

EXHIBIT 5 TO THE FOURTH AMENDMENT
Amendments to Below-Market Rate Housing Plan

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1. Cumulative Subsidy Cap. As of the Fourth Amendment Reference Date, Developer has paid \$7,490,000 in Agency Subsidies meeting the Cumulative Subsidy Cap for 2028 and 2029. The parties desire to adjust the dates for Developer's payment of the Cumulative Subsidy Cap. Section 2.6(b)(1)(2) of the Below-Market Rate Housing Plan is hereby deleted and replaced with the following:

(b) Cumulative Subsidy Cap. The Cumulative Subsidy Cap shall be the maximum aggregate payment of Agency Subsidy that Developer may be required to make before the corresponding dates therefore, as such dates may be extended pursuant to the effect of Excusable Delay (the "**Cumulative Subsidy Cap**"), as follows:

(2) if the Stadium Termination Event occurs

<u>Date</u>	<u>Cumulative Subsidy Cap</u>
2028	\$490,000
2029	\$7,000,000
2030	\$15,499,167
2031	\$17,120,833
2032	\$36,044,167
2033	\$45,097,500
2034	\$53,042,500
2035	\$63,029,167
2036	\$73,896,667
2037	\$79,800,000

In the event Developer or Vertical Developer does not obtain the Temporary Certificate of Occupancy for the last building in Major Phase 2 on the Candlestick Site by January 1, 2030, each date set forth above shall be automatically extended by five (5) years (e.g., 2028 would be extended to 2033, 2029 would be extended to 2034, 2030 would be extended to 2035, etc.).

2. Remaining Alice Griffith Subsidy. Section 5.4(a), (c) and (e) of the Below-Market Rate Housing Plan is hereby deleted and replaced with the following:

5.4 Contributions for the Alice Griffith Replacement Projects.

(a) Developer and Alice Griffith Developer Payment Obligations. On the Alice Griffith Authorization Date for an Alice Griffith Lot, Developer shall provide Adequate Security for (i) the Alice Griffith Subsidy for each Alice Griffith Replacement Unit applicable to such Alice Griffith Lot and (ii) the Agency Subsidy for each Subsidized Agency Affordable Unit applicable to such Alice Griffith Lot. As of the Fourth Amendment Effective Date, Developer has provided the Alice Griffith Subsidy for 226 of the 256 Alice Griffith Replacement Units. Developer shall provide to the Alice Griffith Replacement Project the Alice Griffith Subsidy for the remaining thirty (30) Alice

Griffith Replacement Units, any Cost Overruns pursuant to Section 5.4(c)(1), and the Agency Subsidy (subject to Section 2.6(b)(1)(2)) for each Subsidized Agency Affordable Unit applicable to such Alice Griffith Replacement Project on the date that Alice Griffith Developer obtains Temporary Certificate of Occupancy for a residential building that includes a remaining Alice Griffith Replacement Unit.

(c) Cost Overruns.

(1) Prior to Commencement. The Alice Griffith DDA shall provide that the Agency and Developer shall contribute to an Alice Griffith Replacement Project any Cost Overruns applicable to such Alice Griffith Replacement Project in accordance with this Section 5.4(c)(1). “**Cost Overruns**” means any shortfalls in the funding for all of the Alice Griffith Replacement Projects based on the budget for such Alice Griffith Replacement Project as of the date of the applicable construction loan closing as compared to the “**Total Development Cost**” applicable to such Alice Griffith Replacement Project as set forth in Exhibit F-C. For the avoidance of doubt, the Total Development Cost set forth in Exhibit F-C is an estimate as of the Reference Date and Cost Overruns applicable to an Alice Griffith Replacement Project shall be based on the estimated Total Development Cost identified in an updated budget (“**Updated Budget**”) and approved by the Citywide Affordable Housing Loan Committee and the Agency Commission as of the date of the construction loan closing for the applicable Alice Griffith Replacement Project. The Agency shall provide an anticipated Updated Budget to the Developer for review and comment and the Agency will reasonably consider any comments provided by the Developer on the Updated Budget prior to approving the Updated Budget. During construction of an Alice Griffith Replacement Project, the Agency shall apprise the Developer of any increases to the Updated Budget, provide the Developer the opportunity to review and comment on any increases to the Updated Budget, and reasonably consider any comments provided by the Developer on such increases. Cost Overruns shall be apportioned between the Agency and Developer according to the ratio of the number of Agency Affordable Units to Alice Griffith Replacement Units in the applicable Alice Griffith Replacement Project. For example, if an Alice Griffith Replacement Project has eighty (80) Units, including twenty (20) Agency Affordable Units and sixty (60) Alice Griffith Replacement Units, then the Agency shall be responsible for twenty five percent (25%) ($20/80 = 25\%$) of the Cost Overruns and Developer shall be responsible for seventy-five percent (75%) ($60/80 = 75\%$) of the Cost Overruns for such Alice Griffith Replacement Project.

(2) Cost Overruns – Following Commencement. The Agency and Developer anticipate that the required contingency reserve accounts as set forth in the budget for each Alice Griffith Replacement Project as of the date of the applicable construction loan closing will cover any change orders or increased costs following the date of the applicable construction loan closing, and thereafter such costs will be paid from reductions of Alice Griffith Developer’s development fee in keeping with the MOH Underwriting Guidelines. If construction-phase change orders or increased costs exceed the value of contingency reserves and the portion

of Alice Griffith Developer's development fee available under MOH Underwriting Guidelines, then Developer and the Agency shall provide the additional funds necessary to Complete the Alice Griffith Replacement Project in the same ratio as that applied to Cost Overruns as set forth in Section 5.4(c)(1).

(d) Anticipated Alice Griffith Funding. As of the Reference Date, the anticipated sources and uses of funds for the Alice Griffith Replacement Projects are shown in Exhibit F-C. The Total Development Cost estimate used to determine any Cost Overruns in accordance with Section 5.4(c)(1) will be based on an Updated Budget approved by the Citywide Affordable Housing Loan Committee and the Agency Commission and reviewed by Developer in accordance with Section 5.4(c)(1) for the applicable Alice Griffith Replacement Project as of the date of the applicable construction loan closing for such Alice Griffith Replacement Project.

3. Senior BMR Project. Section 3.2(c) of the Below-Market Rate Housing Plan is hereby deleted and replaced with the following:

(c) Senior BMR Project Completion. Developer shall ensure, subject to Excusable Delays, that the Senior BMR Project is Completed, ready for occupancy, and marketed by the date of issuance of the last Temporary Certificate of Occupancy for the last building in Major Phase 4 on the Candlestick Site, but no later than the same for the CP Market Rate Project. For the avoidance of doubt, the Senior BMR Project is subject to the parking requirements set forth in Section 3.5(d).

4. Minimum and Maximum Affordability. Section 2.2(b)(1) of the Below-Market Rate Housing Plan is hereby deleted and replaced with the following:

(1) Inclusionary Units and Workforce Units. When Developer Transfers a Market Rate Lot, it shall have the right to determine in its sole and absolute discretion the number of Units, Inclusionary Units and Workforce Units designated for each such Lot, so long as, unless otherwise Approved in the sole and absolute discretion of the Agency Director: (i) no less than five percent (5%) and no more than twenty percent (20%) of the Units on such Market Rate Lot are Inclusionary Units; provided, however, that if Developer Transfers a Market Rate Lot for development of the Senior BMR Project, then the number of Inclusionary Units designated for the Market Rate Lot(s) Transferred for the development of one (1) other Residential Project in Candlestick Site (the "CP Market Rate Project") may be less than five percent (5%); (ii) no more than forty percent (40%) of the Units on such Market Rate Lot are Workforce Units; (iii) Developer otherwise satisfies the requirements of Section 2.5; and (iv) if Developer decreases the percentage of Inclusionary Units or Workforce Units on such Lot from the number that was identified in a Major Phase Approval, it shall notify the Agency of the proposed alternative location of such Inclusionary Units or Workforce Units. If the applicable Lot is designated to include Additional Units, then the provisions of this Section 2.2(b)(1) shall not apply with respect to such Additional Units (which, for the avoidance of doubt, shall not be counted for purposes of the foregoing restrictions) and instead the provisions of Section 2.2(b)(3) shall apply

with respect to such Additional Units (including the Additional Inclusionary Units).

5. Definitions. All references to the term “CP-02 Senior BMR Project” shall be replaced with “Senior BMR Project” and the definition of “CP-02 Senior BMR Project” is hereby deleted and replaced with the following:

“**Senior BMR Project**” means a Residential Project developed within the Candlestick Site that contains one hundred and five (105) Units serving seniors ages 62 and older and with household incomes up to sixty percent (60%) of AMI (and including one (1) manager’s unit) and including the recorded restrictions as set forth in Section 3.4(a), subject to such revisions thereto as are Approved by the applicable Vertical Developer and the Agency (including to conform with the requirements related to such Residential Project as contemplated hereby and to provide that such restrictions will apply for the life of the Residential Project, as more particularly described therein).

6. Replacement of Housing Map. The Housing Map for the Non-Stadium Alternative attached to the Below-Market Rate Housing Plan as exhibit F-B thereto is hereby deleted and replaced by Exhibit 5-1 hereto.