

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

Office of the City and County Surveyor
49 South Van Ness Avenue 9th Floor
San Francisco, California 94103

AB: _____, **Lot:** _____

Space Above This Line Reserved For Recorder's Use

**AGREEMENT TO PROVIDE A LIFE TIME LEASE UNIT BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO AND
[PROPERTY OWNER(S)]**

THIS AGREEMENT TO PROVIDE A LIFETIME LEASE UNIT(s) ("Agreement") dated for reference purposes only as of this _____ day of _____, 20____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California (the "City"), acting by and through its Department of Public Works, and

_____, ("Property Owner(s)") with respect to the condominium conversion approved for the real property located at _____, as more particularly described in Exhibit A attached hereto (the "Property") specifically relating to Unit(s) _____ **[Insert description of affected Lifetime Lease Unit(s)]**. Property Owner(s) also refers to all Owners of fee title interest in the Property. City and Property Owner(s) are also sometimes referred to individually as a "Party" and together as the "Parties."

RECITALS

This Agreement is made with reference to the following facts:

A. Code Authorization.

(1) On June 18, 2013, the San Francisco Board of Supervisors finally passed Ordinance No. 117-13 adopting the Condominium Conversion Fee and Expedited Conversion Program, San Francisco Subdivision Code Section 1396.4 (the "Program"). The Program permits property owners of apartments to convert the units in their building to condominiums under certain conditions. The Program suspends the City's 200-unit annual cap on condominium conversions and exempts property owners from the lottery process, under certain conditions. The lottery process had resulted in property owners experiencing a wait of up to nine years to convert to condominiums. The Program provides for an expedited conversion process that allows conversions to occur as soon as the building meets all required criteria for eligibility. In addition, Ordinance No. 117-13 provides for a refund of a portion of the condominium

conversion fee for each unit in a building subject to a lifetime lease with a higher percentage of fee reduction available if a larger number of units are subject to a lifetime lease.

(2) Chapter 4.3 of the California Government Code directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act (California Civil Code Sections 1954.50 et seq., hereafter “Costa-Hawkins Act”) imposes limitations on the establishment of the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995, with exceptions, including an exception for dwelling units constructed pursuant to a contract with a public entity in consideration for a direct financial contribution or any other form of assistance specified in Chapter 4.3 of the California Government Code (Section 1954.52(b)). Pursuant to Civil Code Section 1954.52(b), the City’s Board of Supervisors has enacted as part of the Program, procedures and requirements for entering into an agreement with a private property owner to memorialize the direct financial contributions, and concessions and incentives granted to the property owner within the exception to the Costa-Hawkins Act for the Lifetime Lease Unit included in the Property.

(3) The Ellis Act (Government Code Section 7060 et seq., hereafter the “Ellis Act”) allows landlords who comply with its terms to go out of the rental business by evicting their tenants and withdrawing all units in a property from the rental market. By its terms, the Ellis Act does not apply to condominium units. The Ellis Act also provides an exception to its terms where a public entity enters into a contract or agreement with the owner to provide rental housing in exchange for a direct financial contribution. Pursuant to Government Code Section 7060.1(a), the City’s Board of Supervisors has enacted as part of the Program, procedures that, should the Ellis Act be deemed to even apply to the Property, require entering into an agreement with a private property owner to memorialize the direct financial contribution granted to the property owner within the exception to the Ellis Act for the Lifetime Lease Unit included in the Property.

B. Development Proposal; Intent of the Parties. The Property is owned in fee by Property Owner. Property Owner proposes to convert _____ **[number of units]** units in the Property to condominium units under the provisions of the Program. Under the terms of the Program, as a condition of development approval of the conversion of the Property, the Property Owner will provide a lifetime lease to an existing tenant in _____ **[insert number of units]** unit(s) (the “Lifetime Lease Unit(s)”). The Department of Public Works conditional tentative approval of the parcel or subdivision map for the Property allowed, without participation in a lottery process, conversion of the units in the Property, including the Lifetime Lease Unit through the expedited provisions in the Program. The dwelling units that are the subject of this Agreement are the Lifetime Lease Unit(s). The Lifetime Lease Unit(s) are more specifically described as: _____. The dwelling units in the Property that are not Lifetime Lease Units, are referred to herein as the “Market Rate Units”. This Agreement is not intended to impose restrictions on the Market Rate Units or any portions of the Property other than the Lifetime Lease Units. The Parties acknowledge that this Agreement is entered into in consideration of the respective burdens and benefits of the Parties contained in this Agreement and in reliance on their agreements, representations and warranties.

C. Lifetime Lease Provision of the Program. The Condominium Conversion Fee and Expedited Conversion Program provides that property owners seeking to convert to condominiums under the Program must offer a lifetime lease to any existing tenants who do not purchase their unit under terms and conditions set forth in Subdivision Code Section 1396.4. The Program provides that the City and property owner shall enter into a binding agreement documenting the requirements of the Program. The Parties hereby enter into this agreement with the City and County of San Francisco pursuant to Chapter 4.3 of the California Government Code for a direct financial contribution and concessions and incentives, and under Government Code Section 7060.1 for a direct financial contribution pursuant to which the property owner covenants to provide the Lifetime Lease Units to satisfy the requirements of the Program and in consideration of the City's direct financial contribution to the Property Owner and concessions and incentives.

D. Property Owner's Election to Convert Through the Program. Property Owner has elected to enter into this Agreement to obtain the benefits and fee reduction provided under the Program in exchange for agreeing to provide the Lifetime Lease Units and acknowledging an exception to the Costa-Hawkins Act and, if applicable, the Ellis Act for the Lifetime Lease Units only.

E. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with Chapter 4.3 of the California Government Code, the Costa-Hawkins Act, the Ellis Act, the San Francisco Subdivision Code, and all other applicable laws and regulations.

AGREEMENT

The Parties acknowledge the receipt and sufficiency of good and valuable consideration and agree as follows:

1. GENERAL PROVISIONS

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

2. DIRECT FINANCIAL CONTRIBUTION AND CONCESSIONS AND INCENTIVES FOR THE LIFETIME LEASE UNITS.

2.1 Direct Financial Contributions and Concessions and Incentives. On _____ **[date]**, DPW issued tentative approval for the condominium conversion for the Property through which the Property Owner will receive the following direct financial contribution and concessions and incentives for the provision of the Lifetime Lease Unit:

2.1.1 Payment. In recognition of the rental requirements of Subdivision Code Section 1396.4(g), the City hereby will provide a fee rebate for each unit in which a non-purchasing tenant resides at the time specified by the Program who is offered a lifetime lease and is unrelated by blood, marriage, or domestic partnership to any owner of the building as follows: **[insert amount: one Lifetime Lease Unit, 10% fee reduction; two Lifetime Lease Unit, 20%**

fee reduction for each unit; three Lifetime Lease Unit, 30% fee reduction for each unit.]
which equal \$_____ [insert dollar amount].

2.1.2 Financial Benefits, Concessions, and Incentives, Granted Through Conversion. Property owner acknowledges that the Program allows it to convert sooner, in some cases up to 6 years or more, at lower mortgage rates applicable to condominiums than the prior lottery system that existing under the San Francisco Subdivision Code. This translates into direct financial benefits as detailed in the report "Condominium Conversion Fee: Economic Impact Report" prepared by the Office of the Controller dated April 2, 2013. And, Property Owner acknowledges the increased property value resulting from conversion sooner than it would have prior to the Program. The Development Impact Fee report prepared by Keyser Marston Associates, dated January 2011 demonstrates a 15% increase in value per unit associated with condominium ownership over other forms of ownership. In addition, the Program allows the Property Owner to avoid the delays, holding costs, and financial uncertainty of the condominium lottery and the prior waiting period for conversion.

2.2 Costa-Hawkins Act and Ellis Act Inapplicable to Lifetime Lease Units Only. The parties acknowledge that, under Section 1954.52(b) of the Costa-Hawkins Act, the Lifetime Lease Units are exempt from the Costa Hawkins Act. The parties also acknowledge that the Ellis Act does not apply to the Property because the Property will be a condominium upon completion of the conversion process, but that should the Ellis Act be deemed to apply, the Lifetime Lease Units are nevertheless exempt from the Ellis Act under Section 7060.1(a) of the Ellis Act. Through this Agreement, Property Owner hereby enters into an agreement with a public entity in consideration for a direct financial contribution and forms of concessions and incentives specified in California Government Code Sections 65915 et seq. The direct financial contribution and concessions and incentives are comprised of, but not limited to, the items set forth in Section 2.1. The Parties hereby agree and acknowledge that this Agreement does not alter in any manner the way that the Costa-Hawkins Act, Ellis Act, or any other law apply to the Market Rate Units.

3. COVENANTS OF PROPERTY OWNER

3.1 Providing Lifetime Lease Units. In consideration of the direct financial contribution and concessions and incentives set forth in Section 2.1, and in accordance with the terms and conditions set forth in the Program, Property Owner shall: (i) prior to final map or parcel map approval for the condominium conversion of the Property, provide a written offer for a lifetime lease to the tenants residing in the Lifetime Lease Units and record such offer against the Property; and (ii) at the time each tenant accepts the lifetime lease offer, execute and record against the Property a lifetime lease with the tenant in the form and subject to the rent restrictions and other terms as set forth in Subdivision Code Section 1396.4(g). For purposes of this agreement, tenant shall be defined under San Francisco Administrative Code Section 37.2(t).

3.2 Property Owner's Acknowledgement that Costa-Hawkins Act and Ellis Act Do Not Apply to the Lifetime Lease Units. The Parties acknowledge that: (i) under the Costa-Hawkins Act, the owner of newly constructed residential real property may establish the initial and all subsequent rental rates for dwelling units in the property without regard to the City's Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the San Francisco

Administrative Code); and (ii) under the Ellis Act, landlords who comply with its terms may go out of the rental business by evicting their tenants and withdrawing all units in a property from the rental market. The Parties also understand and agree that the Costa-Hawkins Act and Ellis Act do not and in no way shall limit or otherwise affect the Lifetime Lease Units because: (i) upon conversion of the Property, the Ellis Act will not apply to the Property due to the fact that the Property will be a condominium; and (ii) this Agreement falls within an express exception to the Costa-Hawkins Act as a contract with a public entity in consideration for a direct financial contribution or other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Should the Ellis Act be deemed to apply to the Property despite its legal status as a condominium, Property Owner acknowledges and agrees that this Agreement falls within an express exception to the Ellis Act as a contract with a public entity in consideration for a direct financial contribution. Property Owner acknowledges that the direct financial contribution and the concessions and incentives specified in Section 2 result in identifiable and actual cost reductions and economic benefits to the Property and therefore fall within the exceptions set forth in Section 1954.52(b) of the Costa-Hawkins Act and Section 7060.1(a) of the Ellis Act. Property Owner also acknowledges that the City would not be willing to enter into this Agreement and provide the fee rebate without the understanding and agreement that the Costa-Hawkins Act and Ellis Act do not apply to the Lifetime Lease Units. Should the Lifetime Units be deemed subject to the Costa-Hawkins Act and/or the Ellis Act, as a material part of the consideration for entering into this Agreement, Property Owner, on behalf of itself and all its successors and assigns to this Agreement, hereby expressly waives, now and forever, any and all rights it may have under the Costa-Hawkins Act and/or the Ellis Act with respect only to the Lifetime Lease Units (but only the Lifetime Lease Units and not as to the Market Rate Units) consistent with Section 3.1 of this Agreement. Without limiting the foregoing, Property Owner, on behalf of itself and all successors and assigns to this Agreement, agrees not to bring any legal or other action against City seeking application of the Costa-Hawkins Act and/or the Ellis Act to the Lifetime Lease Units for so long as the Lifetime Lease Units are in effect. The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers and agreements set forth in this Section 3.2.

3.3 Property Owner's Waiver of Right to Seek Waiver of Program Requirements. Developer specifically agrees to be bound by all of the provisions of the Program applicable to the Lifetime Lease Units. Developer covenants and agrees that it will not seek a waiver of the provisions of the Program applicable to the Lifetime Lease Units.

4. MUTUAL OBLIGATIONS

4.1 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Program.

4.2 Other Necessary Acts. Each Party shall execute and deliver to the other all further instruments and documents as may be reasonably necessary to carry out this Agreement, the Program (as applied to the Lifetime Lease Units) and applicable law in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

4.3 Effect of Future Changes to Program. The City hereby acknowledges and agrees that, in the event that the City adopts changes to the Program after the date this Agreement is executed by both Parties, nothing in this Agreement shall be construed to limit or prohibit any rights Property Owner may have to modify requirements with respect to the Lifetime Lease Units to the extent permitted by such changes to the Program.

5. PROPERTY OWNER REPRESENTATIONS, WARRANTIES AND COVENANTS.

5.1 Interest of Property Owner. Property Owner represents that it is the legal and equitable fee owner of the Property and that it has the power and authority to bind itself to the terms of this Agreement. Property Owner is a _____, duly organized and validly existing and in good standing under the laws of the State of California. Property Owner has all requisite power and authority to own property and conduct business as presently conducted. Property Owner has made all filings and is in good standing in the State of California.

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

5.3 No Inability to Perform; Valid Execution. Property Owner warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Property Owner have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Property Owner, enforceable against Property Owner in accordance with its terms.

5.4 Conflict of Interest. Through its execution of this Agreement, the Property Owner 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 of this Agreement.

5.5 Notification of Limitations on Contributions. Through execution of this Agreement, the Property Owner 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 the contract until three (3) 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.

5.6 Nondiscrimination. In the performance of this Agreement, Property Owner agrees not to discriminate on the basis of the fact or perception of a person's, race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes, against any City employee, employee of or applicant for employment with the Property Owner, or against any bidder or contractor for public works or improvements, or for a franchise, concession or lease of property, or for goods or services or supplies to be purchased by the Property Owner. A similar provision shall be included in all subordinate agreements let, awarded, negotiated or entered into by the Property Owner for the purpose of implementing this Agreement.

6. AMENDMENT; TERMINATION

6.1 Amendment or Termination. Except as provided in Sections 6.2 (Automatic Termination) and 8.3 (Remedies for Default), this Agreement may only be amended or terminated with the mutual written consent of the Parties.

6.2 Automatic Termination. This Agreement shall automatically terminate upon termination of all lifetime leases for the Lifetime Lease Units, in accordance with Subdivision Code Section 1396.4(g).

7. TRANSFER OR ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE

7.1 Agreement Runs With The Land. Property Owner may assign or transfer its duties and obligations under this Agreement to another entity, provided such entity is the legal and equitable fee owner of the Property ("Transferee"). As provided in Section 9.2, this Agreement runs with the land and any Transferee will be bound by all of the terms and conditions of this Agreement.

7.2 Rights of Property Owner. The provisions in this Section 7 shall not be deemed to prohibit or otherwise restrict Property Owner from (i) granting easements or licenses to facilitate development of the Property, (ii) encumbering the Property or any portion of the improvements thereon by any mortgage, deed of trust, or other device securing financing with respect to the Property, (iii) granting a leasehold interest in all or any portion of the Property (other than the Lifetime Lease Units), or (iv) transferring all or a portion of the Property pursuant to a sale, transfer pursuant to foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage. None of the terms, covenants, conditions, or restrictions of this Agreement or the Program shall be deemed waived by City by reason of the rights given to the Property Owner pursuant to this Section 7.2.

7.3 Property Owner's Responsibility for Performance. If Property Owner transfers or assigns all or any portion of the Property or any interest therein to any other person or entity, Property Owner shall continue to be responsible for performing the obligations under this Agreement as to the transferred property interest until such time as there is delivered to the City a legally binding agreement pursuant to which the Transferee assumes and agrees to perform Property Owner's obligations under this Agreement from and after the date of transfer of the Property (or an interest therein) to the Transferee (an "Assignment and Assumption Agreement"). The City is entitled to enforce each and every such obligation assumed by the Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert any defense against the City's enforcement of performance of such obligation that is attributable to Property Owner's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between the Property Owner and the Transferee. The transferor Property Owner shall remain responsible for the performance of all of its obligations under the Agreement prior to the date of transfer, and shall remain liable to the City for any failure to perform such obligations prior to the date of the transfer.

7.4 Release Upon Transfer or Assignment. Upon the Property Owner's transfer or assignment of all or a portion of the Property or any interest therein, including the Property Owner's rights and interests under this Agreement, the Property Owner shall be released from any obligations required to be performed from and after the date of transfer under this Agreement with respect to the portion of the Property so transferred; provided, however, that (i) the Property Owner is not then in default under this Agreement and (ii) the Transferee executes and delivers to the City the legally binding Assignment and Assumption Agreement. Following any transfer, in accordance with the terms of this Section 7, a default under this Agreement by the Transferee shall not constitute a default by the Property Owner under this Agreement and shall have no effect upon the Property Owner's rights under this Agreement as to the remaining portions of the Property owned by the Property Owner. Further, a default under this Agreement by the Property Owner as to any portion of the Property not transferred or a default under this agreement by the Property Owner prior to the date of transfer shall not constitute a default by the Transferee and shall not affect any of Transferee's rights under this Agreement.

7.5 Rights of Mortgagees; Right to Cure Default.

7.5.1 Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), a mortgagee or beneficiary under a deed of trust, including any mortgagee or beneficiary who obtains title to the Property or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action, (“Mortgagee”) shall not be obligated under this Agreement to complete the condominium conversion under the Program solely because the Mortgagee holds a mortgage or other interest in the Property or this Agreement. The foregoing provisions shall not be applicable to any other party who, after such foreclosure, conveyance, or other action in lieu thereof, or other remedial action, obtains title to the Property or a portion thereof from or through the Mortgagee or any other purchaser at a foreclosure sale other than the Mortgagee itself. A breach of any obligation secured by any mortgage or other lien against the mortgaged interest or a foreclosure under any mortgage or other lien shall not by itself defeat, diminish, render invalid or unenforceable, or otherwise impair the obligations or rights of the Property Owner under this Agreement.

7.5.2 Subject to the provisions of the first sentence of Section 7.5.1, any person, including a Mortgagee, who acquires title to all or any portion of the mortgaged property by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise shall succeed to all of the rights and obligations of the Property Owner under this Agreement, and shall take title subject to: (i) all of the terms and conditions of this Agreement; (ii) the Program requirements for the Lifetime Lease Units; and (iii) any lifetime lease for the Lifetime Lease Units entered into in accordance with this Agreement. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote any portion of the Property to any uses, or to construct any improvements, other than the uses and improvements provided for or authorized by the Program and this Agreement.

7.5.3 If City receives a written notice from a Mortgagee or from Property Owner requesting a copy of any Notice of Default delivered to Property Owner and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Property Owner, any Notice of Default delivered to Property Owner under this Agreement. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to City at the address shown on the first page of this Agreement for recording, provided that no Mortgagee or trustee under a deed of trust shall incur any liability to the City for any failure to give any such notice of default or notice of sale except to the extent the City records a request for notice of default and notice of sale in compliance with Section 2924b of the California Civil Code (a “Request for Special Notice”) with respect to a specific mortgage or deed of trust and the Mortgagee or trustee fails to give any notice required under Section 2924b of the California Civil Code as a result of the recordation of a Request for Special Notice.

7.5.4 A Mortgagee shall have the right, at its option, to cure any default or breach by the Property Owner under this Agreement within the same time period as Property Owner has to remedy or cause to be remedied any default or breach, plus an additional period of (i) thirty (30) calendar days to cure a default or breach by the Property Owner to pay any sum of money required to be paid hereunder and (ii) ninety (90) days to cure or commence to cure a non-monetary default or breach and thereafter to pursue such cure diligently to completion; provided that if the Mortgagee cannot cure a non-monetary default or breach without acquiring

title to the Property, then so long as Mortgagee is diligently pursuing foreclosure of its mortgage or deed of trust, Mortgagee shall have until ninety (90) days after completion of such foreclosure to cure such non-monetary default or breach.

7.5.5 If at any time there is more than one mortgage constituting a lien on any portion of the Property, the lien of the Mortgagee prior in lien to all others on that portion of the mortgaged property shall be vested with the rights under this Section 7.5 to the exclusion of the holder of any junior mortgage; provided that if the holder of the senior mortgage notifies the City that it elects not to exercise the rights sets forth in this Section 7.5, then each holder of a mortgage junior in lien in the order of priority of their respective liens shall have the right to exercise those rights to the exclusion of junior lien holders. Neither any failure by the senior Mortgagee to exercise its rights under this Agreement nor any delay in the response of a Mortgagee to any notice by the City shall extend Property Owner's or any Mortgagee's rights under this Section 7.5. For purposes of this Section 7.5, in the absence of an order of a court of competent jurisdiction that is served on the City, a then current title report of a title company licensed to do business in the State of California and having an office in the City setting forth the order of priority of lien of the mortgages shall be reasonably relied upon by the City as evidence of priority.

7.6 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be constructively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

8. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

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

8.2 Default. For purposes of this Agreement, the following shall constitute a 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; 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, but in no event later than one hundred twenty (120) days.

8.3 Remedies for Default. In the event of an uncured 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. In addition, the non-defaulting Party may terminate this Agreement subject to the provisions of this Section 8 by sending a Notice of Intent to Terminate to the other Party setting forth the basis for the termination. The Agreement will be considered terminated effective upon receipt of a Notice of Termination.

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

9. MISCELLANEOUS PROVISIONS

9.1 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.

9.2 Binding Covenants; Run With the Land; Release. From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Regardless of whether the procedures in Section 7 are followed, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468. Notwithstanding the forgoing, in the event that a final map or parcel map is approved and recorded for the Property, such that the Property is subdivided into multiple condominium parcels, the Parties hereby agree that, upon request from the Property Owner or any owner of a Market Rate Unit, they will execute and deliver to the other all further instruments and documents as may be reasonably necessary to release a Market Rate Unit from the terms of this Agreement.

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

9.4 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Property Owner. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement shall be deemed to refer to the Agreement as it may be amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

9.5 Property Is a Private Undertaking; No Joint Venture or Partnership.

9.5.1 The Property is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. The Property Owner shall exercise full dominion and control over the Property, subject only to the limitations and obligations of the Property Owner contained in this Agreement or in the Program.

9.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and the Property Owner. Neither Party is acting as the agent of the other Party in any respect hereunder. The Property Owner is not a state or governmental actor with respect to any activity conducted by the Property Owner hereunder.

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

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

9.8 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Director
San Francisco Public Works
49 South Van Ness Avenue 16th Floor
San Francisco, California 94103

With a copy to:

David Chiu, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: John Malamut, Dep. City Attorney

To Property Owner:

9.9 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.10 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Property Owner acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.11 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

9.12 Sunshine. The Property Owner understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't 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.

9.13 Effective Date. This Agreement will become effective on the date that the last Party duly executes and delivers this Agreement.

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:
David Chiu, City Attorney

By: _____
Elias W. French, City and County Surveyor
on behalf of the Director of San Francisco
Public Works

By: _____
John D. Malamut, Deputy City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of _____)

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.

Signature of Notary Public

(Notary Seal)

PROPERTY OWNERS

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

PROPERTY OWNER

Owner's Signature

Printed Name: _____

Date: _____

SIGNATURES MUST BE NOTARIZED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of _____)

County of _____)

On _____ before me, _____, Notary Public,
Date *Name of Officer*

personally appeared _____,
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

EXHIBIT A
Legal Description of Property

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