



City of South San Francisco

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

City Council

Resolution: RES 33-2020

File Number: 20-56

Enactment Number: RES 33-2020

RESOLUTION APPROVING BUDGET AMENDMENT NUMBER 20.034 WHICH APPROPRIATES \$2,450,000 FROM THE CITY OF SOUTH SAN FRANCISCO'S HOUSING ASSET FUND (FUND 241) FOR A DEVELOPER LOAN TO ROEM DEVELOPMENT CORPORATION FOR THE DEVELOPMENT OF 46 BELOW MARKET RATE UNITS AND ONE MANAGERS UNIT AT 201-219 GRAND 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, on February 8, 2017, the City adopted Resolution 16-2017 approving the transfer of the Agency Properties from the Successor Agency to the City and in accordance with the requirements set forth in the LRPMP, and on February 21, 2017, the Oversight Board adopted a resolution approving the transfer of the redevelopment properties from the Successor Agency to the City; and

WHEREAS, consistent with the LRPMP and the Oversight Board resolution, the Successor Agency and City executed and recorded grant deeds transferring the Agency Properties to the City; and

WHEREAS, the City of South San Francisco ("City") is also the owner of former Redevelopment Agency property located in the City of South San Francisco, California, with the address of 201-219 Grand Avenue, known as APNs 012-316-100, 012-316-110, 012-316-080 and 012-316-090 (collectively, "201 Grand Avenue"); and

WHEREAS, in December 2015 the City approved entitlements for a mixed-use project at 201-219 Grand Avenue ("Project") and a residential project at 418 Linden Avenue ("Developments"); and,

WHEREAS, in December 2016 the City and Agency selected a developer, ROEM Development Corporation ("Developer"), to build the Developments; and,

WHEREAS, in September 2017 the City approved a Development Agreement ("DA"), a Purchase and Sale Agreement ("PSA") for 418 Linden Avenue and a PSA for 201-219 Grand Avenue, an Affordable Housing Agreement ("AHA") for eight (8) Below Market Rate ("BMR") units at 418 Linden and an AHA for nine (9) BMR units at 201-219 Grand Avenue with Developer related to the Project; and,

WHEREAS, Developer now wishes to amend the entitlements utilizing the Density Bonus Law (found in California Government Code Sections 65915 - 65918); and,

WHEREAS, pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390, the Project will result in forty-six (46) units being available to Eligible Households at an Affordable Rent and one (1) unit being the property manager's unit; and,

WHEREAS, Developer has, pursuant to Section 20.390.010.B.7, requested development standard waivers including; a reduction in parking from 58 spaces to 31 spaces, a reduction in the number of Electric Vehicle parking spaces to from 3 spaces to 1 space, reduction in the private storage space from 200 cubic square feet to 100 cubic square feet, and for permits and fees required by the City not to exceed \$533,002; and,

WHEREAS, at the time the PSA was negotiated Seller committed grant funding of Two Million Four Hundred and Fifty Thousand Dollars (\$2,450,000) from the City's Affordable Housing Asset Fund to assist in the construction of the affordable housing units ("City Grant"); and,

WHEREAS, Buyer has requested that the City Grant be converted to a loan in order to leverage other funding; and,

WHEREAS, Seller has agreed to a Two Million Four Hundred and Fifty Thousand Dollars (\$2,450,000) loan from the City's Affordable Housing Asset Fund; and,

WHEREAS, Buyer has increased the number of Below Market Rate ("BMR") units from nine (9) to forty-six (46) and has not requested to change the purchase price of \$1,200,000; and,

WHEREAS, the City is providing a loan to Borrower in the amount of Two Million, Four Hundred Fifty Thousand dollars (\$2,450,000.00) purpose of developing the Project ("Loan") which shall be evidenced by an accompanying Promissory Note ("Note"); and,

WHEREAS, as long as Developer complies with the Loan Agreement ("Agreement") during the Compliance Period and no breach or default occurs, the City shall forgive the Loan at the termination of the Compliance Period; and,

WHEREAS, the Loan and Note will be secured by a Deed of Trust ("DOT").

WHEREAS, as a condition of providing the Loan, the City imposes occupancy and affordability restrictions on the Property and Project for the Compliance Period to ensure the affordable units remain affordable to low income households and as required by the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants ("Affordability Covenant"); and,

WHEREAS, the Note, Deed of Trust, DA and Affordability Covenant shall collectively be referred to herein as "City Documents".

NOW THEREFORE IT BE RESOLVED by the City Council of the City of South San Francisco as follows:

The foregoing recitals are true and correct.

Budget Amendment 20.034, which appropriates \$2,450,000 of the City of South San Francisco's Housing Asset Fund (Fund 241) as a loan to ROEM Development Corporation for the development of 46 Below Market Rate units and one managers unit at 201 Grand Avenue is approved.

The Loan Agreement, Note, Deed of Trust and Affordability Covenant, in substantially the same form attached hereto as Exhibits A through D, respectively, are approved.

The City Manager or his designee is authorized to enter into and execute on behalf of the City Council the City Documents; to make any revisions, amendments or modifications deemed necessary to carry out the intent of this Resolution and which do not materially or substantially increase the City's obligations thereunder.

* * * * *

Exhibit A: Loan Agreement between the City and Developer for \$2,450,000

Exhibit B: Promissory Note for 201 Grand

Exhibit C: Deed of Trust for 201 Grand

Exhibit D: Affordability Covenant for 201 Grand

At a meeting of the City Council on 3/11/2020, a motion was made by Councilmember Nagales, seconded by Councilmember Nicolas, that this Resolution be approved. The motion passed.

Yes: 4 Mayor Garbarino, Vice Mayor Addiego, Councilmember Nagales, and Councilmember Nicolas

No: 1 Councilmember Matsumoto

Attest by 
Rosa Govea Acosta, City Clerk

LOAN AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND ROEM DEVELOPMENT CORPORATION

This Loan Agreement ("**Agreement**") is entered into effective as of [Date] day of [Month], 2020 by and between the City of South San Francisco, a municipal corporation, ("**City**") and Grand and Linden Family Apartments, L.P., a California limited partnership, ("**Borrower**"). City and Borrower are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

RECITALS

A. City owns that certain real property located in the City of South San Francisco at 201-219 Grand Avenue, known as County Assessor's Parcel Numbers 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A attached hereto ("**Property**").

B. On June 29, 2011, the Legislature of the State of California (the "**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) (the "**Dissolution Law**"), pursuant to which the former Redevelopment Agency of the City of South San Francisco was dissolved on February 1, 2012. The City became the Successor Agency to the Redevelopment Agency of the City of South San Francisco ("**Successor Agency**"), and in accordance with the Dissolution Law, the Successor Agency prepared a Long Range Property Management Plan ("**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 Department of Finance ("**DOF**") on October 1, 2015.

C. 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 was transferred to the Successor Agency ("**Agency Properties**"). 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.

D. On February 8, 2017, the City adopted Resolution 16-2017 approving the transfer of the Agency Properties from the Successor Agency to the City and in accordance with the requirements set forth in the LRPMP, and on February 21, 2017, the Oversight Board adopted a resolution approving the transfer of the Redevelopment Properties from the Successor Agency to the City.

E. Consistent with the LRPMP and the Oversight Board resolution, the Successor Agency and City executed and recorded grant deeds transferring the Agency Properties to the City. The Property is one of the Agency Properties and is subject to the provisions of the LRPMP and the Compensation Agreement. The Oversight Board adopted Resolution 05-2017 on 09/19/2017 approving the sale of the Property pursuant to the LRPMP and the Compensation Agreement.

F. In accordance with that certain Development Agreement executed by and between the Parties and dated as of November 15, 2017 (“**DA**”), a memorandum of which was recorded in the Official Records of San Mateo City (“**Official Records**”) on [REDACTED], City desires Borrower to purchase the Property and re-develop it into a mixed-use, high-density building consisting of forty-six (46) affordable residential units and one manager’s unit, and approximately 6,000 square feet of ground floor commercial units (“**Project**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the DA.

G. To assist in the construction of affordable units at the Project, City authorized providing Borrower with a loan in the amount of Two Million, Four Hundred and Fifty Thousand dollars (\$2,450,000.00) from the Housing Asset Fund on [insert date] in Resolution No. [insert Resolution #].

H. Through this Agreement and accompanying Exhibits, the City is providing a loan to Borrower in the amount of Two Million, Four Hundred and Fifty Thousand dollars (\$2,450,000.00) purpose of developing the Project (“**Loan**”) which shall be evidenced by an accompanying Promissory Note (“**Note**”). As long Borrower complies with the Agreement during the Compliance Period as defined in Section 5 of Exhibit A and no breach or default occurs, the City may, in its sole and absolute discretion, forgive the Loan at the termination of the Compliance Period. The Loan and Note will be secured by a Deed of Trust. As a condition of providing the Loan, the City imposes occupancy and affordability restrictions on the Property and Project for the Compliance Period to ensure the affordable units remain affordable to low income households as set forth herein and as further required by the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“**Affordability Covenant**”) executed concurrently herewith. The Note, Deed of Trust, DA and Affordability Covenant shall collectively be referred to herein as “**City Documents**”.

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 hereto as follows:

1. Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A– Project Description

Exhibit B– Disbursement and Rates

Exhibit C– Funding Conditions

Exhibit D– Project Sources and Uses Development Budget

2. Services to be Performed by Borrower

In consideration for the funding assistance set forth herein and in Exhibit B, Borrower shall perform the services (“**services**” or “**work**”) necessary to implement the Project as described in Exhibit A.

3. Disbursements

Subject to Borrower’s satisfactory performance of the terms and conditions set forth herein, including but not limited to Exhibit A, City shall disburse to Borrower in accordance with the rates and in the manner specified in Exhibit B. 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 with forty-five (45) days’ notice and opportunity to cure. In no event shall City’s total fiscal obligation under this Agreement exceed Two Million, Four Hundred and Fifty Thousand dollars (\$2,450,000.00).

4. Security and Subordination

The accompanying Note shall be secured by the Deed of Trust. 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 Property or the Project. If at the time the Deed of Trust is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to the Deed of Trust, upon the request of City, Borrower hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 4, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that pursuant to Health and Safety Code Section 33334.14(a)(4), the City will not withhold consent to reasonable requests for subordination of the Deed of Trust to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the DA, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default consistent with the requirements of Health and Safety Code Section 33334.14(a)(4), including without limitation, extended notice and cure rights. Any subordination request shall be subject to a \$2,000.00 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.

Borrower hereby: (i) represents and warrants that they are not affiliated in any way with the lender identified in the Financing Plan approved in connection with the DA, and (ii) covenants that they will not become so affiliated by acquiring an interest in such lender, or an interest in its loan, or otherwise.

5. Encumbrances

Borrower agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender (“**Lender**”) shall contain each of the following provisions: (i) Lender shall use its best efforts to provide to City a copy of any notice of default issued to Borrower concurrently with provision of such notice to Borrower; and, (ii) City shall have the reasonable right, but not the obligation, to cure any default by Borrower within the same period of time provided to Borrower for such cure extended by an additional 90 days. Borrower agrees to provide to City a copy of any notice of default it receives from any Lender within thirty (30) business days following Borrower’s receipt thereof.

6. Conditions of Funding

In addition to the terms detailed in Section 3 (Disbursements) above, City reserves the right to withhold disbursements if City determines that Borrower has not completed the conditions of funding, enumerated in Exhibit C of this Agreement. City acknowledges that upon execution of this Agreement, all conditions applicable to “Agreement Execution” set forth in Exhibit C have been completed to the satisfaction of City.

7. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from Project Completion as defined in Section 7 of Exhibit A through the later of **55** years from the first day of the Compliance Period or the Note Maturity set forth in the Note and Exhibit A. Borrower shall provide all notices and rights to tenants required to be given prior to and upon the expiration of the Compliance Period pursuant to Government Code Section 65863.10 or a successor statute. The Loan shall be repaid in full with the interest as set forth in Exhibit A by Borrower if an Event of Default occurs under this Agreement or City Documents. The Affordability Covenant shall remain in effect for the Compliance Period, regardless of any repayment of the Loan.

8. Availability of Funds

Notwithstanding any other provision in this Agreement, City may terminate this Agreement or a portion of the services referenced in the Exhibits 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.

Relationship of 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 Property, or the construction or operation of the Project, and the Borrower shall include similar requirements in any contracts entered into for the such purposes.

9. Indemnity

To the fullest extent permitted by law, Borrower 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 Borrower’s construction, management, or operation of the Property and the Project, the performance of any work or services required of Borrower under this Agreement, or Loan disbursement made pursuant to this Agreement or any failure to perform any obligation as and when required by this Agreement or the City Documents or any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Indemnitees. Borrower’s indemnification obligations under 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 Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement or the City Documents. However, Borrower’s duty to indemnify under this Section shall not apply to injuries or damage for which Indemnitees have been found in a court of competent jurisdiction to be solely liable by reason of their own gross negligence or willful misconduct

10. Assignability and Subcontracting

Borrower hereby subjects its interest in the Property and the Project 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 Property, 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 Property 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 Property 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 loan 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 Property and the Project in favor of City.

11. 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 non-payment 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.

12. 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.

13. Non-Discrimination and Other Requirements

A) *General non-discrimination.* Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property 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. Borrower 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 Property, Project or part thereof, 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, sub lessees or vendees in, of, or for the Property, Project or part thereof.

All deeds made or entered into by Borrower, its successors or assigns, as to any portion of the Property 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 Property 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, 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).”

B) *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.

C) *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.

D) *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.

E) *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.

F) *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 30 days of such filing, provided that within such 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.

14. Retention of Records, Right to Monitor and Audit

A) Borrower shall maintain all required records for five (5) years after City makes final payment and all other pending matters are closed, and Borrower shall be subject to the examination and/or audit by City.

B) Reporting and Record Keeping: Borrower shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by City.

C) Borrower agrees upon reasonable notice to provide to City, to any Federal or State department having monitoring or review authority, to City's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement and City Documents, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause and Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the Parties to this Agreement and correctly states the rights, duties, and obligations of each Party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of

the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding.

All subsequent modifications or amendments shall be in writing, signed by the Parties and any request made for such shall be subject to a \$2,000.00 fee payable by Borrower to City per modification or amendment request unless such amendment is required by the City.

16. Waiver of Terms and Conditions

A Party may at its discretion waive in writing any of the terms and conditions of this Agreement, without completing an amendment to this Agreement. No waiver of any default or breach shall be implied from any omission by the non-breaching Party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated.

Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a Party to or of any act by the other Party requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement, nor shall it invalidate any act done pursuant to notice of default, or prejudice the exercising Party in the exercise of any right, power, or remedy hereunder.

17. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, the rights and duties of the Parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. 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 parties 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
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: alex.greenwood@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff
555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-2000
Email sky@meyersnave.com

If to Borrower: Grand and Linden Family Apartments, L.P.
1650 Lafayette Street
Santa Clara, CA 95050
Attention: Alex Sanchez
Telephone: (408) 984-5600
Email: asanchez@roemcorp.com

With a Copy to: Bocarsly Emden Cowan Esmail & Arndt
633 W. Fifth Street
64th Floor
Los Angeles, CA 90071
Attention: Kyle B. Arndt
Telephone: 213-239-8048
Email: karndt@bocarsly.com

19. 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 at the discretion of the City Manager.

20. Non Liability of 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 City under this Agreement.

21. Discretion Retained by City

The Borrower acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, for the Project, and in no way limits the discretion of the City in the permit allocation and approval process regarding the Property or Project.

22. 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.

23. Electronic Signature

If both City and Borrower wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law, both boxes below must be checked. Any Party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For City: ☐ If this box is checked by City, City consents to the use of electronic signatures in relation to this Agreement.

For Borrower: ☐ If this box is checked by Borrower, Borrower consents to the use of electronic signatures in relation to this Agreement.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

REST OF PAGE DELIBERATELY LEFT BLANK

IN WITNESS WHEREOF, this Agreement has been entered into by and between Borrower and City as of the date and year first above written.

CITY OF SOUTH SAN FRANCISCO

By: _____
Name: Charles Michael Futrell
Title: City Manager
Date:

APPROVED AS TO FORM:

By: _____
Sky Woodruff,
City Attorney

ATTEST:

By: _____
Rosa Govea Acosta
City Clerk

BORROWER: Grand and Linden Family Apartments, L.P., a California limited partnership

By: _____
Borrower's Signature (blue ink only)

Print Name: _____

Print Title: _____
Date:

Exhibit A
Project Description and Requirements

In consideration of the payments set forth in Exhibit B and also described below, Borrower shall undertake the following activities and comply with the following restrictions and requirements:

1. **Project Description**

Project Location / Address: 201-219 Grand Avenue, South San Francisco, CA

Assessor's Parcel Number(s): San Mateo County Assessor's Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080

Total # of Units Proposed: 47

Total # of Affordable Units Proposed: 46

Sources of Committed Funds: Fund 241: Housing Asset Fund

Funding provided in this Agreement is from the following sources:

City Housing Asset Fund FY 2019-20	TOTAL
\$2,450,000	\$2,450,000

Project Sources & Uses Development Budget:

The budget detailed in Exhibit D of this Agreement represents current financing projections for the Project and are subject to change as the Project design and program is further refined.

2. **City Affordable Housing Asset Fund**

A. **Determination of Restricted Units.**

“Restricted Unit” means a residential unit that is subject to rent and occupancy restrictions as a result of the financial assistance provided by City, as specified in the Loan Agreement and City Documents. This Section shall be amended to include the specific levels of affordability for each Restricted Unit once finally determined by the Parties. Under this Agreement, 46 units of the Project will be designated as Restricted Units.

In connection with this Agreement and prior to release of funds under this Agreement, Borrower shall execute and record the Affordability Covenant restricting units as described in Section 1 (Project Description) and Section 2 (City Affordable Housing Asset Fund) of Exhibit A.

B. Affordability Requirements.

All Restricted Units in the Project must remain affordable for a minimum of fifty-five (55) years.

1) Income Limits: All Restricted Units shall be offered for rent restricted and affordable to low income households. This Section shall be amended to include the specific levels of affordability for each Restricted Unit once finally determined by the Parties. All of these units shall be considered Restricted Units as defined in Section 2 of this Exhibit A.

2) Special Considerations for units with Project Based Section 8 Rental Assistance: If the Project receives an award of Project-Based Section 8 rental assistance, the units receiving the project-based vouchers (“PBVs”) shall be underwritten at the total subsidized rent for each unit paid by the project-based rental assistance and the tenant in sum. If PBVs are terminated, rents for any Restricted Units losing PBVs may be increased to the federally-permitted maximums in accordance with current California Tax Credit Allocation Committee (“CTCAC”) Regulations.

If a PBV is terminated, and the current tenant is unable to pay the maximum CTCAC-allowable rent, Borrower may, upon advance written notice to City, transition targeted units detailed in Section 3.A (Unit Affordability Provisions) of this Exhibit A as follows:

- (a) First, to a household of the same targeted population that could afford to pay the maximum CTCAC rent allowed; and if there is no household that meets this criterion,
- (b) Second, to the next eligible household on Borrower’s waiting list that could afford to pay the maximum CTCAC rent allowed.

For PBVs that are also HUD-Veterans Affairs Supportive Housing (VASH) vouchers, and if the current tenant is unable to pay the maximum CTCAC-allowable rent, Borrower may, upon advance written notice to City, transition to these units as follows:

- (a) First, to a homeless veteran household for whom the maximum CTCAC rent allowed is affordable; and if there is no household that meets this criterion,
- (b) Second, to a homeless household for whom the maximum CTCAC rent allowed is affordable; and if there is no household who meets this criterion,
- (c) Third, to a veteran household for whom the maximum CTCAC rent allowed is affordable; and if there is no household who meets this criterion,
- (d) Fourth, to the next eligible household on Owner's waiting list for whom the maximum CTCAC rent allowed is affordable.

If PBVs are terminated, Borrower may request, and City may grant a reduction or waiver in writing of the homeless household requirements described above, upon submission of evidence that such requirements cause the Project to be financially infeasible.

3. **Environmental Review**

All applicable California Environmental Quality Act ("CEQA") requirements must be met for all projects that receive City funding.

4. **Project Completion**

Project Completion is defined as completion of construction of the Project as evidenced by issuance of Final Certificate of Occupancy or some other document acceptable to City ("**Project Completion Document**").

5. **Compliance Period**

The Compliance Period is defined as the time frame beginning immediately upon Project Completion and ending on the later of fifty-five (55) years from the first day of the Compliance Period or the Note Maturity set forth in the Note. Borrower shall provide City with a Housing Completion Report, including final Project funding sources and uses, and tenant profile described below on forms acceptable to City within the first 180 days of the Compliance Period. Upon Borrower request to City, the due dates for these reports may be extended to accommodate a longer lease-up period if Borrower has demonstrated reasonable diligence and progress toward achieving 100% occupancy.

6. **Property Standards**

Construction of the Project must fully comply with all applicable local and State building codes and regulations, and Borrower must operate and maintain the Property and Project in a manner that ensures the Property and Project will continue to comply with said codes and regulations. Borrower's operations and maintenance of the Project must ensure that its appearance from all

public right-of-ways continually presents the Project in a high-quality manner and complies with provisions of the Affordability Covenant and Deed of Trust.

7. Contract Number

All correspondence, invoices, payments, and reports must include the City contract number. The City will provide the contract number upon disposition of the Property to Borrower.

8. Rents and Occupancy

Project financing is anticipated to include proceeds from Low-Income Housing Tax Credits (“LIHTC”). For LIHTC projects, City shall defer to income certification and calculation requirements imposed by tax credits. If project financing does not include tax credits, Borrower shall rely on income determination calculations set forth in 24 CFR Part 5 (i.e., the Section 8 Voucher Program).

9. Security/Term/Loan Terms

Unless otherwise noted herein, funding is provided in the form of a loan or loans, in accordance with terms described in this Paragraph. Should funding provided in this Agreement include more than one City funding source, separate Note(s) and Deeds of Trust will be executed for each funding source. For each funding source, prior to any disbursement of funds, Borrower shall execute and deliver a Note in the amount indicated below and a Deed of Trust in favor of City to secure the performance of all terms and conditions of the Note and this Agreement.

Funding Source	Note Amount	Deed of Trust Amount
City Affordable Housing Asset Fund	\$2,450,000.00	\$2,450,000.00

The Note will be non-recourse. The Deed of Trust will be recorded in the Office of the Recorder of the County of San Mateo upon Borrower’s acquisition of the Property. The Deed of Trust may be subordinate to the liens of any senior lenders.

No interest will accrue on the Note unless Borrower commits and Event of Default under this Agreement or any of the City Documents. The City may, in the sole and absolute discretion of the City forgive the Loan at the Note Maturity if no Event of Default has occurred or is occurring. If an Event of Default has occurred, the entire outstanding balance of the Loan shall become immediately due and payable and such amount shall be deemed to have accrued simple interest at the rate of three percent (3%) per annum, commencing on the date of disbursement through the date of the Event of Default.

Beginning as of the date of the Event of Default and continuing until such time as the Loan is repaid in full or default or breach is completely cured, the outstanding principal balance of the Loan shall accrue the default rate of the lesser of either ten percent (10%), compounded annually, or the highest rate permitted by law. 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.

10. **Repayment**

The provisions and requirements in this and foregoing sections will refer to each Note unless stated otherwise. Annual payments on the Note will be made from Project Operations, which begins on the first day of the month after the Project receives a Certificate of Occupancy, or some other document evidencing completion acceptable to City. Annual payments will equal 50% of Residual Receipts, with payment amount determined by disbursed amount of City funding provided in this Agreement as a proportion of all local funding requiring repayment (to be confirmed by City and Borrower in writing outside of this Agreement).

In cases where the City is not the sole subsidy lender requiring Residual Receipt payments, the other subsidy lenders shall share their 50% portion of Residual Receipts in proportion to the size of each lenders' total contribution.

Where another subsidy lender requires payment based upon the subsidy lender's sharing a greater percentage than fifty percent (50%) of the Residual Receipts, then the City's share of Residual Receipts shall be adjusted to be equal to that lender's greater percentage of Residual Receipts.

Payment will be first applied to outstanding interest, if any, and then to principal until the Note is paid in full. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest will carry over to the following year. Interest will not compound on this interest carry-over. The entire outstanding principal balance plus any unpaid accrued interest will be due and payable upon an Event of Default.

The first payment will be due no later than 120 days after the end of the Project's first fiscal year after the project receiving a Certificate of Occupancy. A copy of the annual independent financial audit delineating Residual Receipts payment to City will also be delivered to City no later than 120 days after the end of each of the Project's fiscal years.

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

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

"Annual Operating Expenses" means costs reasonably and 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 acceptable 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; resident services; additional supportive services necessary to help residents maintain personal or household stability and housing status; any 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; 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 unreasonably withheld); resident services, additional supportive services necessary to help tenants maintain personal or household stability and housing status; annual cash deposited into a reserve for capital replacements of Project improvements in an amount of up to \$500 dollars per unit per year (increasing by 3% per annum), provided any changes to the amount deposited into this replacement reserve will require City approval; 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 permitted under Section 11 (Developer Fee) below; 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. For avoidance of doubt, any deferred developer fee remaining after payment of the Net Developer Fee may be paid only from Borrower's share of Residual Receipts.

Prior to start of Project Operations, Borrower will confirm in writing with City all fee and reserve amounts to be included in the above calculations for Residual Receipts. Annual operating expenses will not include the following: depreciation, amortization, depletion, or other non-cash expenses, or any amount expended from a reserve account.

11. Developer Fee

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 shall not exceed the maximum amount allowed under TCAC regulations (the "Net Developer Fee"). Any amount of developer fee in excess of Net Developer Fee may be paid only from Borrower's share of Residual Receipts.

12. Excess Construction Proceeds/Cost Savings

“Surplus Construction Cash” is defined as the difference between total of all sources of funds received for the Project and the total cost of the Project. If Surplus Construction Cash remains after construction is completed and Borrower Form 8609 is filed, and all obligations to construction contractors, subcontractors, and lenders for construction period expenses are satisfied, Borrower shall reimburse City for its financial investment in the Project as set forth herein. Borrower shall prepare and submit to City a Cost Certification detailing the amount of Surplus Construction Cash, if any, at Project completion. City may, at its sole option, accept a Cost Audit required by another funding source as evidence of Surplus Construction Cash, if any.

Borrower shall distribute Surplus Construction Cash among City and any other governmental agency/agencies requiring reimbursement/repayment in direct proportion to the share of total Project funds disbursed from each such agency funding the Project. These other agencies, and respective amounts disbursed will be confirmed in writing outside of this Agreement prior to start of construction of the Project. Any reimbursement to City will be counted toward repayment of the amount owed on City Note[s], with such payment first applied toward any interest accrued before reduction of the principal balance.

Borrower may opt to retain up to 50% of the Surplus Construction Cash proceeds with the other 50% to be distributed to City and other applicable public/governmental agencies in the proportion described above. Should Borrower opt to retain a portion of the Surplus Construction Cash, its portion shall be used solely for ongoing Project Operations or for payment of deferred Developer Fees. In either case, Borrower shall inform City of its intent to retain up to 50% of the Surplus Construction Cash, and provide a detailed description of the intended use[s] of the Surplus Construction Cash, as well as the identity of any other public/governmental funding agencies, in writing, no later than the permanent loan closing date.

13. Prepayment

Prepayments may be made at any time without penalty.

14. Due on Sale, Refinance, or Transfer of Title

If Borrower sells, refinances or transfers the Property or Project or any interest therein without prior written consent of the City Manager or his/her designee, it shall be considered an Event of Default and the entire principal balance of the Note, including any accumulated interest accrued pursuant to Exhibit A, 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, or (iii) 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 Project for purposes of this section. Replacement of a general partner of Borrower

with any other entity shall be subject to prior written approval of City, which shall not be unreasonably withheld.

Borrower may transfer or assign all or any portion of its interest, right or obligations in the Property only as set forth in 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 Agreement and the City Documents; (2) the transferee expressly assumes all obligations of Borrower imposed by this Agreement and the City Documents; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Borrower's obligations under this Agreement 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 Agreement 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 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 Borrower, it shall be deemed approved.

Borrower 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, 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.

15. **Events of Default**

The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

A. **Failure to Construct Project.**

A failure by the Borrower to commence or complete the construction of the Project in accordance with the terms of the City Documents which failure is not cured within 30 days of written notice from the City;

B. **Breach of Covenants.**

Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of this Agreement or the City Documents which failure is not cured within 30 days of written notice from the City;

C. Unauthorized Transfer.

Any transfer other than as permitted pursuant to this Agreement;

D. Representation or Warranty Incorrect.

Any Borrower representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with Loan or City Documents, proving to have been incorrect in any material respect when made;

E. Default Under Other Financing or DA.

Failure to make any payment or perform any of the Borrower's covenants, agreements, or obligations under the documents evidencing and securing the financing for the Project or City Documents following expiration of all applicable notice and cure periods;

F. Insolvency.

A court having jurisdiction shall have made or entered any decree or order

- (i) adjudging the Borrower (or any general partner of the Borrower) to be bankrupt or insolvent,
- (ii) approving as properly filed a petition seeking reorganization of the Borrower (or any general partner of the Borrower) or seeking any arrangement for the Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction,
- (iii) appointing a receiver, trustee, liquidator, or assignee of the Borrower (or any general partner of the Borrower) in bankruptcy or insolvency or for any of their properties, or
- (iv) directing the winding up or liquidation of the Borrower (or any general partner of the Borrower),

if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or the Borrower (or any general partner of the Borrower) shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive;

G. Assignment; Attachment.

The Borrower (or any general partner of the Borrower) shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any

substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution;

H. Suspension.

The Borrower (or any general partner of the Borrower) shall have voluntarily suspended its business;

I. Liens.

There shall be filed any claim of lien (other than liens approved in writing by the City) against the Property or Project or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notices to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore satisfactory to the City;

J. Condemnation.

The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Property or Project; or

K. Insurance.

Borrower's failure to maintain insurance on the Property and the Project as required hereunder or under City Documents, and the failure of Owner to cure such default within thirty (30) days of written notice from City;

L. Taxes and Assessments.

Subject to Owner's right to contest the following charges, Borrower's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within sixty (60) days of delinquency;

M. Other Default.

Occurrence of any other event (whether termed default, event of default, or otherwise) which under the terms of this Agreement or City Documents will entitle City to exercise rights or remedies.

16. Remedies

The occurrence of any Event of Default will either, at the option of the City or automatically where so specified, relieve the City of any obligation to make the Loan and shall give the City the right to proceed with any and all remedies set forth in this Agreement, including but not limited to the following:

A. Repayment of Loan.

The City shall have the right to require immediate repayment of the outstanding principal balance of the Loan and such amount shall be deemed to have accrued simple interest at the rate of three percent (3%) per annum, commencing on the date of disbursement through the date of the Event of Default.

Beginning as of the date of the Event of Default and continuing until such time as the Loan is repaid in full or default or breach is completely cured, the outstanding principal balance of the Loan shall accrue the default rate of the lesser of either ten percent (10%), compounded annually, or the highest rate permitted by law.

Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce repayment of the Loan and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

B. Specific Performance.

Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement or City Documents, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief.

C. LIQUIDATED DAMAGES.

FOR VIOLATIONS OF OBLIGATIONS WITH RESPECT TO RENTS FOR RESTRICTED UNITS, THE CITY SHALL HAVE THE RIGHT TO IMPOSE AS LIQUIDATED DAMAGES A CHARGE IN AN AMOUNT EQUAL TO THE ACTUAL AMOUNT COLLECTED BY OWNER OR OWNER'S REPRESENTATIVE IN EXCESS OF THE AFFORDABLE RENT. THE PARTIES AGREE THAT, IN SUCH INSTANCE, SUCH EXCESS RENT REPRESENTS A REASONABLE APPROXIMATION OF THE CITY'S DAMAGES AND IS NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. OWNER SHALL PAY ANY LIQUIDATED DAMAGES ASSESSED BY THE CITY WITHIN TEN (10) DAYS.

City's Initials

Owner's Initials

D. Other Remedies.

Pursue any other remedy allowed at law or in equity.

E. Right to Cure at Borrower's Expense.

The City shall have the right (but not the obligation) to cure any monetary default by the Borrower under a loan secured by the Property. The Borrower agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Borrower upon demand therefore, together with interest thereon at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the date of expenditure until the date of reimbursement.

F. Right of Contest.

The Borrower shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.

G. Remedies Cumulative.

No right, power, or remedy given to a party by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Party. Neither the failure nor any delay on the part of a Party to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by a Party of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

17. **Title Policy**

If funds provided in this Agreement are to assist in Property acquisition, Borrower shall open an escrow account with a mutually acceptable title company. City as a lender shall provide instructions to record its Deed of Trust and Affordability Covenant.

For all loans secured by a Deed of Trust, at the close of escrow, Borrower shall obtain for City's benefit, an ALTA extended coverage lender's policy of title insurance in an amount not less than the face value of the Note, clear of any title defects which would prevent the operation of the proposed Project. Borrower shall be responsible for paying all recording fees, escrow fees, the premium for the title insurance policy, all fees and cost for any new financing, and shall pay any applicable transfer taxes.

18. **Fire and Extended Coverage**

Borrower at its costs shall maintain for the Project a policy of standard fire and extended coverage during the life of the Note and Deed of Trust securing this Agreement, or any subsequently executed document which replaces the Note and Deed of Trust, with vandalism and malicious mischief endorsements, in the amount of at least the full replacement value of the improvements

which are part of the Project. The insurance policy must be issued in the names of Borrower and City as their interests appear. The insurance policy must contain a lender's loss payment endorsement, providing that any proceeds will be payable to City as its interests appear and may be subject to the interest of senior lenders.

19. **Property Damage or Destruction**

If any part of the Project is damaged or destroyed, Borrower shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement and 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.

20. **Nonrecourse Obligation.** Notwithstanding anything to the contrary set forth herein, the Loan evidenced by this Agreement shall be a nonrecourse obligation of Borrower and its Partners.

Exhibit B
Disbursement and Rates

Funding provided in this Agreement is to be used to support work scope activity and delivery costs enumerated in Exhibit A. None of the funding shall be used to support Borrower's general administration costs. Subject to the terms of the Agreement, City shall disburse loan funds to Borrower based on the following fee schedule and terms:

City shall deposit funds into an escrow held by a title company mutually approved by City and Borrower, in accordance with City enabling instructions. City funds deposited into escrow will be used by the title company to consummate the transaction.

Exhibit C

Funding Conditions

In consideration of the payments set forth in Exhibit B, Borrower shall undertake the following activities as conditions for funding provided in this Agreement:

- 1) Prior to award of funds provided and detailed in this Agreement, Borrower must satisfy the following conditions:
 - a) *Borrower shall deliver to the City copies of insurance policies described in Section 12 which name the City as additional insured.*
 - b) *Borrower shall execute and Escrow Agent shall deliver to the City the Note.*
 - c) *Borrower shall execute the Deed of Trust securing the Note. The Deed of Trust shall be recorded against the Property at the time the Borrower acquires it with Loan proceeds.*
 - d) *Borrower shall execute the Affordability Covenant which shall be recorded against the Property at the time the Borrower acquires it with Loan proceeds.*

City acknowledges that the above-stated conditions have been addressed to City's satisfaction.
- 2) *Prior to Property conveyance, Borrower must satisfy the following conditions:*
 - a) *Meet all closing obligations, pursuant to Section 6: Closing and Payment of Purchase Price of the Purchase and Sale Agreement*

City reserves the right to waive, delay, or otherwise modify funding conditions stated above, except those conditions detailed in Sections 1 and 2 of this Exhibit.

Exhibit D
Project Sources and Uses Development Budget

3471812.1

DO NOT DESTROY THIS NOTE. WHEN THIS NOTE IS FULLY PAID, IT MUST BE SURRENDERED TO THE TRUSTEE ALONG WITH THE ORIGINAL DEED OF TRUST FOR CANCELLATION AND ISSUANCE OF A RECONVEYANCE.

PROMISSORY NOTE

Secured by a Deed of Trust

\$2,450,000.00

South San Francisco, California
_____, 2020

FOR VALUE RECEIVED, Grand and Linden Family Apartments, L.P. ("**Borrower**"), promises to pay to the City of South San Francisco, a municipal corporation, ("**City**") the sum of Two Million Four Hundred Fifty Thousand Dollars (**\$2,450,000.00**) plus interest (the "**Loan**"). All payments on this Note shall be made to City at 400 Grand Avenue, South San Francisco, CA 94080 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to a Loan Agreement dated as of the date hereof by and between Borrower and City (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 Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City and encumbering Borrower's interest in the property 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 the Loan Agreement.

Use of Loan Funds: Proceeds for this Loan come from the City's Housing Trust Fund. Said proceeds will be used for the purchase of 201-219 Grand Avenue, known as County Assessor's Parcel Numbers 012-316-110, 012-316-100, 012-316-090 and 012-316-080 (the "**Property**") and re-development of the Property into a mixed use, high-density, residential apartment building of forty-six (46) affordable residential units and one manager's unit and approximately 6,000 square feet of ground floor commercial units (the "**Project**"). The terms and conditions of the Loan are more specifically described in the "Loan Agreement Between the City of South San Francisco and Grand and Linden Family Apartments, L.P." (the "**Agreement**") by Resolution No. [add #], [add date] and the "Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants between the City of South San Francisco and Grand and Linden Family Apartments, L.P." ("**Affordability Covenant**") dated _____, 2020.

Term: The term of this Note shall be from execution and shall mature fifty-five (55) years from date of Project Completion, as defined by issuance of a Final Certificate of Occupancy, or some other document acceptable to the City, for the Project (the "**Note Maturity**").

Repayment/Interest Rate: The principal amount under the Note shall bear no interest unless an Event of Default occurs under this Note, the Agreement, Deed of Trust or Affordability Covenant (collectively "**City Documents**"). In the City's sole and absolute discretion, the Loan may be forgiven by the City at Note

Maturity so long as no Event of Default has occurred or is occurring under the Note or City Documents. If an Event of Default has occurred, the entire outstanding balance of the Loan shall become immediately due and payable and such amount shall be deemed to have accrued simple interest at the rate of three percent (3%) per annum, commencing on the date of disbursement through the date of the Event of Default.

Beginning as of the date of the Event of Default and continuing until such time as the Loan is repaid in full or default or breach is completely cured, the outstanding principal balance of the Loan shall accrue the default rate of the lesser of either ten percent (10%), compounded annually, or the highest rate permitted by law. The City Documents shall be executed prior to any disbursement of funds under the Agreement. The Deed of Trust shall be recorded as described in the section below entitled "Security."

If payment is due, payment will first be applied to outstanding interest and then to any outstanding principal until the Note is paid as set forth herein. In the event this payment is less than accumulated interest owed plus current interest, any unpaid interest shall carry over to the following year. Interest shall not compound on this interest carry-over.

Due on Sale, Refinance or Transfer of Title: Notwithstanding the foregoing, in the event of a sale, refinance or transfer of the Project or Property or any interest therein by Borrower without prior written consent of the City 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, or (iii) 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 Project for purposes of this section. Replacement of a general partner of Borrower with any other entity shall be subject to prior written approval of City, which shall not be unreasonably withheld.

Borrower may transfer or assign all or any portion of its interest, right or obligations in the Property only as set forth in this Note 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 Note and the City Documents; (2) the transferee expressly assumes all obligations of Borrower imposed by this Note and the City Documents; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Borrower's obligations under this Note 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 Note 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 Borrower, it shall be deemed approved.

Borrower 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 Note 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.

Default: In the event Borrower commits an Event of Default pursuant to the Agreement and Affordability Covenant, 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 the total outstanding principal amount of the Note and any accrued interest under the Agreement or Affordability Covenant, and/or may initiate foreclosure proceedings under the Deed of Trust.

Nonrecourse: This Note shall be non-recourse to Borrower and its partners.

Security: This Note will be secured by the Deed of Trust recorded against Borrower's fee simple estate in the Property.

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

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first written above.

BORROWER:

Grand and Linden Family Apartments, L.P.

By: _____

Title: _____

Date: _____

RECORDING REQUESTED BY :

City of South San Francisco

WHEN RECORDED, MAIL TO :

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

*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, made this _____ day _____, 2020 between

ROEM DEVELOPMENT CORPORATION

herein called "Trustor," whose mailing address is

Grand and Linden Family Apartments, L.P.
1650 Lafayette Street
Santa Clara, CA 95050

and **Chicago Title Company** "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, that property in County of San Mateo, State of California, described in "**Exhibit A**" attached hereto together with all the improvements now or hereafter erected on the property, 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 property, 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 property covered by this Deed of Trust; and all of the foregoing, together with said property are referred to as (the "**Property**").

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 Property. If at the time this Deed of Trust is recorded, any interest, lien, or encumbrance has been recorded against the Property 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 pursuant to Health and Safety Code

Section 33334.14(a)(4), 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 lenders identified in the Financing Plan approved in connection with the certain Development Agreement executed by and between the Parties and dated as of November 15, 2017 ("**DA**"), provided that the instruments effecting such subordination include reasonable protections to the City in the event of default consistent with the requirements of Health and Safety Code Section 33334.14(a)(4), including without limitation, extended notice and cure rights.

Any subordination request shall be subject to a \$2,000.00 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: (i) represents and warrants that it is not affiliated in any way with the lender identified in the Financing Plan approved in connection with the DA, and (ii) covenants that it will not become so affiliated 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 Property, and that Trustor will warrant and defend generally the title of the Property 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 Property. In the event the Property 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 date 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 **\$2,450,000.00** executed by Trustor in favor of Beneficiary (the "**Loan**"); 3) Payment of such further sums as the then record owner of said Property 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 Grand and Linden Family Apartments, L.P." (the "**Agreement**"), dated _____ 2020, approved by the South San Francisco City Council Resolution No. [insert resolution #], [insert 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 Grand and Linden Family Apartments, L.P." ("**Affordability Covenant**") dated _____ 2020 (collectively the Note, Agreement and Affordability Covenant 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 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 Property and all parts or parcels of the Property shall be subject to these restrictions and shall pass with the Property 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 issuance of a Final Certificate of Occupancy for the residential portion of the Project, or some other document acceptable to Beneficiary, for the residential portion of 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 Property or permit the conveyance, transfer, or encumbrance of such Property 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 Property or improvements, except as provided by the City Documents.

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

(3) Maintenance of Property. To maintain the Property 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 Property (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 Property or at the Project. Trustor shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property 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 this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property.

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 8% 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 Owner with not less than thirty (30) days' written notice prior to undertaking any work for which Owner 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 Property 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 Property, 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 Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property 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 Property, 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

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 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 Property 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 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 Property; 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 affordability covenants compliance period herein described has terminated, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property 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 (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 Property, 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 Property 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 Property, 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 Property

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 Property 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 Property 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 Property 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 is recorded and the name and address of new Trustee.

(15) Binding on Successors. That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrator, 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, 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 Property encumbered by this Deed of Trust, 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 PROPERTY 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 AFFORDABILITY COVENANT, 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, OR (III) 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 PROPERTY 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 Property 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 date of the principal and accrued interest on the Note in the event that the Property is 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 Affordability Covenant 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.

ROEM Development Corporation

By: **[Add Clause]**

By: _____

Title: _____

[Signature Page Follows]

SIGNATURES MUST BE NOTARIZED

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

201 Grand Avenue

For APN/Parcel ID(s): 012-316-110

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

LOT 29 IN BLOCK 140, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA, PLAT NO. 1", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 1, 1892 IN BOOK "B" OF MAPS AT PAGE(S) 6, AND A COPY ENTERED IN BOOK 2 OF MAPS AT PAGE 52.

207 Grand Avenue

For APN/Parcel ID(s): 012-316-100

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

LOT 28, IN BLOCK 140, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO, SAN MATEO CO. CAL, PLAT NO. 1", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 1, 1892 IN BOOK "B" OF MAPS, AT PAGE 6, AND A COPY ENTERED IN BOOK 2 OF MAPS, AT PAGE 52.

217-219 Grand Avenue

For APN/Parcel ID(s): 012-316-080
 012-316-090

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

LOTS 25, 26 AND 27 IN BLOCK 140, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO, SAN MATEO CO. CAL, PLAT NO. 1", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 1, 1892 IN BOOK "B" OF MAPS, AT PAGE 6, AND A COPY ENTERED IN BOOK 2 OF MAPS, AT PAGE 52.

3470598.1

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

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

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

for 201-219 Grand Avenue, South San Francisco

by and between

THE CITY OF SOUTH SAN FRANCISCO

and

GRAND AND LINDEN FAMILY APARTMENTS, L.P.

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of _____, 2020 (“**Effective Date**”) by and between the City of South San Francisco, a municipal corporation (“**City**”) and **GRAND AND LINDEN FAMILY APARTMENTS, L.P.** (“**Owner**”). City and Owner are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Owner owns that certain real property located in the City of South San Francisco at 201-219 Grand Avenue, known as San Mateo County Assessor’s Parcel Nos. 012-316-110, 012-316-100, 012-316-090 and 012-316-080 and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. In accordance with that certain Development Agreement executed by and between the Parties and dated as of _____ (the “**DA**”), a memorandum of which was recorded in the Official Records of San Mateo County (“**Official Records**”) on _____, Owner will re-develop the Property into a mixed use, high-density, residential apartment building of forty-six (46) affordable residential units and one manager’s unit and approximately 6,000 square feet of ground floor commercial units (the “**Project**”). Capitalized terms used and not defined in this Agreement have the meaning ascribed to them in the DA.

C. Pursuant to Government Code Section 65915 and South San Francisco Municipal Code Chapter 20.390, Owner has agreed that the Project will result in forty-six (46) units being available to Eligible Households at an Affordable Rent as those terms are defined herein in Section 1. Furthermore, Owner has, pursuant to Section 20.390.010.B.7, requested development standard waivers including; a reduction in parking from 58 spaces to 31 spaces, reduction in the number of Electric Vehicle parking spaces to 1 space from 3 spaces, a reduction in the private storage space requirement from 200 cubic feet to 100 cubic feet per unit and, a for permits and fees required by the City not to exceed \$533,002.

D. To assist in the construction of affordable units at the Project, City provided Owner with a loan in the amount of Two Million, Four Hundred and Fifty Thousand Dollars (\$2,450,000.00) from City Affordable Housing Asset Fund (Fund 241), to partially finance the Project (“**Loan**”), as further set forth in the DA and the Loan Agreement entered into between the Parties (“**Loan Agreement**”) concurrently herewith.

E. As required by the DA, density bonus requirements and as a condition to its agreement to provide the Loan, the City requires the Property 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, forty-six (46) 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 Affordable Housing Asset Fund (Fund 241) to remain affordable for the longest feasible time.

F. 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.

"Actual Household Size" means the actual number of persons in the applicable household.

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any) and as defined below:

Studio – 1 person
One Bedroom – 1.5 people
Two Bedroom – 3 people
Three Bedroom – 4.5 people

"Affordable Rent" means the following amounts, less a utility allowance and such other adjustments as required pursuant to the California Redevelopment Law: (i) for units that are restricted for rental to households with incomes of not more than eighty percent (80%) of AMI (**"80% Units"**), a monthly rent that does not exceed one-twelfth (1/12) of thirty percent (30%) of eighty percent (80%) of AMI, Adjusted for Family Size Appropriate for the Unit, and (ii) for units that are restricted for rental to households with incomes of not more than one hundred twenty percent (120%) of AMI (**"120% Units"**), a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

"Area Median Income" or "AMI" means the median income for San Mateo County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (**"HUD"**) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (**"HCD"**) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"Claims" is defined in Section 10.

"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.

"Indemnitees" is defined in Section 10.

“Low-Income” or “Lower Income” means an annual gross household income that is less than or equal to the qualifying limits for households of Lower Income adjusted for actual household size, as determined periodically by HUD on the basis of gross annual household income and published by HCD in the Regulations for San Mateo County. If HUD ceases to make such determination, “Lower Income” shall be defined as not greater than 80% of Area Median Income adjusted for actual household size, as published by HCD in the Regulations. If both HCD and HUD cease to make such determinations, City in its reasonable discretion may designate another definition of “Lower Income” used by any other federal or state agency so long as such definition is no more restrictive than that set forth herein.

“Moderate-Income” means an annual gross household income that is less than or equal to 120% of AMI, adjusted for actual household size as determined periodically by HCD on the basis of gross annual household income and published in the Regulations for San Mateo County.

“Regulations” means Title 25 of the California Code of Regulations.

“Rent-Restricted” means a dwelling unit for which the gross rent charged for such unit does not exceed the Affordable Rent, as adjusted for assumed household size in accordance with the Department of Housing and Community Development (“HCD”) guidelines.

“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.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a multifamily rental housing development in compliance with the DA, Loan Agreement, City Promissory Note and City Deed of Trust and the requirements set forth herein (**“City Documents”**). 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 or other City Documents, 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 For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the residential portion of the Project, not less than forty-six (46) of the residential units of the Project shall be both Rent Restricted (as defined below) and occupied (or if vacant, available for occupancy), available at Affordable Rents to Eligible Households. This Section 2.1 shall be amended to include the specific levels of affordability for each Restricted Unit once finally determined by the Parties. The forty-six (46) residential units subject to this Agreement shall also be Rent Restricted and occupied by Eligible Households and allocated across unit type as specified in Exhibit B once finally determined by the Parties.

2.1.2 Special Considerations for units with Project Based Section 8 Rental Assistance: If the Project receives an award of Project-Based Section 8 rental assistance, the units

receiving the project-based vouchers (“**PBVs**”) shall be underwritten at the total subsidized rent for each unit paid by the project-based rental assistance and the tenant in sum. If PBVs are terminated, rents for any Restricted Units losing PBVs may be increased to the federally-permitted maximums in accordance with current California Tax Credit Allocation Committee (“**CTCAC**”) regulations.

If a PBV is terminated, and the current tenant is unable to pay the maximum CTCAC-allowable rent, Owner may, upon advance written notice to City, transition targeted units detailed in Exhibit B as follows:

(a) First, to a household of the same targeted population that could afford to pay the maximum CTCAC rent allowed; and if there is no household that meets this criterion,

(b) Second, to the next eligible household on Owner’s waiting list that could afford to pay the maximum CTCAC rent allowed.

For PBVs that are also HUD-Veterans Affairs Supportive Housing (VASH) vouchers, and if the current tenant is unable to pay the maximum CTCAC-allowable rent, Borrower may, upon advance written notice to City, transition to these units as follows:

(a) First, to a homeless veteran household for whom the maximum CTCAC rent allowed is affordable; and if there is no household that meets this criterion,

(b) Second, to a homeless household for whom the maximum CTCAC rent allowed is affordable; and if there is no household who meets this criterion,

(c) Third, to a veteran household for whom the maximum CTCAC rent allowed is affordable; and if there is no household who meets this criterion,

(d) Fourth, to the next eligible household on Owner’s waiting list for whom the maximum CTCAC rent allowed is affordable.

If PBVs are terminated, Borrower may request, and City may grant a reduction or waiver in writing of the homeless household requirements described above, upon submission of evidence that such requirements cause the Project to be financially infeasible.

2.1.3 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. If the income of a household occupying an extremely-low income unit (“**ELI Unit**”) increases to or beyond 50% of the AMI at recertification, the unit will no longer qualify as an ELI Unit for purposes of compliance with this Agreement and the Loan Agreement. In that scenario, the next vacancy in a unit of similar size

shall be filled with a household earning up to 30% AMI, qualifying that unit as an ELI Unit for purposes of compliance.

2.2 Rents for Restricted Units. Rents for Restricted Units shall be limited to Affordable Rents for households of the applicable income limit in accordance with Section 2.1 and Exhibit B. 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. 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 thirty percent (30%) of the Resident's Adjusted Income, subject to the maximum rent allowed pursuant to other funding restrictions.

2.2.1 Termination of Occupancy of Restricted Unit by Eligible Household.

Upon termination of occupancy of a Restricted Unit by an Eligible Household, Owner shall rent the Unit shall 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.

2.3 Unit Sizes, Design and Location. The Restricted Units shall be of comparable design quality as unrestricted units in the Project and 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 Eligible Households of units in the Project that are not Restricted Units 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.

2.4 City Loan Funds. Owner shall ensure that all City Loan Funds are used for the construction 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 Asset Fund (Fund 241) to remain affordable for the longest feasible time.

2.5 No Condominium Conversion. Owner shall not convert the residential 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 and meets which consent shall be conditioned upon Owner's agreement to ensure that the Restricted Units remain available as affordable housing. Prior to conveyance of any Restricted Unit(s), the buyer(s) of the for-sale Restricted 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, the City Documents or in California law whichever is greater..

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 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 law 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 rental of the residential units in the Project to Eligible Households that include at least one member who lives or works in the City of South San Francisco. Notwithstanding the foregoing, 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.

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

2.6.3 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property 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 Property, 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 Property, Project or part thereof.

All deeds made or entered into by Owner, its successors or assigns, as to any portion of the Property 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 Property 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).”

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

- i. termination of this Agreement;
- ii. disqualification of Owner 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

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 Owner’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 Owner under this Agreement or City Documents.

Owner 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 30 days of such filing, provided that within such 30 days such entity has not notified Owner 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. Owner shall provide City with a copy of their response to the Complaint when filed.

3. Reporting Requirements.

3.1. Eligible Household Certification. Project financing is anticipated to include proceeds from Low-Income Housing Tax Credits (“**LIHTC**”). If the Project is awarded LIHTC, City shall defer to income certification and calculation requirements imposed by tax credits. If the Project financing does not include tax credits, Owner shall rely on income determination calculations set forth in 24 CFR Part 5 (i.e., the Section 8 Voucher Program). Owner or Owner’s authorized agent shall obtain from each household prior to initial occupancy of each Restricted 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. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (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 regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

3.3 On-site Inspection. Owner shall permit representatives of City to enter and inspect the Property 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 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 Property and Project, shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by City, and shall permit any duly authorized representative of the Federal, State, local agencies and City to inspect records, including records pertaining to income and household size of 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. Owner agrees upon reasonable notice to provide to City or any Federal or State or local department having monitoring or review authority, to City's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement and the City Documents, and to evaluate the quality, appropriateness, and timeliness of services performed. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Restricted Units for a period of at least five (5) years, and for any period during

which there is an audit undertaken by the City pursuant to the City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. Unless extended by mutual agreement of the Parties, upon the 55th anniversary of issuance of the final certificate of occupancy for the residential portion of the Project, this Agreement shall automatically terminate and be of no further force or effect. 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 a successor statute.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of any repayment of the Loan, sale, assignment, transfer, or conveyance of the Property 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 Property and the Project to the covenants and restrictions set forth in this Agreement and the City Documents. The Parties hereby declare their express intent that the covenants and restrictions set forth in such Agreements 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 Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the Eligible Households of the individual dwelling units or retail/commercial space 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 Property 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 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, 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 the City Documents 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 or in the City Documents do not run with the land, such covenants shall be enforced as equitable servitudes against the Property 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 Property 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 Property 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 Property and the Project in good physical condition, in good repair (reasonable wear and tear excepted), 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, Owner agrees to maintain the Project and the Property (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 Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate 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, 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 Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property.

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. The failure to pay all such sums within thirty (30) days following delivery of City's invoice therefor shall constitute an Event of Default hereunder and 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 Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Restricted 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 describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Owner

proposes to enter into with Project Eligible Households. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property 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 Management and Marketing 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 Property 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 6.6 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 the City Documents, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in the City Documents.

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 and 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.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of San Mateo County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that pursuant to Health and Safety Code Section 33334.14(a)(4), the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan approved in connection with the DA, provided that the instruments effecting

such subordination include reasonable protections to the City in the event of default consistent with the requirements of Health and Safety Code Section 33334.14(a)(4), including without limitation, extended notice and cure rights.

Any subordination request shall be subject to a \$2,000.00 fee payable by Owner to City upon Owner's request for City to review instruments and other legal documents proposed to effect a subordination under this Agreement.

Owner hereby: (i) represents and warrants that it is not affiliated in any way with the lender identified in the Financing Plan approved in connection with the DA, and (ii) covenants that it will not become so affiliated by acquiring an interest in such lender, or an interest in its loan, or otherwise.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance.

If Owner sells, refinances or transfers the Property or Project or any interest therein without prior written consent of the City, it shall be considered an Event of Default and the entire principal balance of the Note, including any accumulated interest accrued pursuant to Exhibit A of the Loan Agreement, shall be immediately due and payable. However, (i) the transfer of limited partner interests in Owner to a LIHTC investor, (ii) the subsequent transfer of such limited partner interests for the purpose of syndicating the LIHTC, or (iii) 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 Project for purposes of this section. Replacement of the general partner of Borrower with any other entity shall be subject to prior written approval of City, which shall not be unreasonably withheld.

Owner may transfer or assign all or any portion of its interest, right or obligations in the Property only as set forth in this Agreement 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 Agreement and the City Documents; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement and the City Documents; (3) the transferee executes all documents reasonably requested by the City with respect to the assumption of the Owner's obligations under this Agreement 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 Agreement 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 Owner, it shall be deemed approved.

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 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.

8.3 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 Property, the Project or part thereof for the benefit of a lender ("**Lender**") shall contain each of the following provisions: (i) Lender shall use its best efforts to 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.

8.4 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 Property, 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 Property 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) Failure to Construct Project. A failure by the Borrower to commence or complete the construction of the Project in accordance with the terms of the City Documents which failure is not cured within 30 days of written notice from the City;

(b) Breach of Covenants. Failure by the Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of this Agreement and the City Documents which failure is not cured within 30 days of written notice from the City;

(c) Unauthorized Transfer. Any transfer other than as permitted pursuant to this Agreement;

(d) Representation or Warranty Incorrect. Any Owner representation or warranty contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the City in connection with the Loan or City Documents, proving to have been incorrect in any material respect when made;

(e) Default Under Project Financing and City Documents. Failure to make any payment or perform any of the Owner's covenants, agreements, or obligations under the documents evidencing and securing the financing for the Project or City Documents following expiration of all applicable notice and cure periods;

(f) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) Owner (or any general partner of Owner) to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Owner (or any general partner of Owner) or seeking any arrangement for the Owner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Owner (or any general partner of the Owner) in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Owner (or any general partner of the Owner), if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or Owner (or any general partner of the Owner) shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive;

(g) Assignment; Attachment. The Owner (or any general partner of the Owner) shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution.

(h) Suspension. The Owner (or any general partner of the Owner) shall have voluntarily suspended its business;

(i) Liens. There shall be filed any claim of lien (other than liens approved in writing by the City) against the Property or Project or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan pursuant to City Documents and the continued maintenance of said claim of lien or notices to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore satisfactory to the City;

(j) Condemnation. The condemnation, seizure, or appropriation of all or, in the opinion of the City, a substantial part of the Property or Project; or

(k) Insurance. Owner's failure to maintain insurance on the Property and the Project as required hereunder or under City Documents, and the failure of Owner to cure such default within thirty (30) days of written notice from City;

(l) Taxes and Assessments. Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within sixty (60) days of delinquency;

(m) Other Default. Occurrence of any other event (whether termed default, event of default, or otherwise) which under the terms of this Agreement or the City Documents entitle City to exercise its rights or remedies.

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. Repayment of Loan. The City shall have the right to require immediate repayment of the total outstanding amount of the Loan, together with any accrued interest thereon as set forth in Exhibit A of the Loan Agreement. Owner waives all right to presentment, demand, protest or notice of protest or dishonor. The City may proceed to enforce repayment of the Loan and to exercise any or all rights afforded to the City as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the City Deed of Trust. The Borrower shall be liable to pay the City on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the City in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.
- B. Specific Performance. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement or City Documents, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- C. LIQUIDATED DAMAGES. FOR VIOLATIONS OF OBLIGATIONS WITH RESPECT TO RENTS FOR RESTRICTED UNITS, THE CITY SHALL HAVE THE RIGHT TO IMPOSE AS LIQUIDATED DAMAGES A CHARGE IN AN AMOUNT EQUAL TO THE ACTUAL AMOUNT COLLECTED BY OWNER OR OWNER'S REPRESENTATIVE IN EXCESS OF THE AFFORDABLE RENT. THE PARTIES AGREE THAT, IN SUCH INSTANCE, SUCH EXCESS RENT REPRESENTS A REASONABLE APPROXIMATION OF THE CITY'S DAMAGES AND IS NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. OWNER SHALL PAY ANY LIQUIDATED DAMAGES ASSESSED BY THE CITY WITHIN TEN (10) DAYS.

City's Initials

Owner's Initials

- D. Other Remedies. Pursue any other remedy allowed at law or in equity;
- E. Right to Cure at Owner's Expense. The City shall have the right (but not the

obligation) to cure any monetary default by the Owner under a loan secured by the Property. The Owner agrees to reimburse the City for any funds advanced by the City to cure a monetary default by the Owner upon demand therefore, together with interest thereon at the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the date of expenditure until the date of reimbursement;

- F. Right of Contest. The Owner shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the City or the rights of the City hereunder.
- G. Remedies Cumulative. No right, power, or remedy given to a party by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Party. Neither the failure nor any delay on the part of a Party to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by a Party of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

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 Property and the Project, the performance of any work or services required of Owner under this Agreement, or Loan disbursement made pursuant to the Loan Agreement or any failure to perform any obligation as and when required by this Agreement or the City Documents or any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of Indemnitees. Owner’s indemnification obligations under 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 or the City Documents. However, Owner’s duty to indemnify under this Section shall not apply to injuries or damage for which Indemnitees have been found in a court of competent jurisdiction to be solely liable by reason of their own gross negligence or willful misconduct.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and any request for such shall be subject to a \$2,000.00 fee payable by Owner to City per modification or amendment request unless such amendment is required by the City.

11.2 Waiver of Terms and Conditions. A Party may at its discretion waive in writing any of the terms and conditions of this Agreement, without completing an amendment to this Agreement. No waiver of any default or breach shall be implied from any omission by the non-breaching Party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated.

Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by a Party to or of any act by the other Party requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement, nor shall it invalidate any act done pursuant to notice of default, or prejudice the exercising Party in the exercise of any right, power, or remedy hereunder.

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 parties 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

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: alex.greenwood@ssf.net

With a Copy to: Meyers Nave
Attn: Sky Woodruff
555 12th Street, Suite 1500
Oakland, CA 94607
Tel (510) 808-2000
Fax (510) 444-1108
Email swoodruff@meyersnave.com

If to Owner: Grand and Linden Family Apartments, L.P.
1650 Lafayette Street
Santa Clara, CA 95050
Attention: Alex Sanchez
Telephone: (408) 984-5600
Email: asanchez@roemncorp.com

With a Copy to: Bocarsly Emden Cowan Esmail & Arndt
633 W. Fifth Street
64th Floor
Los Angeles, CA 90071
Attention: Kyle B. Arndt
Telephone: 213-239-8048
Email: karndt@bocarsly.com

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. Owner agrees and understands that work/services performed pursuant this Agreement are performed by Owner as conditions of receiving the Loan funding, and not as an employee or joint venture of City and that neither Owner 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 Owner may have employed or with whom the Owner 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 Property, or the construction or operation of the Project, and the Owner shall include similar requirements in any contracts entered into for the such purposes.

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 City Council 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, together with the other City Documents 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. Exhibits A and B, 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.

11.15 Nonrecourse Obligation. Notwithstanding anything to the contrary set forth herein, the Loan shall be nonrecourse obligation of Borrower and its Partners.

11.16 Limited Partner Provisions. The City shall provide copies of any notice delivered to Owner hereunder or under Loan Document to the Owner's Limited Partner (the "Limited Partner"). The Limited Partner shall have the same right as the Owner to cure or remedy and default hereunder within the cure period provided to Owner extended by an additional sixty (60) days' provided, however, if the default is of such nature that the Limited Partner reasonably determines that it is necessary to replace a general partner of Owner in order to cure such default, then the cure period shall be extended until the date sixty (60) days following the removal of said general partner of Owner.

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: _____

Name: Michael Futrell

Title: City Manager

ATTEST:

By: _____
Rosa Acosta, City Clerk

APPROVED AS TO FORM:

By: _____
Sky Woodruff, City Attorney

OWNER

GRAND AND LINDEN FAMILY APARTMENTS, L.P.
a California limited partnership

By: _____

Its: _____

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)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

STATE OF CALIFORNIA)
)
COUNTY OF SAN MATEO)

On _____, 20__, before me, _____, (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

201 Grand Avenue

For APN/Parcel ID(s): 012-316-110

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

LOT 29 IN BLOCK 140, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SOUTH SAN FRANCISCO, SAN MATEO COUNTY, CALIFORNIA, PLAT NO. 1", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 1, 1892 IN BOOK "B" OF MAPS AT PAGE(S) 6, AND A COPY ENTERED IN BOOK 2 OF MAPS AT PAGE 52.

207 Grand Avenue

For APN/Parcel ID(s): 012-316-100

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

LOT 28, IN BLOCK 140, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO, SAN MATEO CO. CAL, PLAT NO. 1", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 1, 1892 IN BOOK "B" OF MAPS, AT PAGE 6, AND A COPY ENTERED IN BOOK 2 OF MAPS, AT PAGE 52.

217-219 Grand Avenue

For APN/Parcel ID(s): 012-316-080
 012-316-090

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

LOTS 25, 26 AND 27 IN BLOCK 140, AS DESIGNATED ON THE MAP ENTITLED "SOUTH SAN FRANCISCO, SAN MATEO CO. CAL, PLAT NO. 1", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON MARCH 1, 1892 IN BOOK "B" OF MAPS, AT PAGE 6, AND A COPY ENTERED IN BOOK 2 OF MAPS, AT PAGE 52.

Exhibit B

Number of Units by Unit Size and Targeted Area Median Income (AMI) Levels

Maximum Household Income	Up to 60% AMI	60% - 80% AMI	80% -120% AMI	Total
Studio				
1-Bedroom				
2-Bedroom				
3-Bedroom				
Total				46

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