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Government Code Section 27383

When recorded, mail to:
San Francisco Planning Department
1650 Mission Street, Room 400
San Francisco, California 94103
Attn: Director

Lot in Assessor's Block

AGREEMENT TO SUBJECT DWELLING UNITS CONSTRUCTED UNDER SAN FRANCISCO PLANNING CODE SECTION 207(c)(4) TO THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE

THIS AGREEMENT TO SUBJECT NEWLY-CONSTRUCTED ACCESSORY DWELLING UNITS TO THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, Chapter 37 of the San Francisco Administrative Code, is dated for reference purposes only as of this ___ day of _____, and is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision of the State of California (the "City"), acting by and through its Planning Department, and _____ ("Owner") with respect to the project proposed to be constructed at _____ in San Francisco, California. City and Owner are also sometimes referred to individually as a "Party" and together as the "Parties."

RECITALS

This Agreement is made with reference to the following facts:

A. **Code Authorization.**

Chapter 4.3 of the California Government Code (commencing with Section 65915, of Division 1 of Title 7, hereafter "Government Code Chapter 4.3") directs public agencies to grant concessions and incentives to private developers for the production of housing for lower income households. The Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq. hereafter "Costa-Hawkins") authorizes the owner of residential real property to establish the initial and all subsequent rental rates for a dwelling unit with a certificate of occupancy issued after February 1, 1995 with certain exceptions, including an exception in Section 1954.52(b) for dwelling units constructed pursuant to a contract with a public entity in consideration for a direct financial contribution or any other form of assistance specified in Government Code Chapter 4.3.

Section 207(c)(4) of the San Francisco Planning Code (hereafter "Planning Code") allows one or more new dwelling units to be constructed entirely within the built envelope of an existing building, or within the built envelope of an existing and authorized auxiliary structure on the same lot, in zoning districts that allow residential use ("Accessory Dwelling Units" or "ADUs"). Planning Code Section 207(c)(4)(G) authorizes the Zoning Administrator to grant a

complete or partial waiver of the Planning Code requirements specified in Planning Code Section 307(l) when modification of the requirement would facilitate the construction of an ADU. Section 207(c)(4)(G) further provides that if the Zoning Administrator grants a complete or partial waiver of Planning Code requirements, and the subject lot contains any Rental Units as defined in Section 37.2(r) of the San Francisco Residential Rent Stabilization and Arbitration Ordinance (hereafter “the Rent Ordinance”) at the time an application for a building permit is filed to construct the ADU(s), the owner must enter into a Regulatory Agreement with the City pursuant to Planning Code Section 207(c)(4)(H) that subjects the ADU(s) to the Rent Ordinance as a condition of approval .

B. **Property Subject to this Agreement.** The property that is the subject of this Agreement consists of the real property and improvements located at _____ in the City and County of San Francisco, California, which is Lot ___ in Assessor’s Block ____ (hereafter “the Property”). The Property is more particularly described in Exhibit A attached hereto and is owned in fee by Owner.

C. **Development Proposal; Intent of the Parties.** Pursuant to Planning Code Section 207(c)(4), the Owner proposes to construct _____ Accessory Dwelling Units within the built envelope of an existing building on the Property that contains ____ existing dwelling units (the “Project”). The lot contained at least one Rental Unit at the time the application for a building permit to construct the ADU(s) was filed with the City. The Owner has requested the Zoning Administrator to waive the Planning Code requirements described in Section 2.1 of this Agreement in order to construct the Accessory Dwelling Unit(s), and the Zoning Administrator has agreed to waive those requirements subject to the execution of this Agreement.

D. **Compliance with All Legal Requirements.** It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with the Costa-Hawkins Rental Housing Act, the Planning Code, and all other applicable laws and regulations.

AGREEMENT

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

1. **INCORPORATION OF RECITALS AND EXHIBITS.**

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

2. **CITY’S CONCESSIONS AND INCENTIVES IN RETURN FOR SUBJECTING UNITS TO THE RENT ORDINANCE.**

2.1 **Costa-Hawkins Rental Housing Act; Ability of Owner to Establish Rental Rates Is Not Applicable to Newly-Constructed Accessory Dwelling Unit(s); Rent Ordinance Applies.** The Parties acknowledge that Section 1954.52(a) of Costa-Hawkins authorizes an owner to establish both the initial and all subsequent rental rates for a dwelling unit with a

certificate of occupancy issued after February 1, 1995, and requires the City to exempt dwelling units from local rent control pursuant to the exemption for newly constructed units which is codified at Section 37.2(r)(5) of the Rent Ordinance, unless the owner has otherwise agreed by contract with a public entity pursuant to Section 1954.52(b) of Costa-Hawkins in consideration for forms of concessions and incentives that are specified in Government Code Chapter 4.3. The Parties further understand and agree that the Accessory Dwelling Units proposed to be constructed on the Property are not subject to Section 1954.52(a) of Costa-Hawkins because, by this Agreement, the Owner is entering into a contract with a public entity pursuant to Section 1954.52(b) in consideration for a complete or partial waiver of the density limits and/or parking, rear yard, exposure or open space standards of the Planning Code or other direct financial contribution or other form of assistance specified in Government Code Chapter 4.3. The concessions and incentives applicable to the subject Property are set forth in Section 2.2 of this Agreement.

2.2 **Concessions, and Incentives.** The Owner has received the following Zoning Administrator waivers of Planning Code requirements as concessions and incentives in return for subjecting to the Rent Ordinance the Accessory Dwelling Unit(s) described in Recital C above and proposed to be constructed in the Property described in Exhibit A:

3. COVENANTS OF OWNER

3.1 **Units Subject to Rent Ordinance.** Pursuant to Planning Code Sections 204(c)(4)(G) and 204(c)(4)(H), and in consideration of the concessions and incentives set forth in Section 2.2 of this Agreement, the Owner agrees to subject the Accessory Dwelling Unit(s) to the provisions of the Rent Ordinance.

3.2 **Owner's Waiver of Rights Under Section 1954.52 of Costa-Hawkins and Section 37.2(r)(5) of the Rent Ordinance as to the Newly-Constructed Accessory Dwelling Unit(s).** As the Parties have acknowledged in Section 2.1 of this Agreement, under Section 1954.52(a) of Costa-Hawkins and Section 37.2(r)(5) of the Rent Ordinance, the owner of newly constructed dwelling units may establish both the initial and all subsequent rental rates for dwelling units in the property without regard to the Rent Ordinance unless otherwise agreed to pursuant to the provisions of Section 1954.52(b) of Costa-Hawkins. The Parties understand and agree that by entering into this Agreement, Section 37.2(r)(5) of the Rent Ordinance and Section 1954.52(a) of Costa-Hawkins do not and in no way shall limit or otherwise affect application of the Rent Ordinance to the Accessory Dwelling Unit(s), and that the City may restrict subsequent rental rates for the Accessory Dwelling Unit(s) because this Agreement, as a contract with a public entity in consideration for a direct financial contribution or other forms of assistance specified in Government Code Chapter 4.3, including but not limited to the concessions and

incentives specified in Section 2.2 above, falls within the exception in Section 1954.52(b) of Costa-Hawkins described in Section 2.1 of this Agreement. Owner acknowledges that the concessions and incentives described in Section 2.2 result in identifiable and actual cost reductions to the Project.

As a material part of the consideration for entering into this Agreement, Owner, on behalf of itself and all its successors and assigns to this Agreement, hereby expressly waives, now and forever, any and all rights it may have under Section 1954.52(a) of Costa-Hawkins and/or Section 37.2(r)(5) of the Rent Ordinance with respect to the Accessory Dwelling Unit(s) consistent with Section 3.1 of this Agreement. This waiver applies only to the Accessory Dwelling Unit(s) and not to any other dwelling units on the Property and does not preclude the Owner from establishing the initial rental rate for the Accessory Dwelling Unit(s) pursuant to Section 1954.53 of Costa-Hawkins. Without limiting the foregoing, Owner, on behalf of itself and all successors and assigns to this Agreement, agrees not to bring any legal or other action against City seeking application of Costa-Hawkins to the Accessory Dwelling Units for so long as the Accessory Dwelling Units are subject to the Rent Ordinance. The Parties understand and agree that the City would not be willing to enter into this Agreement without the waivers and agreements set forth in this Section 3.

4. **MUTUAL OBLIGATIONS**

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

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

5. **OWNER REPRESENTATIONS, WARRANTIES AND COVENANTS.**

5.1 **Interest of Owner.** Owner represents that it is the legal and equitable owner of a fee simple interest in the Property, that it has the power and authority to bind all other persons with legal or equitable interest in the newly-constructed dwelling units to the terms of this Agreement, and that all other persons holding legal or equitable interest in the Accessory Dwelling Unit are to be bound by this Agreement.

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

affecting Owner or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Owner's business, operations, or assets or Owner's ability to perform under this Agreement.

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

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

5.5 **Notification of Limitations on Contributions.** Through execution of this Agreement, Owner acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

6. **AMENDMENT; TERMINATION**

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

6.2 **Automatic Termination.** This Agreement shall automatically terminate in the event that the Newly-Constructed Dwelling Units authorized under Section 207 (c) (4) of the San Francisco Planning Code are no longer subject to regulation as to the rental rates.

6.3 **Effect of Termination.** If this Agreement is terminated for any reason, the City's waivers of Planning Code requirements described in Section 2.1 shall no longer be in effect and the Property shall be subject to the provisions of the Planning Code that would otherwise have applied to the Project.

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

7.1 **Agreement Runs With The Land.** Owner may assign or transfer its duties and obligations under this Agreement to another entity, provided such entity is the legal and equitable fee owner or lessee of the Property ("Transferee"). Owner acknowledges that the Project Approvals are dependent on this Agreement, and that any party that wishes to develop some or all of the Project on the Property must assume all of Owner's rights and obligations under this Agreement. As provided in Section 9.2, this Agreement runs with the land and any Transferee will be bound by all of the terms and conditions of this Agreement.

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

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

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

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

8.2 **Default.** For purposes of this Agreement, the following shall constitute a default under this Agreement: the failure to perform or fulfill any material term, provision, obligation, or covenant hereunder and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance; provided, however, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter, but in no event later than one hundred twenty (120) days.

8.3 **Remedies for Default.** In the event of an uncured default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity. In addition, the non-defaulting Party may terminate this Agreement subject to the provisions of this Section 8 by sending a Notice of Intent to Terminate to the other Party setting forth the basis for the termination. The Agreement will be considered terminated effective upon receipt of a Notice of Termination. The Party receiving the Notice of Termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

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

9. **MISCELLANEOUS PROVISIONS**

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

9.2 **Binding Covenants; Run With the Land.** From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties, and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

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

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

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

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

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

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

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

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Kate H. Stacy, Dep. City Attorney

To Owner:

with a copy to:

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

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

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

9.11 **Sunshine.** The Owner understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure.

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

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

CITY

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

By: _____
John Rahaim
Director of Planning

By: _____
Deputy City Attorney

OWNER

By: _____
Its: _____

EXHIBIT A

Legal Description of Property

DRAFT