notice of Default. Prior to the initiation of any action for relief specified in Section 6.4 below, the Party claiming default shall deliver to the other Party a Notice of Default.

The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section 6.4.1 to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section 6.4.1. Any such termination shall be in accordance with Section 3.3 of this Agreement. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

6.4 Remedies.

6.4.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section 6.4.2 below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default, if Bayside is alleged to have defaulted, and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party setting forth the basis for the termination. Bayside will not be required to participate in a public hearing if City defaults. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable. Any such termination shall be in accordance with the applicable provisions of Sections 3.4 – 3.6 of this Agreement.

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

6.4.3 Remedies for Non-Provision of Permanently Affordable BMR Units. Upon the occurrence of an Event of Default which is based on Bayside not providing the full number of Permanently Affordable BMR Units, the Parties agree that upon reinstating the full number of Permanently Affordable BMR Units and payment of the Rent Default Amount to the City, the Event of Default will be deemed cured and the Agreement will remain in full force and effect.

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

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

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

7. MISCELLANEOUS PROVISIONS

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

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

7.3 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Bayside. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or

enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

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

7.4.1 The Agreement is to be undertaken by Bayside and the Bayside Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Bayside Project. Bayside shall exercise full dominion and control over the Bayside Project, subject only to the limitations and obligations of Bayside contained in this Agreement.

7.4.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Bayside. Neither Party is acting as the agent of the other Party in any respect hereunder.

7.5 Recordation. The parties shall cause a memorandum of this Agreement and the NSR to be recorded in the Official Records within ten (10) business days after the date on which the Grant is paid to Bayside with costs to be borne by Bayside. Bayside shall have obtained any Subordinations prior to the City funding the Grant. The parties shall cause a memorandum of any amendment to this Agreement or to the NSR to be recorded within ten (10) business days after the date of any such amendment with costs to be borne by Bayside. The form of memorandum of this Agreement is attached hereto as Exhibit D.

7.6 Obligations Not Dischargeable in Bankruptcy. Bayside shall not seek to discharge its obligations under this Agreement in bankruptcy.

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

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

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

7.10 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by certified mail, return receipt requested. Notice, whether given by personal delivery or certified mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written

notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

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

with a copy to:

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

To Bayside:

Forest City Bayside Corp.
1100 Terminal Tower
50 Public Square
Suite 1360
Cleveland, Ohio 44113-2203
Phone: (216) 621-6060
Attn: President, Forest City Capital Corp.

with a simultaneous copy to:

Forest City Bayside Corp.
1100 Terminal Tower
50 Public Square
Suite 1360
Cleveland, Ohio 44113-2203
Phone: (216) 621-6060
Attn: Office of the General Counsel

Any notice of default must be sent by certified mail.

7.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of (i) the City Parties and any their successor agencies and departments that succeed

to or obtain jurisdiction over any aspect of the subject matter of this Agreement and (ii) Bayside and its respective successors and assigns.

7.12 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

7.13 Sunshine. Bayside understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Bayside in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Bayside shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Bayside. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Bayside of that conclusion and that the information will be released by a specified date in order to provide Bayside an opportunity to obtain a court order prohibiting disclosure.

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

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

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

By: _____
Heidi J. Gewertz
Deputy City Attorney

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

BAYSIDE

BAYSIDE VILLAGE ASSOCIATES, L.P.,
a California limited partnership

By: Forest City Bayside LLC,
an Ohio limited liability company,
its General Partner

By: _____
Name: _____
Its: _____

Approved on _____
Board of Supervisors Resolution No. _____

EXHIBIT A

**List of 70 Apartment Units Identified as Permanently Preserved BMR Units by Unit Type
and AMI Level**

- 1. Twenty-three (23) studios – AMI Level: one hundred twenty percent (120%);**
- 2. Twenty-three (23) one bedroom units – AMI Level: one hundred twenty percent (120%);
and**
- 3. Twenty-four (24) two bedroom units – AMI Level: one hundred twenty percent (120%).**

Schedule A

Unit Numbers for the Permanently Affordable BMR Units as of the Identification Date

Studios:

One bedroom units:

Two bedroom units:

EXHIBIT B

Form of Notice of Special Restrictions

FREE RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383
REQUESTED BY AND WHEN RECORDED RETURN TO:

Mayor's Office of Housing and
Community Development
City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94102
Attention: Director

Property Address: Three Bayside Village Place,
San Francisco, CA 94107

(Space Above This Line for Recorder's Use)

NOTICE OF SPECIAL RESTRICTIONS UNDER PLANNING CODE

The undersigned, BAYSIDE VILLAGE ASSOCIATES, L.P., the owner of that certain real property situated in the City and County of San Francisco, State of California more particularly described as follows: (see 'Exhibit A' for full legal description of the property)

**BEING ASSESSOR'S BLOCK: 3773
AND COMMONLY KNOWN AS BAYSIDE VILLAGE APARTMENTS**

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

Said Restrictions consist of conditions included in the "Grant Agreement For the Preservation of Affordable Housing Units at the Bayside Village Apartments" (the "Agreement") authorized by the Board of Supervisors of the City and County of San Francisco on _____, 2016, as set forth in Resolution No. ____•16 approving an agreement with Bayside Village Associates, L.P. to preserve 172 affordable housing units at Bayside Village Apartments (the "Project").

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

1. Number of Required Units. Pursuant to the Agreement, the Project is initially required to restrict a total of 172 dwelling units to certain qualifying households. Specifically the Agreement provides that Bayside Village Associates, L.P. (the "Owner"), and its successors and assigns, will (a) maintain 70 of the units identified in Exhibit A of the Agreement, and as attached hereto, at below market rates (the "BMR Units") for the exclusive tenancy, use and occupancy by Existing BMR Tenants and Qualified Tenants, as defined in the Agreement (the "BMR Program"), and will (b) maintain the remaining 102 units for existing BMR

Tenants at their current rental rates until the occurrence of certain events set forth in the Agreement.

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

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

3. Duration. The BMR Units shall remain affordable for the Life of the Project, consistent with the terms of the Agreement and as otherwise specified in the Agreement.

For Information about compliance, contact the Mayor's Office of Housing and Community Development at 415- 701-5500, www.sf-mob.org.

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

For Information about compliance, contact the Mayor's Office of Housing and Community Development at 415- 701-5500, www.sf-mob.org.

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

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

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

(Signature pages of the parties and notary acknowledgments follow)

SCHEDULE A

LEGAL DESCRIPTION

The land referred to herein is situated in the City and County of San Francisco, State of California, described as follows:

Parcel One: (Bayside Village I)

All that certain real property in the City and County of San Francisco, State of California, shown on Condominium Map of Bayside Village I, recorded September 8, 1988 in Book 28 of Condominium Maps at Pages 135 to 146, inclusive, in the Office of the Recorder, City and County of San Francisco, being a resubdivision of Lot 7 and previously shown on that Parcel Map recorded May 27, 1987 in Book 35 of Parcel Maps at Page 67 in the Office of the Recorder, County of San Francisco.

Said real property is also described as Lot 300A as defined on that certain Certificate of Correction recorded June 27, 1990, Reel F155, Image 1227, Series No. E570223, Official Records, previously shown as Lot 3000 on that certain Parcel Map, being a resubdivision of Assessor's Block 3773, a Lot Line Adjustment involving existing Lot 5 and the parcels occupied by Bayside Village I - a Condominium Project- and Bayside Village II- a Condominium Project- recorded November 15, 1989 in Book 39 of Parcel Maps at Pages 144 and 145, in the Office of the Recorder, City and County of San Francisco.

Said real property is also described in that certain Amendment of Condominium Maps of and Deeds of Trust on Bayside Village I, II and III recorded August 9, 1991, Reel F436, Image 0495, Series No. E953619, Official Records of the City and County of San Francisco, as Follows:

Lot 3000 in the Parcel Map recorded November 15, 1989 in Book 39 of Parcel Maps, at Pages 144 and 145, in the Office of the Recorder of the City and County of San Francisco, renumbered as Lot 300A in the Certificate of Correction recorded June 27, 1990 in Reel F155, Image 1227, Series No. E570223 in the Office of the Recorder of the City and County of San Francisco.

Assessor's Lot 300A, Block 3773

Parcel Two: (Bayside Village II)

All that certain real property in the City and County of San Francisco, State of California, shown on Condominium Map of Bayside Village II, recorded May 26, 1988 in Book 28 of Condominium Maps at Pages 29 to 40, inclusive, in the Office of the Recorder, City and County of San Francisco, being a resubdivision of Lot 8 and previously shown on that Parcel Map recorded May 27, 1987 in Book 35 of Parcel Maps at Page 67 in the Office of the Recorder, County of San Francisco.

Said real property is also described as Lot 200A as defined on that certain Certificate of Correction recorded June 27, 1990, Reel F155, Image 1227, Series No. E570223, Official Records, previously shown as Lot 2000 on that certain Parcel Map, being a resubdivision of Assessor's Block 3773, a Lot Line Adjustment involving existing Lot 5 and the parcels occupied by Bayside Village I - a Condominium Project- and Bayside Village II- a Condominium Project-recorded November 15,

1989 in Book 39 of Parcel Maps at Pages 144 and 145, in the Office of the Recorder, City and County of San Francisco.

Said real property is also described in that certain Amendment of Condominium Maps of and Deeds of Trust on Bayside Village I, II and III recorded August 9, 1991, Reel F436, Image 0495, Series No. E953619, Official Records of the City and County of San Francisco, as Follows:

Lot 2000 in the Parcel Map recorded November 15, 1989 in Book 39 of Parcel Maps, at Pages 144 and 145, in the Office of the Recorder of the City and County of San Francisco, renumbered as Lot 200A in the Certificate of Correction recorded June 27, 1990 in Reel F155, Image 1227, Series No. E570223 in the Office of the Recorder of the City and County of San Francisco.

Assessor's Lot 200A, Block 3773

Parcel Three: (Bayside Village III)

All that certain real property in the City and County of San Francisco, State of California, shown on Condominium Map of Bayside Village III, recorded January 4, 1990, in Book 30 of Condominium Maps at Page 118 to 136, inclusive, in the Office of the Recorder, City and County of San Francisco, being a resubdivision of Lot 5 and portions of Lots 6 and 7, previously shown on that Parcel Map recorded December 2, 1986 in Book 34 of Parcel Maps at Page 18 in the Office of the Recorder, County of San Francisco.

Said real property is also described as Lot 100A as defined on that certain Certificate of Correction recorded June 27, 1990, Reel F155, Image 1227, Series No. E570223, Official Records, previously shown as Lot 1000 on that certain Parcel Map, being a resubdivision of Assessor's Block 3773, a Lot Line Adjustment involving existing Lot 5 and the parcels occupied by Bayside Village I - a Condominium Project - and Bayside Village II- a Condominium Project, recorded November 15, 1989, in Book 39 of Parcel Maps, at Pages 144 and 145, in the Office of the Recorder, City and County of San Francisco.

Said real property is also described in that certain Amendment of Condominium Maps of and Deeds of Trust on Bayside Village I, II and III recorded August 9, 1991, Reel F436, Image 0495, Series No. E953619, Official Records of the City and County of San Francisco, as Follows:

Lot 1000 in the Parcel Map recorded November 15, 1989 in Book 39 of Parcel Maps, at Pages 144 and 145, in the Office of the Recorder of the City and County of San Francisco, renumbered as Lot 100A in the Certificate of Correction recorded June 27, 1990 in Reel F155, Image 1227, Series No. in the Office of the Recorder of the City and County of San Francisco.

Assessor's Lot 100A, Block 3773

EXHIBIT C

Form of Promissory Note

PROMISSORY NOTE

Principal Amount: \$ 21,680,000

San Francisco, CA

Date:

FOR VALUE RECEIVED, the undersigned, **BAYSIDE VILLAGE ASSOCIATES, L.P., a California Limited Partnership** ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum of Twenty One Million Six Hundred Eighty Thousand and No/100 Dollars (\$21,680,000.00) (the "Funding Amount"), as such amount is disbursed pursuant to the Agreement described in **Section 1** below, all as more specifically provided in this Note.

1. Agreement. This Promissory Note ("Note") is given under the terms of the "Grant Agreement for the Preservation of Affordable Housing Units at the Bayside Village Apartments" by and between Maker and Holder (the "Agreement") dated as of December 1, 2016, which Agreement is incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.

2. Interest. Except as provided in **Section 3**, no interest will accrue on the Funding Amount.

3. Default Interest Rate. Upon the occurrence of an Event of Default under the Agreement, that remains uncured following the process described in Section 6.4 of the Agreement (the "Effective Date) and Maker's termination of the Agreement as a result thereof, interest ("Default Interest") will be deemed to have accrued on the Grant Amount at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, in either case commencing on the Effective Date to and including the date on which the full amount of the Grant Amount, and any Default Interest due thereon, is repaid to the Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under the Agreement.

4. Terms of Payment.

4.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

4.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5th Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

4.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

5. Default.

5.1 Any of the following will constitute an Event of Default under this Note:

- (a) Maker fails to make any payment required under this Note within ten (10) days of the date it is due; or
- (b) the occurrence of any other Event of Default under the Agreement.

5.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the Agreement), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the Grant Amount, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately following an Event of Default and Holder's termination of the Agreement in accordance with the terms and conditions of the Agreement.

6. Waivers.

6.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

6.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

6.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

7. Miscellaneous Provisions.

7.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

7.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

7.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

7.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

7.5 Time is of the essence in the performance of any obligations hereunder.

[Signature on Following Page.]

"MAKER"

By: BAYSIDE VILLAGE ASSOCIATES, L.P.
A California limited partnership

By: Forest City Bayside LLC,
An Ohio limited liability company,
Its General Partner

By: _____

Name: _____

Title: _____

EXHIBIT D

Form of Memorandum of Agreement

Recording Requested By:
MAYOR'S OFFICE OF HOUSING
AND COMMUNITY DEVELOPMENT
CITY AND COUNTY OF SAN FRANCISCO

AND WHEN RECORDED, RETURN TO:
Mayor's Office of Housing
1 South Van Ness Ave., Fifth Floor

San Francisco, CA 94103
Attn: Director

Free Recording Requested – Government
Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GRANT AGREEMENT FOR THE PRESERVATION OF
AFFORDABLE HOUSING UNITS

This Memorandum of Grant Agreement for the Preservation of Affordable Housing Units at Bayside Village Apartments (“Memorandum”) is made and entered into as of _____, 201_, for the purpose of recording, by the City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the “City”) acting by and through its Mayor's Office of Housing and Community Development and Bayside Village Associates, L.P., a California limited partnership (“Bayside”), who are the parties to that certain Grant Agreement for the Preservation of Affordable Housing Units at Bayside Village Apartments, of even date herewith, but having an effective date of December 1, 2016, with respect to the Bayside Village Apartments, 3 Bayside Village Place, San Francisco, California (“Bayside Project”), located on the real property described in Exhibit A attached hereto (the “Agreement”). Capitalized terms used herein without definition shall have the meanings given them in the Agreement.

Pursuant to the Agreement, and in consideration for the Grant Amount, Bayside has agreed to maintain for the Life of the Project not less than seventy (70) apartment units at below market rental rates, all as more specifically set forth in the Agreement.

As used in the Agreement, the term “Life of Project” means the period of time in which the Bayside Project continues to operate as a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units. In the event the Bayside Project is substantially damaged or destroyed by fire, the elements, an act of any public authority, or other casualty, and is subsequently replaced by a multi-family apartment project substantially similar to its current condition in terms of its original number of units, the life of such replacement project will be deemed to be a continuation of the Life of the Project.

In addition to the seventy (70) permanently affordable apartment units, Bayside has agreed to maintain an additional one hundred two (102) units as below market rate units until the occurrence of certain conditions.

The Agreement is binding on the Parties' successors and assigns.

Simultaneously with recording this Memorandum, the Parties are also recording a Notice of Special Restrictions, in the form attached as Exhibit B to the Agreement.

This Memorandum is intended for notice purposes and does not supersede, diminish, add to or change the terms of the Agreement, all of which are incorporated by reference herein. To the extent of any conflict between this Memorandum and the Agreement, the terms of the Agreement shall control. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

(Signature Page and Notary Acknowledgements Follow)

IN WITNESS WHEREOF, City and Bayside have executed this instrument as of the date set forth on the first page hereof.

CITY:

BAYSIDE:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

BAYSIDE VILLAGE ASSOCIATES, L.P., a California limited partnership

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

By: Forest City Bayside LLC,
an Ohio limited liability company,
its General Partner

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

EXHIBIT A
TO
MEMORANDUM OF AGREEMENT

Description of Property

All that certain real property located in the City and County of San Francisco, State of California, more particularly described as follows:

EXHIBIT E

Sample Calculation of Amortized Amount

CALCULATION OF "AMORTIZED PAYMENT"
(THIS IS ONLY APPLICABLE IN CASE IN WHICH AGREEMENT IS TERMINATED BY BAYSIDE DUE TO EVENTS OUTLINED IN SECTION 3.6)

Total Value	21,680,000				
Useful Life	40 years				
	Proportionate Value		Proportion of Total MOH Payment	Units	Value/Unit
Studio	9,085	14%	\$ 3,131,115	23	\$ 136,135
1 BR	14,076	22%	\$ 4,851,247	23	\$ 210,924
2 BR	39,744	63%	\$ 13,697,638	24	\$ 570,735
Subtotals	62,905		21,680,000.00	70	

Example Termination After 10 Years						
	Base Value/Unit Per Year	Units	Years	Bayside Obligation Satisfied (not including CPI/inflation)	Bayside Obligation Satisfied (with including CPI/inflation -- see	Repayment to City
Studio	\$ 3,403	23	10	\$ 782,779		
1 BR	\$ 5,273	23	10	\$ 1,212,812		
2 BR	\$ 14,268	24	10	\$ 3,424,410		
Total				\$ 5,420,000	\$ 6,224,039	\$ 15,455,961

	CPI/Inflation	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%
Year		1	2	3	4	5	6	7	8	9	10
0.041		80,235	82,241	84,297	86,404	88,564	90,778	93,048	95,374	97,758	100,202
		124,313	127,421	130,607	133,872	137,219	140,649	144,165	147,769	151,464	155,250
		351,002	359,777	368,771	377,991	387,441	397,127	407,055	417,231	427,662	438,353
		555,550	569,439	583,675	598,267	613,223	628,554	644,268	660,374	676,884	693,806