



City of South San Francisco

P.O. Box 711 (City Hall,
400 Grand Avenue)
South San Francisco, CA

City Council

Resolution: RES 180-2021

File Number: 21-777

Enactment Number: RES 180-2021

RESOLUTION APPROVING BUDGET AMENDMENT
#22.023 FOR A \$4,050,000 LOAN FROM
COMMERCIAL LINKAGE FEE FUNDS TO FOR THE
FUTURE HOUSING, INC. FOR THE ACQUISITION
OF 428 AND 432 BADEN AVENUE.

WHEREAS, on June 29, 2011, the Legislature of the State of California ("State") adopted Assembly Bill x1 26 ("AB 26"), which amended provisions of the State's Community Redevelopment Law (Health and Safety Code sections 33000 et seq.) ("Dissolution Law"), pursuant to which the former Redevelopment Agency of the City of South San Francisco ("City") was dissolved on February 1, 2012; and

WHEREAS, the City elected to become the Successor Agency to the Redevelopment Agency of the City of South San Francisco ("Successor Agency"); and

WHEREAS, pursuant to Health and Safety Code Section 34191.5(c)(2)(C), property shall not be transferred to a successor agency, city, county or city and county, unless a Long Range Property Management Plan ("LRPMP") has been approved by the Oversight Board and the California Department of Finance ("DOF"); and

WHEREAS, in accordance with the Dissolution Law, the Successor Agency prepared a LRPMP, which was approved by a resolution of the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco ("Oversight Board") on May 21, 2015, and was approved by the DOF on October 1, 2015; and

WHEREAS, consistent with the Dissolution Law and the LRPMP, certain real properties located in the City of South San Francisco, that were previously owned by the former Redevelopment Agency, were transferred to the Successor Agency ("Agency Properties"); and

WHEREAS, on October 18, 2016, the City entered into an Amended and Restated Master Agreement for Taxing Entity Compensation ("Compensation Agreement") with the various local agencies who receive shares of property tax revenues from the former redevelopment project area ("Taxing Entities"), which provides that upon approval by the Oversight Board of the sale price, and consistent with the LRPMP, the proceeds from the sale of any of the Agency Properties will be distributed to the Taxing Entities in accordance with their proportionate contributions to the Real Property Tax Trust Fund for the former Redevelopment Agency; and

WHEREAS, the LRPMP, prepared by the Successor Agency and approved by the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of South San Francisco (“Oversight Board”), designated 432 Baden Avenue (the “Site”), County Assessor's Parcel Number 012-321-160 (the “Property”), to be sold, with the proceeds of the sale distributed to the taxing entities; and

WHEREAS, to carry out the terms of the LRPMP, the Successor Agency transferred the Agency Properties, including the Property, to the City for disposition consistent with the terms of the LRPMP; and

WHEREAS, the Property was transferred from the Agency to the City pursuant to Grant Deeds recorded on May 16, 2017; and

WHEREAS, Baden Development LLC (“Baden”) owns the adjacent property, 428 Baden Avenue, South San Francisco; and

WHEREAS, on September 23, 2019, Baden provided the City with a Letter of Intent (“LOI”) for the purchase of the Property for \$1,100,000 (“Purchase Price”); and

WHEREAS, on February 10, 2020 the San Mateo Countywide Oversight Board (“Countywide Oversight Board”) adopted a resolution approving the sale of the Site to Baden for \$1,100,000; and

WHEREAS, City and Baden entered into that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020; and

WHEREAS, the sale of the Property is exempt from the Surplus Land Act under Section 54234(b) of the Government Code as the Property was designated in the LRPMP for future development, and the City executed the Purchase and Sale Agreement for sale of the Property on February 19, 2020, pursuant to the terms of the LRPMP; and

WHEREAS, City and Baden entered into the First Amendment to the Purchase And Sale Agreement And Joint Escrow Instructions on April 9, 2020, which extended the due diligence period and Close of Escrow by six months; and

WHEREAS, City and Baden entered into the Second Amendment to the Purchase And Sale Agreement And Joint Escrow Instructions (collectively, the “PSA”) on December 21, 2020 which extended the Close of Escrow period to May 17, 2021 and allowed for two 90-day administrative extensions; and

WHEREAS, on April 29, 2021, Baden opted to utilize one of the administrative extensions which extended the Close of Escrow period to August 16, 2021; and

WHEREAS, on August 6, 2020, the City of South San Francisco Planning Commission adopted Resolution 2866-2020 approving Conditional Use Permit (UP19-0005) and Design Review (DR19-0022) for a development project proposed at the Property; and

WHEREAS, specifically, Resolution 2866-2020 approves a residential development, consisting of 36

rental units utilizing the State Density Bonus Law where three of the units will be dedicated to very low income households and be subject to an Affordable Housing Agreement, and provide 28 parking spaces over 0.32 acres on 428 and 432 Baden Avenue (consisting of two parcels (APNs: 012-321-170 and 012-321-160)) (collectively, the "Project Site"); and

WHEREAS, For the Future Housing, Inc. ("FTF Housing") made an offer to Baden to purchase the Project Site; and

WHEREAS, on October 13, 2021 the City Council adopted Resolution No. 179-2021, authorizing the City to enter into the Third Amendment to the PSA, approving the assignment of Baden's rights and obligations under the PSA to FTF Housing, amending the scope of the Project from market rate to a fully-affordable housing development of thirty-six below market rate units, and changing the Close of Escrow date to January 5, 2022, and amending other related provisions; and

WHEREAS, in order to purchase the Project site, FTF Housing has requested an acquisition loan of \$4,050,000 from the City ("Acquisition Loan"); and

WHEREAS, the City Council now wishes to approve the Acquisition Loan to FTF Housing in the amount of \$4,050,000 in order to streamline the likelihood and timeline for the delivery of the fully-affordable housing development at 428 and 432 Baden Avenue; and

WHEREAS, the terms of the Acquisition Loan will be provided in two components: \$2,000,000 pursuant to terms for a "Short Term Component" repaid after FTF Housing secures construction financing, but no later than twenty-four (24) months after the date of execution of the Loan Agreement; and \$2,050,000 pursuant to terms for a "Long Term Component", which will become due and payable in fifty-five (55) years from the date of execution of the Loan Agreement, with annual payments made through residual receipts; and

WHEREAS, both the short and long term components of the Acquisition Loan would become due and payable if construction financing is not secured within 24 months of the Loan Agreement; and

WHEREAS, the Acquisition Loan will be secured by a Promissory Note, and Deed of Trust encumbering both properties at 428 and 432 Baden Avenue; and

WHEREAS, as a condition of providing the Acquisition Loan, the City will impose occupancy and affordability restrictions on both properties at 428 and 432 Baden Avenue to ensure the affordable units remain affordable to low income households, which the City will set forth in the Loan Agreement and Affordable Housing Regulatory Agreement.

NOW, THEREFORE, the City Council of the City of South San Francisco does hereby resolve as follows:

1. The Recitals set forth above are true and correct, and are incorporated herein by reference.
2. The Loan Agreement and Affordable Housing Regulatory Agreement, in the forms attached hereto as Exhibits A and B and incorporated herein, are hereby approved, and the City Manager or his designee is hereby authorized to execute the agreements on behalf of the City of South San Francisco; to make revisions to the Loan Agreement and Affordable Housing Regulatory Agreement,

with review and approval by the City Attorney, which do not materially or substantially increase the City's obligations thereunder; to sign all documents; to make all approvals and take all actions necessary or appropriate to carry out and implement the intent of this Resolution.

* * * * *

Exhibit A: Loan Agreement

Exhibit B: Affordable Housing Regulatory Agreement

At a meeting of the City Council on 10/13/2021, a motion was made by Councilmember Nicolas, seconded by Councilmember Flores, that this Resolution be approved. The motion passed.

Yes: 5 Mayor Addiego, Vice Mayor Nagales, Councilmember Nicolas, Councilmember Coleman, and Councilmember Flores

Attest by



Rosa Govea Acosta, City Clerk

**LOAN AGREEMENT
(428-432 Baden Avenue)**

This Loan Agreement (this “**Agreement**”) is entered into effective as of _____, 2022 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (the “**City**”) and For The Future Housing, Inc., a California Corporation (“**Borrower**”). The City and Borrower are hereinafter collectively referred to as the “**Parties**.”

RECITALS

- A. City owns that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as County Assessor’s Parcel Number 012-321-160, more particularly described in Exhibit A attached hereto (“**Property**”). Borrower owns, or intends to acquire, that certain adjacent lot, located at 428 Baden Avenue, South San Francisco, known as County Assessor’s Parcel Number 012-314-010 (“**Adjacent Lot**”) (hereinafter collectively referred to as the “Combined Properties”).
- B. In accordance with that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020, as amended by that certain First Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated April 9, 2020, that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated December 21, 2020, and that certain Third Amendment to the Purchase and Sale Agreement and Joint Escrow Instructions dated _____ (together, the “**PSA**”) with respect to the Property, the City agreed to sell the Property to Borrower, and Borrower agreed to merge the Combined Properties into one parcel for the purpose of developing a high density, residential apartment building with thirty-five (35) affordable dwelling units thereon and one manager unit (each a “**Unit**,” and collectively the “**Project**”).
- C. Of even date with Borrower's acquisition of the Property, the Parties will execute for recordation in the Official Records of San Mateo County (the “**Official Records**”) an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”), recorded against the Combined Properties, substantially in the form approved by the City Council on October 13, 2021, pursuant to which Borrower will agree to lease all thirty-five (35) Units, exclusive of a manager's Unit, at an affordable rent for a period of fifty-five (55) years from the date of Project Completion, as defined by issuance of a final certificate of occupancy or equivalent certification provided for the Units by the City’s building official. Affordability levels for the Units shall be as set forth in Regulatory Agreement Exhibit B.
- D. The City maintains a Commercial Linkage Fee Fund (Fund 823). To assist in the construction of affordable units on the Combined Properties, the City desires to make to Borrower, and Borrower desires to accept from the City, a loan as described in further detail in this Agreement and using Commercial Linkage Fee Fund monies, in the total amount of Four Million Fifty Thousand Dollars (\$4,050,000) (the “**Loan**”).
- E. Through this Agreement and accompanying Exhibits, the City is providing the loan in two components, Two Million Dollars (\$2,000,000) pursuant to terms for a “**Short Term**

Component", and Two Million Fifty Thousand Dollars (\$2,050,000) pursuant to terms for a **"Long Term Component"**, and shall be evidenced by an accompanying Promissory Note (**"Note"**), substantially in the form attached hereto as Exhibit B. The Short Term Component of the Loan will be repaid after Borrower secures construction financing, but no later than expiration of the Short Term Component Maturity Date, as contemplated herein. The Long Term Component of the Loan will become due and payable in fifty-five (55) years, and payments thereon will be made annually through residual receipts.

- F. Pursuant to the PSA, One Million One Hundred Thousand Dollars (\$1,100,000) is the purchase price for the Property. The City will place the full amount of the Loan in Escrow, and One Million One Hundred Thousand Dollars (\$1,100,000) of the Loan will serve as seller-financing of the Purchase Price. Thus, One Million One Hundred Thousand Dollars (\$1,100,000) of the Loan will be repaid to the City's Commercial Linkage Fee Fund upon close of Escrow. The additional Two Million Nine Hundred and Fifty Thousand Dollars (\$2,950,000) will be disbursed to the Borrower to be used for acquisition of the Adjacent Lot in order for Borrower to construct thirty-five (35) affordable dwelling units, and one (1) manager's unit on the Combined Properties.
- G. As a condition of providing the Loan, the City imposes occupancy and affordability restrictions on the Combined Properties to ensure the affordable units remain affordable to low income households as set forth herein and as further defined by the Regulatory Agreement executed concurrently herewith. This Agreement, the Note, Deed of Trust, and Regulatory Agreement shall collectively be referred to herein as the **"City Documents"**.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by the Parties as follows:

1. **LOAN TERMS.**

1.1. Promissory Note; Deed of Trust. City agrees to loan to Borrower the amount of Four Million Fifty Thousand Dollars (\$4,050,000), and Borrower agrees to accept the same, upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note dated as of the Effective Date and executed by Borrower. The Note shall be secured by a Deed of Trust, as further described in Section 5 and 6, and substantially in the form attached hereto as Exhibit C. The Deed of Trust shall encumber the Combined Properties.

1.2. Short Term Component. The Short Term Component of the Loan, which shall be in the amount of Two Million Dollars (\$2,000,000), shall become due and payable upon the earlier date of (1) twenty-four (24) months from execution of this Agreement; or (2) the date Borrower secures construction financing (**"Short Term Component Maturity Date"**). If Borrower has not secured all project financing by the end of the Short Term Component Maturity Date, Borrower has submitted a minimum of two low income housing tax credit applications, and City determines there is a reasonable likelihood that project financing will be obtained, the City Manager may, upon request from the Borrower, extend the Short Term Component Maturity Date up to an additional twenty four (24) months. Any request for extension by Borrower must

be received by City no later than ninety (90) days before the Short Term Component Maturity Date. Any extension approved by the City Manager shall be in writing.

1.3. Long Term Component. The Long Term Component of the Loan, which shall be in the amount of Two Million Fifty Thousand Dollars (\$2,050,000), shall become due and payable fifty-five (55) years from the date of Project Completion, as defined by issuance of a final certificate of issuance of occupancy or equivalent certification provided for the Units by the City's building official, with annual payments made from the Project's Net Residual Receipts ("**Long Term Component Maturity Date**"). However, if the date of Project Completion cannot be established, the Long Term Component shall be due and payable on the fifty-seventh (57th) anniversary from the date of execution of this Agreement.

1.4. Interest. No interest will accrue on the Note unless Borrower commits an Event of Default under this Agreement or any of the City Documents. If Borrower commits an Event of Default, the Loan shall accrue interest at the Default Rate, as set forth in the Note, until such default is cured.

2. DISBURSEMENT.

2.1. Loan funds disbursed pursuant to this Agreement shall be used by Borrower to pay for the cost of acquisition of the Property and Adjacent Lot, and for no other purposes.

2.2. Disbursement of Proceeds. Provided that Borrower has complied with all conditions set forth in Section 2.3, the Loan shall be disbursed as set forth herein:

- a. The Note and Deed of Trust will be executed prior to any disbursement of funds under this Agreement. Should there be a conflict in the language between the Note and this Agreement, the Note will prevail. City reserves the right to withhold disbursements if City determines that Borrower's performance of applicable terms and conditions is unacceptable or documentation evidencing performance is unacceptable; provided City shall provide Borrower and its limited partners with forty-five (45) days' notice and opportunity to cure. In no event shall City's total fiscal obligation under this Agreement exceed Four Million Fifty Thousand Dollars (\$4,050,000).
- b. The City will place the full amount of the Loan in Escrow, and One Million One Hundred Thousand Dollars (\$1,100,000) of the Loan will serve as seller-financing of the Purchase Price. Upon close of Escrow, One Million One Hundred Thousand Dollars (\$1,100,000) of the Loan shall be repaid to the City's Commercial Linkage Fee Fund. Two Million Nine Hundred and Fifty Thousand Dollars (\$2,950,000) shall then be disbursed to the Borrower to be used for acquisition of the Adjacent Lot in order for Borrower to construct thirty-five (35) affordable dwelling units, and one (1) manager's unit on the Combined Properties.

2.3. Conditions Precedent to Disbursement of Funds. The City's obligation to disburse the proceeds of the Loan is conditioned upon satisfaction of all of the following conditions:

- a. Borrower's execution and delivery to the City of this Agreement, the Note, and Deed of Trust; and
- b. Borrower's delivery to the City of both of the following: (i) a certified resolution indicating that Borrower has authorized this transaction and that the persons executing this Agreement on Borrower's behalf have been duly authorized to do so, and (ii) certified copies of Borrower's articles of incorporation, bylaws, and I.R.S. tax-exemption determination letter.

2.4. No Obligation to Disburse Proceeds Upon Default or Termination. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse any portion of the Loan to Borrower:

- a. Upon the failure of any of Borrower's representations and warranties set forth in this Agreement to be true and correct in all material respects;
- b. Following the termination of this Agreement; or
- c. During the pendency of any uncured Event of Default.

3. AVAILABILITY OF FUNDS.

Notwithstanding any other provision in this Agreement, City may terminate this Agreement based upon unavailability of City funds by providing written notice to Borrower as soon as is reasonably possible after City learns of said unavailability of such funding.

4. RELATIONSHIP OF THE PARTIES.

Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. Borrower agrees and understands that work/services performed pursuant this Agreement are performed by Borrower as conditions of receiving the Loan funding, and not as an employee or joint venture of City and that neither Borrower nor its employees acquire any of the rights, privileges, powers, or advantages of City employees. Nothing contained in this Agreement shall create or justify any claim against the City by any person that the Borrower may have employed or with whom the Borrower may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the purchase of the Combined Properties, or the construction or operation of the Project, and the Borrower shall include similar requirements in any contracts entered into for such purposes.

5. SECURITY.

The accompanying Note shall be secured by the Deed of Trust, and the Assignment of Collateral as set forth in the Note. Borrower hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, the Deed of Trust shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Combined Properties or the Project, except through a subordination agreement signed by the City. If at the time the Deed of Trust is recorded, any

interest, lien, or encumbrance has been recorded against the Combined Properties in position superior to the Deed of Trust, upon the request of City, except for a subordination agreement signed, shall clear such matter from title or to subordinate such interest to this Agreement, and to provide such evidence thereof as City may reasonably request. Any subordination request shall be subject to a \$1,000.00 fee payable by Borrower to City upon Borrower's request for City to review instruments and other legal documents proposed to effect a subordination of the City Documents.

6. DEED OF TRUST.

Concurrent with the Borrower's acquisition of the Combined Properties, the Borrower shall record and comply with the Deed of Trust in a form provided by the City and reasonably acceptable to the Borrower. Such Deed of Trust shall be subordinate to Borrower's private financing for construction of the Project, upon written approval from the City. The Deed of Trust shall be recorded against the Combined Properties.

7. ASSIGNABILITY AND SUBCONTRACTING

Borrower hereby subjects its interest in the Combined Properties to the covenants and restrictions set forth in this Agreement and City Documents. The Parties hereby declare their express intent that the covenants and restrictions set forth herein, and the City Documents, shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Parties, regardless of any sale, assignment, conveyance or transfer of the Combined Properties, the Project or any part thereof or interest therein. Any successor-in-interest to Borrower, including without limitation any purchaser, transferee or lessee of the Combined Properties or the Project (other than the Eligible Households of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby, and in the City Documents, for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Combined Properties or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein and in the City Documents regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Borrower hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement, and the City Documents and agree to be bound hereby. Except as permitted in the Deed of Trust or elsewhere in this Agreement, Borrower shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Borrower under this Agreement without the prior written consent of City. Any such assignment or subcontract without City's prior written consent will give City the right to declare an Event of Default hereunder. Notwithstanding the foregoing restrictions, Borrower may, with City's prior written consent, assign its rights and obligations under this Agreement to a limited partnership formed to develop and own the Project. In connection with such assignment, City and Borrower acknowledge and agree that this Agreement and any other City Documents shall be amended and restated to reflect such assignment.

Borrower agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein, or the City Documents do not run with the land, such covenants shall be enforced as equitable servitudes against the Combined Properties and the Project in favor of the City.

8. INSURANCE.

Borrower shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by City's Risk Manager, and Borrower shall use diligence to obtain such insurance and to obtain such approval. Borrower shall furnish City with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Borrower's coverage to include the contractual liability assumed by Borrower pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to City of any cancellation of the policy for reasons other than nonpayment of premium, and ten (10) days' notice of cancellation of the policy for non-payment of premium. Throughout the term of this Agreement, Borrower shall comply with the insurance requirements set forth in this Agreement and the City Documents, and shall, at Borrower's expense, maintain in full force and effect, insurance coverage as specified therein.

9. COMPLIANCE WITH LAWS; PAYMENTS OF PERMITS / LICENSES.

All services to be performed by Borrower pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, City, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or City financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, City, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Borrower will timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. NON-DISCRIMINATION AND OTHER REQUIREMENTS.

10.1. General non-discrimination. Borrower covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or

the Property, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. Deeds, leases, and contracts entered into by Borrower with respect to the Project shall contain any mandatory non-discrimination language required under the Regulatory Agreement.

All deeds made or entered into by Borrower, its successors or assigns, as to any portion of the Combined Properties or Project shall contain the following language, and all leases or contracts made or entered into by Borrower, its successors or assigns, as to any portion of the Combined Properties or Project, shall reference this Section, and shall enforce the same diligently and in good faith:

"(a) Borrower herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the Borrower or any person claiming under or through the Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (d) of Section 12955 of the Government Code shall apply to paragraph (a)."

10.2. Equal employment opportunity. Borrower shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Borrower's equal employment policies shall be made available to City upon request.

10.3. Section 504 of the Rehabilitation Act of 1973. Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to Borrowers who are providing services to members of the public under this Agreement.

10.4. Discrimination Against Individuals with Disabilities. Borrower shall comply fully with the nondiscrimination requirements of 41 C.F.R. § 60-741.5(a), which is incorporated herein as if fully set forth.

10.5. History of Discrimination. Borrower must check one of the two following options, and by executing this Agreement, Borrower certifies that the option selected is accurate:

- ☐ No finding of discrimination has been issued in the past 365 days against Borrower by the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Borrower within the past 365 days by the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or other investigative entity. If this box is checked, Borrower shall provide City with a written explanation of the outcome(s) or remedy for the discrimination.

10.6. Violation of Non-discrimination provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Borrower to penalties, to be determined by the City Manager, including but not limited to the following:

- i. Termination of this Agreement;
- ii. Disqualification of Borrower from bidding on or being awarded a City contract for a period of up to 3 years;
- iii. Liquidated damages of \$2,500 per violation; and/or
- iv. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the City Manager.

To effectuate the provisions of this Section, the City Manager shall have the authority to examine Borrower's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Borrower under this Agreement or City Documents.

Borrower shall report to the City Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Department of Fair Employment and Housing, or any other entity charged with the investigation of allegations within thirty (30) days of such filing, provided that within such thirty (30) days such entity has not notified Borrower that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Borrower shall provide City with a copy of their response to the Complaint when filed.

11. ADDITIONAL COVENANTS, REPRESENTATIONS AND WARRANTIES OF BORROWER.

11.1. Representations. Borrower represents and warrants to the City as follows:

- a. Organization of the Borrower. Borrower is a duly organized California corporation, validly existing and in good standing under the laws of the State of California. Borrower has all requisite power and authority to develop the Combined Properties, to carry on its business as now conducted, and to execute, deliver and perform its obligations under this Agreement, the Note and Deed of Trust.
- b. Authorization of the Loan; No Violation. The execution, delivery and performance of this Agreement, the Note and Deed of Trust have been duly authorized by Borrower, and this Agreement, the Note and Deed of Trust, when duly executed and delivered will constitute the valid and binding obligations of Borrower enforceable in accordance with their respective terms. Borrower's execution of this Agreement, the Note and Deed of Trust and performance thereunder will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.
- c. Litigation. There are no pending or, to Borrower's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower or its ability to carry out the obligations of Borrower under this Agreement, the Note and Deed of Trust. Borrower is not the subject of an action under federal or state Bankruptcy Law (as defined below).

11.2. Indemnification. Borrower shall indemnify, defend (with counsel approved by the City), and hold the City and its elected and appointed officers, officials, employees, contractors, agents, and representatives (all of the foregoing, collectively the "**Indemnitees**") harmless from and against any and all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and court costs) (all of the foregoing, collectively "**Claims**") arising directly or indirectly in any manner in connection with or resulting from, (a) any and all of Borrower's predevelopment and construction activities in connection with the Project, including without limitation, site investigations conducted by or for Borrower; (b) any failure of any of Borrower's representations or warranties set forth in this Agreement, or made by Borrower in connection with the execution and delivery of this Agreement or in any certificate furnished pursuant hereto, or in connection with any request for disbursement of proceeds of the Loan to be correct in all material respects; (c) any contract for services entered into between Borrower and a third party, or services provided to Borrower by a third party, related to the Project; and (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnatee which relates to or arises in connection with the Loan or any transaction contemplated thereby. Borrower's obligations under this Section shall survive the making and repayment of the Loan and the expiration or termination of this Agreement. Borrower's indemnity obligations shall not apply to Claims arising solely as a result of the willful misconduct or gross negligence of the Indemnitees.

11.3. Books and Records. The City shall have the right, during business hours and after reasonable notice to Borrower, to request copies of, inspect, and copy Borrower's books and records pertaining to the Combined Properties, the Project and the Loan, excluding those that are confidential or proprietary. Borrower shall comply with any request for such records within thirty (30) days. The City shall maintain the copies of Borrower's books and records in strict confidence except to the extent required to be disclosed by applicable law.

12. DEFAULT AND REMEDIES.

12.1. Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- a. Borrower fails to pay any amount due under the Note, and such failure continues for thirty (30) days after the City notifies Borrower thereof in writing.
- b. Any of Borrower's representations or warranties contained in this Agreement, or made by Borrower in connection with the execution and delivery of this Agreement or in any certificate furnished pursuant hereto, or in connection with any request for disbursement of the proceeds of the Loan, shall prove to have been incorrect when made in any material respect.
- c. Borrower fails to use the proceeds of the Loan in accordance with this Agreement or fails to use proceeds of the Loan in accordance with Borrower's request for disbursement.
- d. Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower, (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.
- e. A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that, (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of such entity's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Combined Properties or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.
- f. Borrower fails to maintain insurance as required pursuant to any of the Loan Documents, and Borrower fails to cure such default within ten (10) days.
- g. Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement or the Note, and unless a shorter cure

period is specified for such default, the default continues for thirty (30) days after the date upon which the City shall have given written notice of the default to Borrower; provided, however, that in the case of a nonmonetary default that is not susceptible of cure within thirty (30) days, an Event of Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from the receipt of notice of default.

12.2. Remedies. Upon the occurrence of an Event of Default, the City shall have the following rights:

- a. To exercise the remedies under the Deed of Trust and Assignment of Collateral;
- b. To seek a judicial declaration or order of specific performance;
- c. To terminate this Agreement.

Notwithstanding the forgoing, the Loan is non-recourse to Borrower. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice, any other remedy provided herein or in the Note or Deed of Trust. The City may exercise any rights and remedies available at law or in equity, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement; provided, however, that Borrower's obligation to repay the Loan shall be secured by the Assignment and the Deed of Trust without recourse to Borrower.

13. MISCELLANEOUS.

13.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the City's obligation to make the Loan is personal to Borrower, and shall not be assignable by operation of law or otherwise absent the express written consent of the City, and any such prohibited assignment by operation of law or otherwise shall be void. The City shall not unreasonably delay, condition, or withhold its consent to an assignment of this Agreement by Borrower to a tax credit limited partnership in which Borrower or an affiliate of Borrower is a general partner.

13.2. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- a. Personal delivery, in which case notice is effective upon delivery;
- b. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

- c. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- d. Electronic mail, in which case notice shall be deemed delivered upon transmittal, provided that, (i) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery (in which case notice shall be deemed given two business days after the duplicate is deposited in the mail), or (ii) receipt is voluntarily acknowledged by the Party to be noticed (in which case notice shall be deemed given when acknowledged), and the electronic mail is sent to an address approved for these purposes under this Agreement by an authorized representative of Borrower or the City.

CITY:

City of South San Francisco
Attn: Director, Community and Economic Development Department
400 Grand Avenue
South San Francisco, CA 94080
Attention: City Manager

WITH A COPY TO:

Meyers Nave
Attn: Sky Woodruff
1999 Harrison Street, 9th Floor
Oakland, CA 94612
Tel (510) 808-2000
Email sky@meyersnave.com

BORROWER:

For the Future Housing
Attn:
[Insert Borrower signature block]

13.3. Waiver, Modification and Amendment. No failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances unless expressly provided herein or by law. No amendment to or modification of this Agreement shall be

effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

13.4. Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

13.5. Modifications for Lenders and Investors. The City Manager is authorized to execute amendments to this Loan Agreement, the Note, Regulatory Agreement, and Deed of Trust, as may be reasonably requested by Project lenders and investors.

13.6. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council unless the City Manager determines in his or her discretion that such action requires such approval.

13.7. Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Borrower, or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Borrower or its successor or for any obligation of the City under this Agreement.

13.8. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

13.9. Captions; Construction. The headings of the sections and paragraphs of this Agreement have been inserted for convenience only and shall not be used to construe this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and consistent with the purposes for which the Parties entered into this Agreement, and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

13.10. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of law. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Combined Properties are located (the “**Property Jurisdiction**”). Borrower agrees that any controversy arising under or in relation to this Agreement shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

13.11. Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the

Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

13.12. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

13.13. Entire Agreement; Exhibits. The PSA, this Agreement, the Note, Deed or Trust, and Regulatory Agreement, contain the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits attached hereto are incorporated herein by this reference.

13.14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Loan Agreement as of the date first written above.

**CITY OF SOUTH SAN FRANCISCO,
a municipal corporation**

By: _____

Name: Mike Futrell
City Manager

ATTEST:

By: _____
Rosa Govea Acosta
City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff
City Attorney

BORROWER:

**FOR THE FUTURE HOUSING, INC.,
a California corporation**

[Insert Signature Block]

EXHIBIT A
Legal Description of Property

DRAFT

EXHIBIT B
Form of Promissory Note

PROMISSORY NOTE
Secured by a Deed of Trust
(428-432 Baden Avenue)

South San Francisco, California
_____, 2022

FOR VALUE RECEIVED, the undersigned, FOR THE FUTURE HOUSING, INC., a California corporation (“**Debtor**” or “**Borrower**”), promises to pay to the City of South San Francisco, a municipal corporation (“**Holder**” or “**City**”), at 400 Grand Avenue, South San Francisco, California 94080, or any other place designated in writing by Holder to Debtor, in lawful money of the United States a principal sum not to exceed FOUR MILLION FIFTY THOUSAND DOLLARS (\$4,050,000) (“**Loan**”) pursuant to the Loan Agreement dated as of the date hereof by and between Borrower and City (the “**Loan Agreement**”), as further described in Paragraph 1 below, and in accordance with the terms and conditions described herein. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Loan Agreement (defined below).

This Promissory Note (this “**Note**”) has been executed and delivered pursuant to the Loan Agreement, and is subject to the terms and conditions of the Loan Agreement, which are by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by a Deed of Trust and Assignment of Rents (“**Deed of Trust**”) dated as of the date hereof, executed by Borrower for the benefit of City and encumbering Borrower's interest in the Combined Properties described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, and in the Loan Agreement.

1. Loan. This Note has been executed and delivered pursuant to the terms of the Loan Agreement between Debtor and Holder, which details the terms and conditions under which Holder agrees to lend to Debtor, and Debtor agrees to borrow, up to Four Million Fifty Thousand Dollars (\$4,050,000), , to fund the acquisition of the Combined Properties, as described in this section, for the purpose of the development of thirty-five (35) affordable dwelling units, and one (1) manager’s unit (each a “**Unit**,” and collectively the “**Project**”). The rights and obligations of Debtor under this Note shall be governed by the Loan Agreement and by the terms set forth in this Note.

Proceeds for the Loan come from the City's Commercial Linkage Fee Fund (Fund 823). Said proceeds will be used for the acquisition of that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as County Assessor's Parcel Number 012-321-160 (the “**Property**”), and the acquisition of that certain adjacent lot located in the City of South San Francisco at 428 Baden Avenue, known as County Assessor’s Parcel Number 012-314-010 (“**Adjacent Lot**”) (collectively referred to as the “**Combined Properties**”). The terms and conditions of the Loan are more specifically described in the “**Loan Agreement**”, by Resolution No. _____ and the Regulatory Agreement, dated on or about the date hereof.

2. Repayment Terms. Should there be a conflict relating to repayment terms between the Agreement and this Note, the latter will prevail.

- (a) Short Term Component. The Short Term Component of the Loan, in the amount of Two Million Dollars (\$2,000,000), shall become due and payable upon the earlier date of (1) twenty-four (24) months from execution of this Agreement; or (2) the date Borrower secures construction financing for the Project (“**Short Term Component Maturity Date**”). If Despite Borrower’s commercially reasonable efforts to secure all project financing by the end of the Short Term Component Maturity Date including multiple low income housing tax credit applications, Buyer has not secured all project financing, then the Short Term Component Maturity Date shall be automatically extended by an additional twenty-four (24) months or the date Borrower secures such financing; whichever comes first.
 - i. Place and Manner of Payment. Payment of Short Term Component shall be made in lawful money of the United States at Holder’s address for notices set forth in this Note, or to any other addresses as Holder may hereafter designate, in accordance with notices for this Note.
- (b) Long Term Component. The Long Term Component of the Loan, in the amount of Two Million Fifty Thousand Dollars (\$2,050,000), shall be due and payable fifty-five (55) years from the date of Project Completion, as defined by issuance of a final certificate of issuance of occupancy or equivalent certification provided for the Units by the City’s building official, with annual payments made from the Project’s Net Residual Receipts (“**Long Term Component Maturity Date**”). However, if the date of Project Completion cannot be established, the Long Term Component shall be due and payable on the fifty-seventh (57th) anniversary from the date of this Note.
 - i. Place and Manner of Payment. Annual payments for the Long Term Component shall be made from 50% of the Project’s Net Residual Receipts, as defined in Section 2, beginning on May 1st of the year after the Project is completed and on every May 1st thereafter during the term of the Loan as set forth herein. A copy of the annual independent financial audit shall be delivered to the City no later than May 1st of each year, beginning with the first full year of occupancy. The audit will set forth the Project’s Net Residual Receipts and payment owed to the City for the applicable fiscal year.
- (c) No Construction Financing. Notwithstanding Section 2(b), should Borrower fail to secure construction financing for the Project by the Short Term Component Maturity Date, both the Short Term Component and Long Term Component shall become immediately due and payable. If both the Short Term Component and Long Term Component become due and payable, payment shall be made to the City in lawful money of the United States at Holder’s address for notices set forth in this Note, or to any other addresses as Holder may hereafter designate, in accordance with notices for this Note.

- (d) Interest Rate. The principal amounts of the Loan under this Note shall bear no interest unless an Event of Default occurs under this Note, the Loan Agreement, Deed of Trust or Regulatory Agreement (collectively "**City Documents**").
- (e) Prepayment. Prepayments may be made at any time without penalty.

3. Residual Receipts.

"*Residual Receipts*" means, with respect to the Borrower's fiscal year, the amount by which "Gross Revenue" exceeds "Annual Operating Expenses," as defined below.

"*Net Residual Receipts*" means, with respect to the Partnership's fiscal year, the amount of Residual Receipts less any applicable Replacement Reserve Cash Flow Deposit, as defined below.

"*Gross Revenue*" means all rental and incidental income from the Project, but excluding tenant security deposits, loan proceeds and capital contributions and any interest earned on said deposits.

"*Annual Operating Expenses*" means reasonable costs actually incurred for operations and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles. A copy of the audit will be delivered with payment as specified above. Costs associated with the Project operations and maintenance include the following: property and other taxes and assessments imposed on the Project; premiums for property damage and liability insurance; utility services not paid for directly by the tenants, including but not limited to water, sewer, trash collection, gas, and electricity; maintenance and repairs, including but not limited to pest control, landscaping and grounds maintenance, painting and decorating, cleaning, common systems repairs, general repairs, janitorial supplies, and others; and license or certificates of occupancy fees required for operation of the Project; general administrative expenses, including but not limited to advertising, marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, and other services; property management fees and reimbursements, including on-site manager expenses, not to exceed fees and reimbursements which are standard in the industry and pursuant to a management contract approved by City (which such approval will not be unreasonable withheld); resident services; annual cash deposited into a reserve for capital replacements of the Project improvements in an amount of Replacement Reserve Minimum Deposit (as defined below); cash deposited into an operating reserve for the Project and such other reserves as may be required by Borrower's senior lender or tax credit investor; payments of any deferred developer fee up to the maximum Net Developer Fee, defined as the maximum cumulative cash developer fee (net of any general partner capital contributions) that may be paid from development sources and/or as an operating expense which shall not exceed the maximum amount allowed under TCAC regulations, permitted under the Loan Agreement; current and accrued general partner partnership management fee and current and accrued limited partner asset management fee in the amount set forth in Borrower's limited partnership agreement (provided, however, following withdrawal of the investor limited partner from Borrower, the limited partner asset management fee shall no longer be included as an Annual Operating Expense for purposes of calculating Residual Receipts), and debt service payments of loans in senior position to this Loan.

Commencing upon permanent loan conversion for the Project, the Borrower shall deposit \$250 per Restricted Unit per year (increasing by 3% per annum) (the "Replacement Reserve Minimum Deposit") in Borrower's replacement reserve fund. The Replacement Reserve Minimum Deposit shall be capped at Five Thousand Dollars (\$5,000) per year.

4. Security.

- (a) Assignment. As security for the Loan, Debtor assigns its rights under the Collateral, as defined below (the "**Assignment**"). The Assignment shall become effective upon the occurrence of an Event of Default. The Holder shall have no obligation under the Collateral unless it expressly agrees in writing to be bound thereby. If the Assignment shall become effective, the Holder may use the Collateral for any purposes for which Debtor could have made use of the same in the development of the Project. Debtor shall cooperate with the Holder in the implementation of its rights under the Assignment, and shall immediately deposit the Collateral with the Holder if the Assignment becomes effective. As used herein, the term "Collateral" includes the following:
- i. All architectural designs, construction, engineering, surveying, and consulting contracts, and any and all amendments, modifications, supplements, addenda and general conditions thereto heretofore or hereafter entered into by Debtor and any contractor or consultant pertaining to development of the Project;
 - ii. All plans and specifications, surveys, shop drawings, working drawings, reports, studies, amendments, modifications, changes, supplements, general conditions, addenda and work product thereto heretofore or hereafter prepared by Debtor or any contractor or consultant pertaining to development of the Project;
 - iii. All land use approvals, conditional use permits, building permits and other governmental entitlements and approvals of any nature obtained for the Project; and
 - iv. All financing applications or other applications and all other tangible documents, except those of a proprietary or confidential nature, pertaining to development of the Project.
- (b) Deed of Trust. In addition to the Assignment, concurrent with the Debtor's acquisition of the Property, the Debtor shall record a Deed of Trust in the official records of the County of San Mateo as an encumbrance upon the Combined Properties, in a form provided by the Holder and reasonably acceptable to the Debtor.

5. Events of Default. In the event Borrower commits an event of default ("Event of Default"), as defined below, Borrower shall be in default under of the terms and conditions of this Note and the Deed of Trust, and City may demand immediate and full payment of any outstanding principal amount of the Note and any accrued interest under the Agreement, and/or may initiate foreclosure proceedings under the Deed of Trust. The occurrence of any one or more of the following events shall constitute an Event of Default under the Note:

- (a) Debtor fails to pay any amount due under the Note, and such failure continues for thirty (30) days after the Holder notifies Debtor thereof in writing;

- (b) Any of Debtor's representations or warranties contained in the City Documents, or made by Debtor in connection with the execution and delivery of the Loan Agreement or in any certificate furnished pursuant hereto, or in connection with any request for disbursement of Loan proceeds, shall prove to have been incorrect when made in any material respect;
- (c) Debtor fails to use Loan proceeds in accordance with the Loan Agreement or fails to use Loan proceeds in accordance with Debtor's request for disbursement.
- (d) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Debtor, (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Debtor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Debtor; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.
- (e) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that, (i) is for relief against Debtor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Debtor or substantially all of such entity's assets, (iii) orders the liquidation of Debtor, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the the Property, Adjacent Lot, Combined Properties, or the Project, and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.
- (f) Debtor fails to maintain insurance as required pursuant to any of the City Documents, and Debtor fails to cure such default within ten (10) days.
- (g) Debtor defaults in the performance of any term, provision, covenant or agreement contained in the City Documents, and unless a shorter cure period is specified for such default, the default continues for thirty (30) days after the date upon which the Holder shall have given written notice of the default to Debtor; provided, however, that in the case of a nonmonetary default that is not susceptible of cure within thirty (30) days, an Event of Default shall not arise hereunder if Debtor commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default to completion with due diligence and in good faith, but in no event longer than one hundred twenty (120) days from the receipt of notice of default.

6. No Waiver or Consent. The failure by Holder to assert its rights upon the occurrence of an Event of Default, or the waiver by Holder of its rights upon any Event of Default, shall not constitute a consent to or waiver of Holder's rights with respect to any other Event of Default.

7. Default Interest. Upon the occurrence of any Event of Default, the interest rate on the sums as to which Debtor is in Default (including principal, if Holder has elected to declare it immediately due and payable) shall be the lower of (i) Ten Percent (10%) per annum, or (ii) the highest rate then allowed by law, commencing as of the date of the Default until paid in full, or until the Default has been cured, whichever is applicable.

8. Remedies. Upon the occurrence of any Event of Default, in addition to its other rights in this Note, the Deed of Trust and the Loan Agreement, at law, or in equity, Holder may exercise any one or more of the following rights and remedies without prior demand:

- (a) Acceleration. Holder may declare the entire unpaid principal balance of the Note together with all accrued interest thereon, and all other sums owing to Holder immediately due and payable; or
- (b) Proceed as Authorized at Law or in Equity. Holder may proceed as authorized at law or in equity with respect to the Event of Default, and in connection with that, pursue any and all other remedies available under law to enforce the terms of this Note.

9. Debtor's Waivers.

- (a) Additional Security. Debtor expressly agrees that Holder may accept further security for this Note, all without in any way affecting the obligations of Debtor under this Note.
- (b) Original Liability. No extension of time for payment of this Note or any installment hereof made by agreement by Holder with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Debtor under this Note, either in whole or in part.
- (c) Obligations Absolute. The obligations of Debtor under this Note shall be absolute and Debtor waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.
- (d) Waivers. Debtor hereby waives (i) any notice of default or delinquency in addition to any notice expressly required by this Note; (ii) notice of acceleration; (iii) any notice of nonpayment in addition to any notice required by this Note; (iv) notice of costs, expenses, losses and interest thereon; (v) notice of interest on interest and late fees; (vi) diligence in taking any action to collect any sums owing under the Note or in proceeding against any of the rights and interest in and to properties securing payment of the Note; and (vii) presentment for payment, demand, protest, and notices of dishonor and/or protest.

10. Holder Forbearance. No waiver of any breach, default or failure of condition under the terms of this Note, the Loan Agreement, Deed of Trust, Regulatory Agreement, or the obligations secured thereby, shall be implied from any failure of Holder to take, or any delay by Holder in taking, action with respect to such breach, default or failure or from any previous waiver of any similar or unrelated breach, default or failure; and a waiver of any term of this Note or the Loan Agreement must be made in writing and shall be limited to the express written terms of such waiver.

11. Nonrecourse. This Note shall be non-recourse to Debtor and its partners; provided, however, that the foregoing shall not in any way affect any rights Holder may have (as a secured party or otherwise) hereunder or under the Agreement or the Deed of Trust to recover directly from Debtor any amounts, or any funds, damages or costs (including without limitation reasonable attorneys' fees and costs) incurred by Holder as a result of fraud, intentional misrepresentation or

bad faith, waste, and any costs and expenses incurred by Holder in connection therewith (including without limitation reasonable attorneys' fees and costs).

12. Due on Sale, Refinance or Transfer of Title. Notwithstanding the foregoing, in the event of a sale, refinance or transfer of the Property, Adjacent Lot, Combined Properties, or Project, or any interest therein by Debtor without prior written consent of the Holder and in accordance with the terms of the City Documents, the entire principal balance of this Note, including any accumulated interest, shall be immediately due and payable. However, (i) the transfer of limited partner interests in Borrower to a Low-Income Housing Tax Credit ("LIHTC") investor, (ii) the subsequent transfer of such limited partner interests for the purpose of syndicating the LIHTC, (iii) the grant of a purchase option or right of first refusal to the general partners of Debtor pursuant to Debtor's partnership agreement, (iv) the removal of the general partner of Debtor and replacement with an affiliate of the investor limited partner in accordance with Debtor's partnership agreement, or (v) the granting of an option or right of first refusal by the Holder and any transfer pursuant to such option or right of first refusal as agreed to by the Holder shall not be considered a sale, refinance or transfer of the Project for purposes of this section. Replacement of a general partner of Debtor with any other entity shall be subject to prior written approval of Holder, which shall not be unreasonably withheld.

13. Notice. Except as may be otherwise specified herein, any approval, notice, direction, consent, request or other action by Holder shall be in writing and must be communicated to Debtor at the address of the Property, or at such other place or places as Debtor shall designate to Holder in writing, from time to time, for the receipt of communications from Holder. Mailed notices shall be deemed delivered and received five (5) working days after deposit in the United States mails in accordance with this provision.

Holder: City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attention: Community and Economic Development Director

Debtor: For The Future Housing, Inc.
[insert address]
Attention:

14. Miscellaneous Provisions.

- (a) **Successors and Assigns.** This Note (i) may not be assigned by Debtor without Holder's written consent, (ii) can be assigned by Holder, at its sole option, and (iii) shall be binding on all successors and assigns of Holder and Debtor.
- (b) **Attorneys' Fees.** If Holder elects to employ any of the remedies available to it in connection with any Event of Default, Debtor shall pay all reasonable costs and expenses incurred by or on behalf of Holder including, without limitation, reasonable attorneys' fees, incurred in connection with the Holder's enforcement of this Note and the exercise of any or all of its rights and remedies.

- (c) Severability. If a court of competent jurisdiction finds any provisions of this Note invalid or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby, and all other provisions of this Note shall remain in full force and effect.
- (d) Time. Time is of the essence in the performance of the terms and conditions of this Note.
- (e) Governing Law. The laws of the State of California shall govern this Note.
- (f) Amendment. This Note may not be changed orally, but only by an amendment in writing signed by Debtor and approved by Holder.
- (g) Headings. The headings within this Note are for the purpose of reference only and shall not limit or otherwise affect any of the terms of the Note.
- (h) Assumptions. The Loan, including this Note, may not be assumed in whole or in part without the prior written consent of Holder, which consent shall be given or withheld at the sole discretion of Holder. Holder may condition its consent to an assumption of the Loan on the satisfaction of conditions reasonably required by Holder at the time of the assumption. Conditions may include, but not be limited to, Holder's satisfaction, in its sole discretion, with the proposed assuming party's ability to meet the obligations of the Loan, the payment of an assumption fee and reimbursement of Holder's fees and costs incurred by reason of the assumption.

Executed in South San Francisco, California on _____ 2022.

DEBTOR:

s

FOR THE FUTURE HOUSING, INC.,
a California corporation

By:
Its:

3884909.3

EXHIBIT C
Form of Deed of Trust

RECORDING REQUESTED BY :

City of South San Francisco

WHEN RECORDED, MAIL TO :

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Clerk

*Exempt from Recording Fees pursuant to
Section 27383 of the Government Code
(This Space for Recorder's Use Only)*

DEED OF TRUST AND ASSIGNMENT OF RENTS

This Deed of Trust and Assignment of Rents (“**Deed of Trust**”), made this ____ day of _____, 2022
between

**FOR THE FUTURE HOUSING, INC., a California Corporation
(428-432 Baden Avenue)**

herein called “Trustor,” whose mailing address is

[Insert FTFH mailing address]

and [insert Trustee] “**Trustee**”, and

City of South San Francisco, herein called “Beneficiary” or “City”

RECITALS

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS, AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the properties in the City of South San Francisco, County of San Mateo, State of California, which shall include that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as County Assessor's Parcel Number 012-321-160, and that certain adjacent lot located in the City of South San Francisco at 428 Baden Avenue, known as County Assessor's Parcel Number 012-314-010 (collectively referred to as the “**Combined Properties**”), and further described in “**Exhibit A**” attached hereto, together with all the improvements now or hereafter erected on the Combined Properties, and all easements, rights, appurtenances, rents (subject, however, to the rights and authorities given to Beneficiary to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the properties, including but not limited to all gas and electric fixtures, radiators, heaters, furnaces, air conditioners, heat pumps, stoves, ranges, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating, venting and air conditioning equipment, cabinets, mantels, cooking apparatus and appurtenances, shades, awnings, screens, venetian blinds and other furnishings, all of which, including replacements and additions thereto, which shall be deemed to be and remain a part of the Combined Properties covered by this Deed of Trust; and all of the foregoing, together with said Combined Properties.

Trustor hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, this Deed of Trust shall not be subordinated in priority to any lien (other than

those pertaining to taxes or assessments), encumbrance, or other interest in the Combined Properties. If at the time this Deed of Trust is recorded, any interest, lien, or encumbrance has been recorded against the Combined Properties in position superior to this Deed of Trust, upon the request of City, Trustor hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Deed of Trust consistent with the intent of and in accordance with this Deed of Trust, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that the City will not withhold consent to reasonable requests for subordination of this Deed of Trust to deeds of trust provided for the benefit of senior lenders.

Any subordination request shall be subject to a \$1,000.00 fee payable by Trustor to City upon Trustor's request for City to review instruments and other legal documents proposed to effect a subordination under this Deed of Trust.

Trustor hereby covenants that it will not become affiliated with any senior lender by acquiring an interest in such lender, or an interest in its loan, or otherwise.

Trustor covenants that it is lawfully seized of the estate conveyed by this Deed of Trust and has the right to grant and convey the Combined Properties, and that Trustor will warrant and defend generally the title of the Combined Properties against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Combined Properties. In the event the Combined Properties or any part thereof, or any interest therein is sold, agreed to be sold, conveyed or alienated by the Trustor, or by the operation of law or otherwise, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice shall become due and payable.

TOGETHER with the rents, issues and profits thereof, SUBJECT HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions incorporated herein by reference to collect and apply such rents, issues and profits, for the purpose of securing 1) Performance of each agreement of Trustor incorporated by reference or contained herein; 2) Payment of the indebtedness evidenced by one Promissory Note ("**Note**") of even date herewith, and any extension or renewal thereof, in the principal amount of **\$4,050,000.00** executed by Trustor in favor of Beneficiary (the "**Loan**"); 3) Payment of such further sums as the then record owner of said Combined Properties hereinafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it so secured; 4) Performance of the terms and conditions of that certain Loan Agreement between the City of South San Francisco and For the Future Housing, Inc. (428-432 Baden Avenue) (the "**Loan Agreement**"), dated on or about the date hereof, approved by the South San Francisco City Council Resolution No. _____, [date]; and 5) Performance of the terms and conditions of that certain "Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants" between the City of South San Francisco and For the Future Housing, Inc. ("**Regulatory Agreement**") dated on or about the date hereof (collectively the Note, Loan Agreement and Regulatory Agreement shall be referred herein as "**City Documents**"). Any Event of Default pursuant to City Documents, shall be grounds for a declaration of an Event of Default hereunder, and Beneficiary may, at its option, demand full payment of any outstanding principal and interest due Beneficiary, under the Note secured by this Deed of Trust, and said Loan Agreement.

To protect the security of this Deed of Trust, Trustor agrees:

(1) Covenants, Conditions and Restrictions. The following covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them. The Combined Properties and all parts or parcels of the Combined Properties shall be subject to these restrictions and shall pass with the Combined Properties and shall bind the respective successors in interest of the Beneficiary. In the event of any breach of the covenants, conditions and restrictions contained in this Deed of Trust, the Beneficiary, in addition to any other remedies available to it, may institute or prosecute any suit which it may consider advisable in order to compel and obtain a decree for specific performance of any obligation of any Trustor to use and maintain the Property in conformity with these covenants. The forgoing provisions do not limit the right of the Beneficiary to foreclose or otherwise enforce any other provision of the City Documents and Deed of Trust; provided, however, that in the event of any foreclosure under any such mortgage, deed of trust or other lien or encumbrance, or sale pursuant to any power of sale included in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns and the Property shall be, and shall continue to be, subject to all of the conditions, covenants and restrictions contained in this Deed of Trust.

a. Use and Transfer Restrictions. During the fifty-five (55) year period commencing with the date of the City's issuance of a Final Certificate of Occupancy for the Project, and subject to Section 18 hereof, Trustor shall comply with the following restrictions unless Trustor has first obtained the written approval of the Beneficiary:

i. Trustor shall not convey, transfer or encumber any of the Combined Properties or permit the conveyance, transfer, or encumbrance of such Combined Properties unless such assignee, transferee or encumbrancer has agreed, in writing and in a form suitable for recordation, to be bound by the terms of the City Documents; and

ii. Trustor shall not add to, reconstruct, or demolish any part of the Combined Properties or improvements, except as provided by the City Documents.

(2) Affordability Requirements. Pursuant to the City Documents, the Combined Properties shall remain affordable to persons and families of low income, as designated and described in the Regulatory Agreement, for not less than fifty-five (55) years commencing with the date of the City's issuance of a Final Certificate of Occupancy for the Project, or some other document acceptable to Beneficiary, for the Project.

(3) Maintenance of Combined Properties. To maintain the Combined Properties and the Project in good physical condition (reasonable wear and tear excepted), in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, regulations and City Documents. Without limiting the foregoing, Trustor agrees to maintain the Project and the Combined Properties (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Combined Properties or at the Project. Trustor shall prevent and/or rectify any physical deterioration of the Combined Properties and the Project and shall make all repairs, renewals and replacements necessary to keep the Combined Properties and the improvements located thereon in good condition and repair. Trustor shall provide adequate security services for occupants of the Project.

In the event that Trustor breaches any of the covenants in this Section 3, and such default continues for a period of thirty (30) days after written notice from City, then City, in addition to any other remedy it may have under the City Documents, this Deed of Trust, or at law or in equity, shall have the right, but not the obligation, to enter upon the Combined Properties and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Combined Properties.

All costs expended by City in connection with the foregoing shall be paid by Trustor to City upon demand. Failure to pay all such sums remaining within thirty (30) days following delivery of City's invoice therefor shall constitute an Event of Default and shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law and Beneficiary may add the amount thereof to the principal balance of the Note hereby secured. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Trustor with not less than thirty (30) days' written notice prior to undertaking any work for which Trustor will incur a financial obligation.

(4) Insurance. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. Notwithstanding anything contained in any of the documents evidencing the Loan from Beneficiary to Trustor, unless Beneficiary and Trustor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property consistent with the occupancy and rent restriction requirements set forth in the City Documents. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

If such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Combined Properties to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

(5) Protection of Beneficiary's Security. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including costs of evidence of title and attorney's fees. If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Combined Properties, including, but not limited to, foreclosure, involuntary sale, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary, at its option, upon notice to Trustor, may make such appearances, disburse such sums and take such action as is necessary to protect Beneficiary's interest. Nothing contained in this Section 5 shall require Beneficiary to incur any expense or take any action.

(6) Charges and Liens. To pay at least ten days before delinquency all taxes and assessments affecting the Combined Properties, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Combined Properties or any part hereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay purchase, contest or compromise any encumbrance charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel and pay his/her reasonable fees.

(7) Timely Payment. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(8) Awards for Damages. That the proceeds of any award or claim for damages, direct or consequential, in connection with a total condemnation or taking of the Combined Properties, shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor, unless Trustor and Beneficiary otherwise agree in writing. In the event of a partial condemnation or taking, the proceeds shall be applied to the restoration or repair of the Combined Properties consistent with the occupancy and rent restriction requirements set forth in the City Documents. Such work shall be commenced as soon as reasonably practicable after the partial condemnation or taking occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that condemnation proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

If such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the condemnation proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Combined Properties to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured.

(9) Waiver. That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(10) Trustee Reconveyance. That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of the Combined Properties; consent to the making of any map or plot thereof; join in granting any easement thereon; or join in any extension agreement of any agreement subordinating the lien or charge hereof.

(11) Reconveyance. That upon written request of Beneficiary stating that all sums secured hereby have been paid and the Regulatory Agreement compliance period herein described has terminated, and

upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Combined Properties then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them).

(12) Rents. That as additional security and subject to the rights of senior lenders, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of the Combined Properties, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Combined Properties or any part thereof, in its own name sue or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of the Combined Properties, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(13) Acceleration Upon Default. That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder or an Event of Default under the City Documents, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause the Combined Properties to be sold, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Combined Properties at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States made payable at time of sale. Trustee may postpone sale of all or any portion of the Combined Properties by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchase its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary as hereinafter defined, may purchase at such sale. Beneficiary shall be entitled to collect from the Trustor, or sale proceeds, if any, all reasonable costs and expenses incurred in pursuing the remedies provided in this Section, including, but not limited to reasonable attorney's fees.

After deducting all costs, fees and expenses of Trustee and of the Trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payments of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(14) Successor Trustee. That Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county where the Combined Properties is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of new Trustee.

(15) Binding on Successors. That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges of the note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the content so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(16) Trustee Acceptance. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provide by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(17) Low-Income Tenant Protection. That notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Combined Properties encumbered by this Deed of Trust, and if the Project has received an allocation of ow Income Housing Tax Credits, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a regulatory agreement with the California Tax Credit Allocation Committee, (a) none of the tenants occupying such units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (b) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

(18) Due on Sale, Refinance, or Transfer of Title: IN THE EVENT OF A SALE, REFINANCE OR TRANSFER OF ALL OR ANY PORTION OF THE COMBINED PROPERTIES DESCRIBED HEREIN BY TRUSTOR WITHOUT PRIOR WRITTEN CONSENT OF BENEFICIARY AND IN ACCORDANCE WITH THE CITY DOCUMENTS, THE ENTIRE PRINCIPAL BALANCE OF THE NOTE, INCLUDING ANY ACCUMULATED INTEREST DUE UNDER THE AGREEMENT OR REGULATORY AGREEMENT, SHALL BE IMMEDIATELY DUE AND PAYABLE. HOWEVER, (I) THE TRANSFER OF LIMITED PARTNER INTERESTS IN TRUSTOR TO A LIHTC INVESTOR, (II) THE SUBSEQUENT TRANSFER OF SUCH LIMITED PARTNER INTERESTS FOR THE PURPOSE OF SYNDICATING THE LIHTC, (III) THE GRANT OF A PURCHASE OPTION OR RIGHT OF FIRST REFUSAL TO THE GENERAL PARTNERS OF TRUSTOR PURSUANT TO TRUSTOR'S PARTNERSHIP AGREEMENT, (IV) THE REMOVAL OF THE GENERAL PARTNER OF BORROWER AND REPLACEMENT WITH AN AFFILIATE OF TRUSTOR'S INVESTOR LIMITED PARTNER IN ACCORDANCE WITH TRUSTOR'S PARTNERSHIP AGREEMENT OR (V) THE GRANTING OF AN OPTION OR RIGHT OF FIRST REFUSAL BY THE CITY

AND ANY TRANSFER PURSUANT TO SUCH OPTION OR RIGHT OF FIRST REFUSAL AS AGREED TO BY THE CITY SHALL NOT BE CONSIDERED A SALE, REFINANCE OR TRANSFER OF THE COMBINED PROPERTIES FOR PURPOSES OF THIS SECTION. REPLACEMENT OF THE GENERAL PARTNER OF TRUSTOR WITH ANY OTHER ENTITY SHALL BE SUBJECT TO PRIOR WRITTEN APPROVAL OF CITY, WHICH SHALL NOT BE UNREASONABLY WITHHELD.

Trustor may transfer or assign all or any portion of its interest, right or obligations in the Combined Properties only as set forth in this Deed of Trust and the City Documents and with City's prior written consent, which consent City shall not withhold provided that (1) the Project is and shall continue to be operated in compliance with this Deed of Trust and the City Documents; (2) the transferee expressly assumes all obligations of Trustor imposed by this Deed of Trust and the City Documents; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Trustor's obligations under this Deed of Trust and the City Documents, and upon City's request, delivers to the City an opinion of its counsel to the effect that such document and this Deed of Trust and the City Documents are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income multifamily rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in sub-clause (A).

Consent to any proposed Transfer may be given by the City's City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved by City in writing within ninety (90) days following City's receipt of written request by Trustor, it shall be deemed approved.

Trustor shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Deed of Trust and the City Documents and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery of an invoice detailing such costs.

Accordingly, the undersigned acknowledges and agrees that, consistent with applicable law, City may accelerate the maturity dates of the principal and accrued interest on the Note in the event that the Combined Properties are sold, conveyed or alienated, except as may be prohibited by law, including section 2924.6 of the California Civil Code.

(19) Request for Notice. City requests that copies of any notices of default and notice of sale be sent to City at the address set forth above.

(20) Priority. This Deed of Trust, regardless of order of recordation, is junior and subordinate to the Regulatory Agreement recorded contemporaneously herewith.

All obligations hereunder are non-recourse. The limited partner(s) shall have the same right as Trustor to cure or remedy any default hereunder within the cure period provided to Trustor extended by an additional sixty (60) days; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general partner of Trustor in order to cure such

default, then the cure period shall be extended until the date sixty (60) days following the removal of the general partner of Trustor.

For The Future Housing, Inc., a California Corporation

[Insert Signature Block]

SIGNATURES MUST BE NOTARIZED

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

State of California)
) 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 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.

_____ Place Notary seal above

Exhibit A

LEGAL DESCRIPTION

3885973.3

3887364.1

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

428-432 Baden Avenue

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

FOR THE FUTURE HOUSING, INC.

AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 20__ (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”), and For the Future Housing, Inc., a California corporation (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns, or intends to acquire, that certain real property located in the City of South San Francisco at 428 Baden Avenue, known as San Mateo County Assessor’s Parcel No. 012-314-010, and that certain real property located in the City of South San Francisco at 432 Baden Avenue, known as County Assessor’s Parcel No. 012-321-160, more particularly described in Exhibit A attached hereto (collectively, the “**Combined Properties**”).

B. In accordance with that certain Purchase And Sale Agreement And Joint Escrow Instructions dated February 19, 2020, as amended by that certain First Amendment to Purchase And Sale Agreement And Joint Escrow Instructions dated April 9, 2020, that certain Second Amendment to Purchase And Sale Agreement And Joint Escrow Instructions dated December 21, 2020, and that certain Third Amendment to Purchase and Sale Agreement And Joint Escrow Instructions dated _____ (as amended, the “**PSA**”) with respect to the sale of that certain real property located at 432 Baden Avenue, South San Francisco, California (Assessor’s Parcel Number 012-321-160), Owner will construct thirty-five (35) affordable dwelling units and one (1) manager unit on the Combined Properties (the “**Project**”).

C. On August 6, 2020, the Planning Commission approved a Use Permit and Design Review (Planning Commission Resolution No. 2866-2020), which approval, together with any approvals or permits now or hereafter issued with respect to the Project are referred to as the “**Project Approvals**.”

D. Owner has applied for a density bonus pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390. Owner has elected to obtain a 35% density bonus under state density bonus law.

E. The Downtown Residential Core (DRC) Zoning District, where the project is located, permits a density of 80 du/acre. The project site at 428 and 432 Baden Avenue is 14,000 sq. ft. therefore permitting a base density 26 units for the project. Owner has agreed that the Project will contain thirty-five (35) affordable dwelling units available to Eligible Households at an Affordable Rent, as those terms are defined in Section 1 hereof.

F. The Project utilizes one incentive/concession from the requirement under SSFMC 20.280.004 to increase the maximum lot coverage from 90% to 95%, and one development standard waiver from the requirement under SSFMC 20.300.016 that all electrical, telephone, cable television, and similar distribution lines providing direct service to a development site shall

be undergrounded.

G. Owner has, pursuant to Municipal Code Section 20.390.010.B.7, requested concessions and development standard waivers, including a reduction in total parking spaces. Based on the percentage of affordability units set aside, the Project is entitled to receive a parking reduction ratio of 0.5 spaces per bedroom, which would reduce the required number of parking spaces under SSFMC 20.330.007 to 23 spaces, although Owner has elected to provide 28 spaces.

H. Upon or prior to its completion of construction of the Project, Owner intends to enter into a Regulatory Agreement with the California Tax Credit Allocation Committee ("CTCAC") which will require that thirty-five (35) of the units in the Project are made available and rented to lower income tenants at an affordable rent.

I. To assist in the construction of affordable units at 428-432 Baden Avenue, City provided Owner with a loan. The short term component of the loan in the amount of Two Million Dollars (\$2,000,000.00) and the long term component of the loan in the amount of Two Million Fifty Thousand Dollars (\$2,050,000.00) will be provided from City Commercial Linkage Fee Fund (the "**Loan**"), as further set forth in the loan agreement entered into between the Parties ("**Loan Agreement**") concurrently herewith.

J. As a condition to the Loan Agreement, the City requires the Combined Properties to be subject to the terms, conditions and restrictions set forth herein, specifically, the City requires that for a period of not less than fifty-five (55) years, thirty-five (35) residential units in the Project be rented at Affordable Rents to Eligible Households ("**Restricted Units**"). The City requires Restricted Units assisted with funds from the City's Commercial Linkage Fee Fund to remain affordable for the longest feasible time.

K. The Parties have agreed to enter into and record this Agreement in order to satisfy the conditions described in the foregoing Recitals. The purpose of this Agreement is to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the occupants of the Project. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

AGREEMENT

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"**Affordable Rent**" means the maximum rent for a Restricted Unit permitted under Section 2.2 hereof.

"**Area Median Income**" or "**AMI**" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the rents published annually by

the California Tax Credit Allocation Committee.

"City Documents" means this Agreement, the Loan Agreement, the Promissory Note and the Deed of Trust.

"Eligible Household" means a household for which gross household income does not exceed the applicable maximum income level for a Restricted Unit as specified in Section 2.1 and Exhibit B.

"Claims" is defined in Section 10.

"Indemnitees" is defined in Section 10.

"Rent-Restricted" means a dwelling unit for which the gross rent charged for such unit does not exceed the Affordable Rent permitted under Section 2.2 hereof.

"Resident" shall mean an individual or household occupying a Unit.

"Restricted Unit" means a dwelling unit which is reserved for occupancy at an Affordable Rent by a household of not more than a specified household income in accordance with and as set forth in Sections 2.1 and 2.2 and Exhibit B.

"TCAC" shall mean the California Tax Credit Allocation Committee.

"Units" shall mean the individual dwelling units to be constructed on the Combined Properties as part of the Project.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Properties and Project shall be used solely for the operation of affordable rental housing and related improvements in compliance with the Project Approvals and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Affordability Requirements.

2.1.1 Income Limits. For a term of fifty-five (55) years commencing upon the date of City's issuance of a final certificate of occupancy for the Project, not less than thirty-five (35) of the Units in the Project (the "Restricted Units") shall be Rent-Restricted (as defined below), occupied (or if vacant, available for occupancy), and rented at Affordable Rent to Eligible Households. If the Project receives an allocation of Low Income Housing Tax Credits, upon or prior to its completion of construction of the Project, Owner shall enter into a Regulatory Agreement with CTCAC which requires that thirty-five (35) of the units in the Project are made available and rented to lower income tenants at an affordable rent (the "CTCAC Regulatory Agreement").

2.1.2 Recertification. In the event that recertification of Eligible Household incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.1 and Exhibit B, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved.

2.2 Affordable Rents for Restricted Units. The maximum rents of the Eligible Household tenants of the thirty-five (35) residential units subject to this Agreement shall be in accordance with the maximum rents set forth in Health and Safety Code Section 50053. Notwithstanding the foregoing, no Eligible Household qualifying for a Restricted Unit shall be denied continued occupancy of a Unit in the Project because, after admission, such Eligible Household's adjusted income increases to exceed the qualifying limit for such Restricted Unit except as specified in this Section 2.2.

2.3 Increased Income of Residents. If, upon recertification of the income of a Resident of a Unit, the Owner determines that the Resident has an Adjusted Income exceeding the maximum qualifying income for the Unit, such Resident shall be permitted to continue occupying the Unit upon expiration of the Resident's lease, and upon sixty (60) days written notice, the Rent shall be increased to the lesser of thirty percent (30%) of the Resident's Adjusted Income or fair market value, subject to the maximum rent allowed pursuant to other funding restrictions.

2.4 Termination of Occupancy. Upon termination of occupancy of a Restricted Unit by an Eligible Household, Owner shall rent the Unit to another Eligible Household at Affordable Rents in accordance with Section 2.1 and Exhibit B within thirty (30) days of termination of occupancy by the former Eligible Household.

2.4 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality among the different affordability categories set forth in Exhibit B. Eligible Households of Restricted Units shall have access to all common facilities of the Project equal to that of all other Eligible Households of Units in the Project and among the affordability categories set forth in Exhibit B. The Restricted Units shall be allocated among affordability categories as set forth in Exhibit B.

2.5 City Loan Funds. Owner shall ensure that all City Loan Funds are used for the construction and development of the Project in a manner consistent with the applicable City Loan Funds requirements and City Documents' terms, which at a minimum, requires residential rental units assisted with funds from the City's Affordable Housing Trust Fund to remain affordable for the longest feasible time.

2.6 No Condominium Conversion. Owner shall not convert the Units in the Project to condominium or cooperative ownership or sell condominium or cooperative rights to the residential portion of the Project or any part thereof unless Owner obtains the City's consent, which consent shall be conditioned upon Owner's agreement to ensure that the Units remain available as affordable housing. Prior to conveyance of any Unit(s), the buyer(s) of the for-sale Units shall enter into an affordable housing agreement, in a form approved by the City Manager and City Attorney, that maintains the affordability of the unit for the minimum term set forth in this Agreement or in California law, whichever is greater.

2.7 Non-Discrimination; Compliance with Fair Housing Laws.

2.7.1 Preferences. In order to ensure that there is an adequate supply of affordable housing within the City for City residents and employees of businesses located within the City, to the extent permitted by fair housing laws and other applicable laws, and consistent with the program regulations for funding sources used for development of the Project, at initial lease up, Owner shall give a preference in the Project to households that include at least one member who lives or works in the City of South San Francisco. Owner will implement any preferences in the rental of Units in the Project pursuant to a preference plan approved by its lenders, investors and the City Manager. Notwithstanding the foregoing, if the Project receives an allocation of Low Income Housing Tax Credits, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

2.7.2 Fair Housing. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units. Owner shall accept as Residents, on the same basis as all other prospective households, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.7.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Combined Properties or Project, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Combined Properties, Project or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in, of, or for the Combined Properties, Project or part thereof.

All deeds made or entered into by Owner, its successors or assigns, as to any portion of the Combined Properties or Project shall contain the following language, and all leases or contracts made or entered into by Owner, its successors or assigns, as to any portion of the Combined Properties or Project, shall reference this Section, and shall enforce the same diligently and in good faith:

“(a) Owner herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property

herein conveyed nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

“(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (d) of Section 12955 of the Government Code shall apply to paragraph (a).”

3. Reporting Requirements.

3.1. Eligible Household Certification. Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (a) The identity of each household member; and
- (b) The total gross household income;

Owner shall retain such certificates for not less than three (3) years, and upon City’s request, shall make the certificates available for City inspection.

3.2 Annual Report; Inspections. By not later than April 30th of each year during the term of this Agreement, Owner shall submit an annual report (“**Annual Report**”) to the City in form satisfactory to City, together with a certification that the Project is in compliance with the requirements of this Agreement (as of December 31 of the prior year). The Annual Report shall, at a minimum, include the following information for each Unit: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying Eligible Household eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a TCAC regulatory agreement, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required by TCAC.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Combined Properties and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 48-hours advance notice of such visit to Owner or to Owner's management agent.

3.4 Additional Information. Owner shall provide any additional information reasonably requested by City. The City shall have the right to audit, examine and make copies of all books, records, or other documents of the Owner which pertain to the Project.

3.5 Records. The Owner shall maintain complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of the Eligible Households. All Eligible Household lists, applications and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least three (3) years, and for any period during which there is an audit undertaken by the City.

4. Term of Agreement.

4.1 Term of Restrictions. Unless extended by mutual agreement of the Parties, upon the 55th anniversary of City's issuance of the final certificate of occupancy for the Project, this Agreement shall automatically terminate and be of no further force or effect. The Owner shall provide all notices and rights to tenants required to be given prior to and upon the expiration of affordability covenants pursuant to Government Code Section 65863.10 or successor statutes.

4.2 Effectiveness Succeeds Conveyance of Combined Properties and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, regardless of any sale, assignment, transfer, or conveyance of the Combined Properties or the Project or any part thereof or interest therein.

4.3 Reconveyance. Upon the expiration of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to evidence the expiration of this Agreement, or to evidence the release and discharge of this Agreement as a matter of title.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Combined Properties and the Project to the covenants and restrictions set forth in this Agreement. The Parties hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Parties, regardless of any sale, assignment, conveyance or transfer of the Combined Properties, the Project or any part thereof or interest therein. Each and every contract, deed, ground lease or other instrument affecting or conveying the Combined Properties or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument

pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Combined Properties and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner, or Owner's designee, shall be responsible for all management functions with respect to the Combined Properties and the Project, including without limitation the selection of Eligible Households, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Combined Properties or the Project.

6.2 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner, or Owner's designee, shall at its own expense, maintain the Combined Properties and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Combined Properties (including without limitation, the Units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair and abandoned vehicles/appliances, and shall take all reasonable steps to prevent the same from occurring on the Combined Properties or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Properties and the Project and shall make all repairs, renewals and replacements necessary to keep the Properties and the improvements located thereon in good condition and repair. Owner shall provide reasonable security services for occupants of the Project.

6.2.1 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.2, and such default continues for a period of thirty (30) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Combined Properties and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Combined Properties.

6.2.2 Costs. All costs expended by City in connection with the foregoing Section 6.2.1, shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 8% per annum or the highest rate permitted by applicable law. Notwithstanding anything to the contrary set forth in this Section, City agrees that it will provide Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner will incur a financial obligation.

6.3 Marketing and Management Plan. Within 180 days following the Effective Date of this Agreement, Owner shall submit for City review and approval, a plan for marketing and managing the Combined Properties ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's Eligible Household selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also set forth the manner in which Owner will encourage or incentivize (including financial incentives, to the extent allowed by TCAC regulations) Eligible Households who no longer qualify as Eligible Households to transition to market rate housing opportunities within the City. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Combined Properties and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Combined Properties and the Project, and throughout the term of this Agreement.

6.4 Approval of Amendments. If City has not responded to any submission of the Marketing and Management Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by City.

6.5 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Combined Properties or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. Nothing in this Section is intended to prohibit Owner from applying for any exemption from property taxes and fees that may be available to the owners of low-income housing.

6.6 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit C.

6.7 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County concurrently with Owner's acquisition of the Combined Properties.

Notwithstanding the foregoing, the City agrees the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders providing financing for the acquisition, development or rehabilitation of the Project (and their successors and assigns), provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a subordination under this Agreement within ten (10) days following City's delivery of an invoice detailing such costs.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. Upon City's issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may, upon approval by the City, which approval shall not be unreasonably withheld, transfer or assign all or any portion of its interests, rights or obligations in the Combined Properties, or under this Agreement, to any third party, and, as this Agreement "runs with the land" this Agreement shall be binding on Owner's successors and assigns for the full term of this Agreement.

Prior to issuance of a final certificate of occupancy for the Project, or any portion thereof, Owner may transfer or assign all or any portion of its interest, right or obligations in the Combined Properties to an affiliate of Owner, as set forth in the Loan Agreement.

Consent to any proposed transfer may be given by the City's City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City's governing board. If a proposed transfer has not been approved by City in writing within thirty (30) days following City's receipt of written request by Owner, it shall be deemed rejected.

Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten (10) days following City's delivery of an invoice detailing such costs.

The Parties contemplate that Owner will assign its rights under this Agreement or its interests, rights, or obligations in the Combined Properties or under this Agreement, to a tax credit limited partnership that is an affiliate of Owner. Notwithstanding anything to the contrary herein, a transfer by the investor limited partner of its limited partner interest in the affiliate, or the exercise by the investor limited partner of its remedies against Owner for breach of the partnership agreement, including removal of Owner as a general partner, shall not constitute an assignment of Owner's interests, rights, or obligations in the Combined Properties or under this Agreement that would require City approval.

8.2 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the

Combined Properties, the Project or part thereof for the benefit of a lender (“**Lender**”) shall contain each of the following provisions: (i) Lender shall provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; and, (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 90 days. Owner agrees to provide to City a copy of any notice of default Owner receives from any Lender within thirty (30) business days following Owner’s receipt thereof.

8.3 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Project or the Combined Properties, and the purchaser at any trustee’s sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee’s sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Combined Properties that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

- (a) The occurrence of a transfer in violation of Section 8.1 hereof;
- (b) Owner’s failure to maintain insurance on the Combined Properties and the Project as required hereunder, and the failure of Owner to cure such default within thirty (30) days of written notice from City;
- (c) Subject to Owner’s right to contest the following charges, Owner’s failure to pay taxes or assessments due on the Combined Properties or the Project or failure to pay any other charge that may result in a lien on the Combined Properties or the Project, and Owner’s failure to cure such default within sixty (60) days of delinquency;
- (d) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Combined Properties and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;
- (e) Owner’s default in the performance of any material term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1) and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 60 days, Owner’s failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the fullest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold City and its respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) arising directly or indirectly, in whole or in part, as a result of or in connection with Owner’s construction, management, or operation of the Combined Properties and the Project or any failure to perform any obligation as and when required by this Agreement. Owner’s indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Owner that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

If to City, to: City of South San Francisco
400 Grand Avenue
Attn: City Manager
South San Francisco, CA 94080
Phone: (650) 877-8500
Email: mike.futrell@ssf.net

With a Copy to: City of South San Francisco
400 Grand Avenue
Attn: ECD Director
South San Francisco, CA 94080
Phone: (650) 829-6622
Email: nell.selander@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff, City Attorney
1999 Harrison Street, 9th Floor
Oakland, CA 94607
Tel (510) 808-2000
Fax (510) 444-1108
Email swoodruff@meyersnave.com

If to Owner: [Insert]

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the City at the discretion of the City Manager.

11.7 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement contains the entire agreement of Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibit A, Exhibit B and Exhibit C, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY

THE CITY OF SOUTH SAN FRANCISCO,
a municipal corporation

By: _____

Charles Michael Futrell
City Manager

ATTEST:

By: _____

Rosa Govea Acosta,
City Clerk

APPROVED AS TO FORM:

By: _____

Sky Woodruff, City Attorney

OWNER

[Insert FTFH Signature Block]

SIGNATURES MUST BE NOTARIZED.

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

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

Signature _____ (Seal) _____

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

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

Signature _____ (Seal) _____

Exhibit A

Legal Description of Combined Properties

DRAFT

Affordable Housing Requirements

- i. 60% Area Median Income (AMI) Level: 3 studio units, 2 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.
- ii. 50% AMI Level: 5 studio units, 3 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.
- iii. 40% AMI Level: 5 studio units, and 3 one-bedroom units.
- iv. 30% AMI Level: 5 studio units, 3 one-bedroom units, 1 two-bedroom unit, and 1 three-bedroom unit.

EXHIBIT C
Insert Insurance Requirements

3884825.4

DRAFT