

File No. 210363

Committee Item No. 9

Board Item No. 23

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date April 21, 2021

Board of Supervisors Meeting

Date April 27, 2021

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Secured Acquisition Promissory Note</u>    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Secured Predevelopment Promissory Note</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Declaration of Restrictions</u>            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Deed of Trust</u>                          |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>General Plan Referral - March 5, 2021</u>  |
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Completed by: Linda Wong Date April 16, 2021

Completed by: Linda Wong Date April 23, 2021

1 [Loan Agreement - 4200 Geary Associates, L.P. - 100% Affordable Housing - 4200 Geary  
2 Boulevard - Not to Exceed \$14,538,982]

3 **Resolution approving and authorizing the Director of the Mayor’s Office of Housing and**  
4 **Community Development to execute loan documents relating to a loan to provide**  
5 **financing for the acquisition of real property located at 4200 Geary Boulevard, and**  
6 **predevelopment activities for the construction of a 100% affordable multifamily rental**  
7 **housing project consisting of 98 units for senior households and ancillary commercial**  
8 **space, known as 4200 Geary Boulevard, in an aggregate amount not to exceed**  
9 **\$14,538,982; approving the form of the loan agreement and ancillary documents;**  
10 **ratifying and approving any action heretofore taken in connection with the project;**  
11 **granting general authority to City Officials to take actions necessary to implement this**  
12 **Resolution, as defined herein; and finding that the loan is consistent the General Plan,**  
13 **and the eight priority policies of Planning Code, Section 101.1.**

14  
15 WHEREAS, The City and County of San Francisco, acting through the Mayor’s Office  
16 of Housing and Community Development (“MOHCD”), administers a variety of housing  
17 programs that provide financing for the development of new affordable housing and the  
18 rehabilitation of single- and multi-family housing for low- and moderate-income households  
19 and resources for homeowners in San Francisco; and

20 WHEREAS, MOHCD enters into loan agreements with affordable housing developers  
21 for the purpose of developing 100% affordable housing within the City; and

22 WHEREAS, The 2019 Affordable Housing Bond priorities include \$15M each for  
23 acquisition and predevelopment of low-income and senior housing production to achieve  
24 geographic balance; and

1           WHEREAS, MOHCD published a Notice of Funding Availability for acquisition and  
2 predevelopment financing on December 27, 2019, to finance site acquisition and  
3 predevelopment activities for proposed affordable housing projects located in Districts 1, 2, 4,  
4 7 and 8; and

5           WHEREAS, Tenderloin Neighborhood Development Corporation, a California nonprofit  
6 public benefit corporation, was recommended for an acquisition and predevelopment loan  
7 under the NOFA, and established 4200 Geary Associates, L.P., a California limited  
8 partnership (the “Borrower”) as an affiliate to acquire and develop affordable housing; and

9           WHEREAS, The Borrower intends to acquire the real property located at 4200 Geary  
10 Boulevard, San Francisco (the “Property”) in order to develop a 100% affordable rental  
11 housing project for extremely-low, very-low, low-, and moderate-income senior households  
12 with studio and 1-bedroom units, and ancillary space for residential property staff offices, a  
13 community-serving space, and ancillary commercial space, to be commonly known as “4200  
14 Geary” (the “Project”); and

15           WHEREAS, On January 22, 2021, the Citywide Affordable Housing Loan Committee  
16 recommended approval to the Mayor of a loan for Project in an amount not to exceed  
17 \$14,538,982 (the “Loan”) to finance Borrower’s acquisition of the Property and  
18 predevelopment activities associated with the development of the Project; and

19           WHEREAS, MOHCD desires to provide the Loan to the Borrower pursuant to a Loan  
20 Agreement, a Secured Acquisition Promissory Note, a Secured Predevelopment Promissory  
21 Note, Declaration of Restrictions, and a Deed of Trust (collectively, “Loan Documents”), in  
22 substantially the form on file with the Clerk of the Board in File No. 210363, and in such final  
23 form as approved by the Director of MOHCD and the City Attorney; and

24           WHEREAS, The material terms of the Loan Documents include: (i) a minimum term of  
25 57 years; (ii) an interest rate of up to three percent (3%); (iii) annual repayment of the loan

1 through residual receipts from the completed Project; (iv) the Property will be restricted for life  
2 of the project as 100% affordable housing to low- and moderate-income senior households  
3 with annual maximum rent and income established by MOHCD; (v) the loan will be secured by  
4 a deed of trust recorded against the Property; and (vi) if the Property cannot be developed  
5 within the time period required by MOHCD's loan agreement time period, the City may require  
6 the Property to be transferred to another nonprofit organization or conveyed to the City; and

7 WHEREAS, The Planning Department has determined the Project is eligible for  
8 affordable housing streamlined approval under California Senate Bill 35 (SB-35) (California  
9 Government Code Section 65913.4), and therefore does not require CEQA analysis, as  
10 provided in the Planning Department's Notice of Final Approval of an SB 35 Project dated  
11 January 20, 2021 (BPA No. 2020.0940.5561 and 2020.0930.5565); and

12 WHEREAS, By letter dated March 5, 2021, the Planning Department found the Project  
13 to be consistent with the General Plan, and with the eight priority policies under Planning  
14 Code, Section 101.1;

15 WHEREAS, The City intends to enter into a purchase and sale agreement at  
16 construction loan closing and enter into a ground lease with the Borrower; now, therefore, be  
17 it

18 RESOLVED, This Board affirms the Planning Department's determination that the  
19 proposed Project loan is consistent, on balance, with the General Plan, and with Planning  
20 Code, Section 101.1 for the reasons set forth in the Director of Planning's letter; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Loan  
22 Documents, and authorizes the Director of MOHCD or the Director's designee to enter into  
23 the Loan Documents for of the Project, including, without limitation, modifications of the Loan  
24 Documents, and preparation and attachment of, or changes to, any of all of the exhibits and  
25 ancillary agreements, and any other documents or instruments necessary in connection

1 therewith, that the Director determines, in consultation with the City Attorney, are in the best  
2 interest of the City, do not materially increase the obligations or liabilities for the City or  
3 materially diminish the benefits of the City, or are necessary or advisable to effectuate the  
4 purposes and intent of this Resolution and are in compliance with all applicable laws,  
5 including the City Charter; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and  
7 delegates to the Director of MOHCD and/or the Director of Property, and their designees, the  
8 authority to undertake any actions necessary to protect the City's financial security in the  
9 Project and enforce the affordable housing restrictions, which may include, without limitation,  
10 acquisition of a Project site upon foreclosure and sale at a trustee sale, acceptance of a deed  
11 in lieu of foreclosure, or curing the default under a senior loan; and, be it

12 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and  
13 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors;  
14 and be it

15 FURTHER RESOLVED, That within thirty (30) days of the Loan Documents being fully  
16 executed by all parties, MOHCD shall provide the Loan Agreement to the Clerk of the Board  
17 for inclusion into the official file.

18

19 RECOMMENDED:

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/s/

Eric D. Shaw, Director  
Mayor's Office of Housing and Community Development

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<p><b>Item 9</b> <b>File 21-0363</b></p>	<p><b>Department:</b> Mayor Office of Housing &amp; Community Development (MOHCD)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution approves a loan of \$14,538,982, funded by Proposition A General Obligation Bond proceeds, to the Tenderloin Neighborhood Development Corporation (TNDC) to acquire 4200 Geary Boulevard for affordable housing development and ancillary commercial use, and pay for predevelopment costs.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Mayor’s Office of Housing and Community Development (MOHCD) issued a Notice of Funding Availability (NOFA) in December 2019 for \$30 million in Proposition A funding for acquisition and predevelopment financing of affordable housing in Districts 1, 2, 4, 7, and 8. Of the \$30 million, \$15 million was allocated to projects serving low-income seniors. In response to the NOFA, MOHCD awarded financing to a senior housing project sponsored by TNDC at 4200 Geary Boulevard. The project will develop 98 units of housing for formerly homeless, extremely low-income, and low-income seniors.</li> <li>• \$11,064,396 is allocated to the purchase costs of 4200 Geary Boulevard. TNDC acquired 4200 Geary Boulevard in May 2020, using an acquisition loan from the Housing Accelerator Fund. The proposed loan refunds the initial loan from the Housing Accelerator Fund and other costs of purchase.</li> <li>• \$3,474,613 will pay for architectural design expenses, entitlement and permit fees, property taxes, geotechnical, environmental and historic studies, community outreach needs and organizational costs.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• City loans to the 4200 Geary Boulevard project, estimated to be \$42,330,606 including the acquisition, predevelopment, and permanent gap loan, comprise 47 percent of total estimated project funding of \$90,374,412. Other funding sources are expected to be Low Income Housing Tax Credits, California Department of Housing and Community Development Multi-Family Housing Program loan, Federal Housing Loan Bank Affordable Housing Program grant funds, and developer equity.</li> <li>• Repayment of the City loan to TNDC for the 4200 Geary Boulevard project will conform to MOHCD’s Residual Receipts Policy. According to the policy, the TNDC will pay the City a portion of the project’s residual receipts (net operating income after expenses).</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed resolution to state that it is the, the City’s intent is to enter into a purchase and sale agreement in the future at the closing of the closing of the construction loan, in which the City will take ownership of the land at 4200 Geary Boulevard, and enter into a ground lease for the land with TNDC.</li> <li>• Approve the proposed resolution as amended.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

## BACKGROUND

San Francisco voters approved Proposition A in November 2019, authorizing the issuance of up to \$600 million in General Obligation Bonds to finance affordable housing development. The \$600 million bond allocation included: \$150 million for public housing, \$220 million for low-income housing, \$60 million for middle-income housing and preservation, \$150 million for senior housing, and \$20 million for educator housing.

The Mayor's Office of Housing and Community Development (MOHCD) issued a Notice of Funding Availability (NOFA) in December 2019 for \$30 million in Proposition A funding for acquisition and predevelopment financing of affordable housing in Districts 1, 2, 4, 7, and 8. Of the \$30 million, \$15 million was allocated to projects serving low-income seniors and \$15 million was allocated to projects serving low- and moderate-income families. In response to the NOFA, MOHCD awarded financing to two projects sponsored by Tenderloin Neighborhood Development Corporation, 4200 Geary Boulevard (subject of the proposed resolution) and 2550 Irving Street.<sup>1</sup>

The Controller's Office of Public Finance sold \$254.6 million in Proposition A bonds in March 2021, which are the source of funding for the \$30 million in loans to be granted in response to the December 2019 NOFA.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a loan of \$14,538,982, funded by Proposition A General Obligation Bond proceeds, to the Tenderloin Neighborhood Development Corporation (TNDC) to acquire 4200 Geary Boulevard for affordable housing development and ancillary commercial use, and pay for predevelopment costs. The proposed resolution also (1) approves the form of the loan agreement and ancillary documents; (2) ratifies and approves actions previously taken in connection to the project; (3) authorizes actions to be taken to implement the proposed resolution; and (4) finds that the loan is consistent the City's General Plan and the priority policies of Planning Code Section 101.1.<sup>2</sup>

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<sup>1</sup> According to MOHCD staff, 2550 Irving Street is a proposed family housing development that will be located in the Sunset and will be brought to the Board of Supervisors for approval at a future date.

<sup>2</sup> The eight priorities defined in Planning Code Section 101.2 states are that (1) existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced; (2) existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods; (3) the City's supply of affordable housing will be preserved and enhanced; (4) commuter traffic will not impede Muni transit service or overburden our streets or neighborhood parking; (5) a diverse economic base will be maintained by protecting our industrial and service

The proposed project will construct 98 units of rental housing affordable to formerly homeless, extremely-low income, and low-income seniors, as shown in Exhibit 1 below.

**Exhibit 1: Unit Mix and Income Levels**

<b>Unit Type</b>	<b>Proposed Number of Units</b>
<u>Formerly Homeless</u> <sup>a</sup>	
Studio	8
One Bedroom	12
<b>Subtotal Formerly Homeless</b>	<b>20</b>
<u>Extremely Low Income</u> <sup>b</sup>	
Studio	15
One Bedroom	15
<b>Subtotal Extremely Low Income</b>	<b>30</b>
<u>Low Income</u> <sup>c</sup>	
Studio	18
One Bedroom	29
<b>Subtotal Low Income</b>	<b>44</b>
One Bedroom (manager's unit)	1
<b>Total Units</b>	<b>98</b>

Source: Proposed Loan Agreement

<sup>a</sup> Operating expenses for the 20 units available to formerly homeless or at-risk to be homeless adults are subsidized by the Local Operating Subsidy Program (LOSP), which is a General Fund subsidy.

<sup>b</sup> Extremely low-income households have income up to 15 percent of the Area Median Income (AMI), defined by the federal Department of Housing and Urban Development (HUD) for the metropolitan area, including San Francisco. In 2020, 15 percent of AMI for a two-person household was less than \$20,000. Operating expenses for these units are subsidized by the City's Senior Operating Subsidy program.

<sup>c</sup> Low-income households have income up to 60 percent of AMI, as defined by HUD, which in 2020 was \$61,500 for a two-person household.

According to the proposed loan agreement, 20 units must be available to seniors who are homeless or at risk to be homeless during the time in which the units are subsidized by the Local Operating Subsidy Program, and 30 units must be available to extremely low-income seniors during the time in which the units are subsidized by the Senior Operating Subsidy program. If the Local Operating Subsidy Program subsidy to the project ends, then the 20 units may be rented to eligible seniors with household income at no more than 50 percent of AMI.<sup>3</sup> However, according

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sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced; (6) the City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake; (7) landmarks and historic buildings will be preserved; and (8) parks and open space and their access to sunlight and vistas will be protected from development.

<sup>3</sup> The proposed loan agreement does not specifically define the impact of ending the Senior Operating Subsidy program, which is a pilot program funded through one-time appropriations (\$5 million for FY19-20 and in \$1.9 million for FY21-22). According to MOHCD staff, the Senior Operating Subsidy is included in the projects as a five-year



to the proposed loan agreement, the maximum initial occupancy income level restrictions when averaged for all residential units may not exceed 60 percent of AMI. The proposed loan agreement further sets a goal that TNDC will work with MOHCD staff to revise unit mix so that the project will include a higher number of units serving households at 50 percent AMI.

### **Specific Loan Conditions**

The proposed loan agreement specifies conditions that must be met by TNDC, including:

- Marketing plan and community outreach updates on marketing to the City's preference program participants (displaced tenants, neighborhood residents, African American residents, other) and meeting racial equity goals;
- Operating and development budgets that meet MOHCD underwriting guidelines and Commercial Space Policy requirements;
- Services plan and proposed staffing levels that meet MOHCD underwriting standards prior to gap/construction loan approval; and
- Cost containment strategies to maximize efficiency of MOHCD gap loans, and value engineering, setting a goal of \$600 per square foot construction costs, including contingencies and escalation.

The loan agreement also provides for TNDC to provide information to MOHCD on the proposed use of commercial space and selection of commercial tenants; financial partners and selection of equity investors; and other financial and cash flow data.

### **Loan Documents**

The proposed resolution also approves the following associated loan documents:

- Declaration of Restrictions and Affordable Housing Covenants, which requires TNDC to maintain the housing affordability levels defined in the loan agreement for the life of the project, even after the loan is paid in full or otherwise satisfied;
- The predevelopment and acquisition promissory notes for the loans; and
- The Deed of Trust between 4200 Geary Associates, LP (a limited partnership formed by TNDC for the acquisition and development of the 4200 Geary Boulevard project) and Old Republic Title Company, on behalf of the City as lender.

## **FISCAL IMPACT**

The proposed loan to TNDC of \$14,538,982 includes (a) \$11,064,369 for property acquisition, and (b) \$3,474,613 for predevelopment costs. The loan is for 57 years at 3 percent simple interest per year, although the loan agreement states that the MOHCD Director can reduce the interest rate to 0. The outstanding principal and any loan interest is due at the 57-year maturity date.

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contract with one-year transition reserve. If the subsidy is not made permanent through an ongoing funding source, the contract will expire at the end of the term without renewal.

**Acquisition, Predevelopment, and Permanent Loan**

According to the proposed loan agreement, the loan is for 57 years, as noted above. However, according to MOHCD's loan evaluation documents, the initial loan is for three years. MOHCD will amend the loan agreement at a future date, subject to Board of Supervisors approval, to add an estimated \$27,791,624 in a permanent gap loan, which will have a term of 57 years.

City loans to the 4200 Geary Boulevard project, estimated to be \$42,330,606 including the acquisition, predevelopment, and permanent gap loan, comprise 47 percent of total estimated project funding of \$90,374,412. Other funding sources are expected to be Low Income Housing Tax Credits, California Department of Housing and Community Development Multi-Family Housing Program loan, Federal Housing Loan Bank Affordable Housing Program grant funds, and developer equity.

Repayment of the City loan to TNDC for the 4200 Geary Boulevard project will conform to MOHCD's Residual Receipts Policy. According to the policy, the TNDC will pay the City a portion of the project's residual receipts (net operating income after expenses).

**Property Acquisition (\$11,064,369)**

TNDC acquired 4200 Geary Boulevard, formerly a funeral home, on May 13, 2020, funded by a loan of \$13,065,000 from the Housing Accelerator Fund, which included the purchase price of \$10,675,930,<sup>4</sup> which is more than the appraised market value of \$10,050,000 from December 2019. Total acquisition costs of \$11,064,369 include closing and other costs of purchase.

**Predevelopment Loan (\$3,474,613)**

The predevelopment loan to TNDC of \$3,474,613 will pay for architectural design expenses, entitlement and permit fees, property taxes, geotechnical, environmental and historic studies, community outreach needs and organizational costs.

**Developer Fee**

The proposed loan agreement provides for payment of a developer fee to TNDC of \$550,000. The developer fee is intended to compensate TNDC for (a) organizational capacity building and maintenance programs; (b) working capital; (c) housing development production and related programs; (d) physical improvements to existing housing owned or sponsored by TNDC; (e) increasing housing operations and asset management activities; (d) improving tenant improvements or commercial space in existing housing owned or sponsored by TNDC; (f) funding community facilities associated with existing housing owned or sponsored by TNDC; (g) providing supplemental tenant rental assistance for existing housing owned or sponsored by TNDC; or (h) programs supporting the welfare of residents residing in existing housing owned or sponsored by TNDC. The developer fee can also be used to pay predevelopment, preconstruction and

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<sup>4</sup> The purchase amount of \$11,675,930 was funded by a loan from the Housing Accelerator Fund to TNDC of \$11,175,930 and TNDC equity of \$500,000. The purchase price of \$11,675,930 included extension fees due to the delay in closing the purchase caused by the pandemic.

construction costs, including reasonable administrative expenses, of future affordable housing development sponsored by TNDC in San Francisco.

According to MOHCD, the developer fee will be paid as follows:

<b>Developer Fee Distribution</b>		
<b>Milestone</b>	<b>% Fee</b>	<b>Amount</b>
Acquisition/ close of predevelopment financing	15%	\$165,000
Approval of schematic design/site plan	15%	165,000
Preliminary gap loan approval prior to submission of California Department of Housing & Community Development funding application	10%	110,000
Submission of joint California Debt Limit Allocation Committee and Tax Credit Allocation Committee application	10%	110,000
<b>Total</b>	<b>100%</b>	<b>\$550,000</b>

Source: MOHCD, Developer Fee Policy

**Land Banking**

According to Section 3.8 of the proposed loan agreement, if the City determines by December 31, 2024 that the 4200 Geary Boulevard project is unlikely to be developed within a reasonable time period for any reason, including TNDC inability to obtain necessary financing, the City may require either that: (i) TNDC transfer the fee title to the property to another nonprofit corporation, limited partnership or limited liability company designated by the City with the intention that the property be developed for affordable housing; or (ii) that TNDC convey the fee title to City for an amount equal to the outstanding principal balance of the Loan, plus accrued and unpaid interest.

**POLICY CONSIDERATION**

**Future Purchase and Sale Agreement**

According to MOHCD staff, the City’s intent is to enter into a purchase and sale agreement at the closing of the closing of the construction loan, in which the City will take ownership of the land at 4200 Geary Boulevard, and enter into a ground lease with TNDC. The Budget and Legislative Analyst recommends amending the proposed resolution to state that this is the City’s intent.

**RECOMMENDATIONS**

1. Amend the proposed resolution to state that it is the, the City’s intent is to enter into a purchase and sale agreement in the future at the closing of the closing of the construction loan, in which the City will take ownership of the land at 4200 Geary Boulevard, and enter into a ground lease for the land with TNDC.
2. Approve the proposed resolution as amended.

**LOAN AGREEMENT  
(CITY AND COUNTY OF SAN FRANCISCO AFFORDABLE HOUSING FUND  
INCLUSIONARY AFFORDABLE HOUSING PROGRAM)**

By and Between

**THE CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation, represented by the Mayor,  
acting by and through the Mayor's Office of Housing and Community Development,

and

**4200 Geary Associates, L.P.**  
A California limited partnership

for

**4200 GEARY**  
**4200 Geary Boulevard**  
\$14,538,982

AFFORDABLE HOUSING FUND INCLUSIONARY: \$14,538,982

Dated as of April \_\_, 2021

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**LOAN AGREEMENT**  
(City and County of San Francisco  
Affordable Housing Fund: (Inclusionary Affordable Housing Program)  
(4200 Geary Boulevard)

**THIS LOAN AGREEMENT** ("Agreement") is entered into as of April ,2021, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "City"), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and **4200 GEARY ASSOCIATES, L.P.**, a California limited partnership ("Borrower").

**RECITALS**

A. Under the Inclusionary Affordable Housing Program set forth in Sections 415.1 *et seq.* of the San Francisco Planning Code, the Citywide Affordable Housing Fund receives in-lieu Affordable Housing Fees ("Fees") paid by housing developers to satisfy requirements of the Inclusionary Affordable Housing Program. The City may use the Fees received by the Citywide Affordable Housing Fund (the "Affordable Housing Fund") to finance housing affordable to qualifying households. MOHCD administers the Funds pursuant to Section 10.100-49 of the San Francisco Administrative Code and enforces agreements relating to them. The funds provided from the Affordable Housing Fund under this Agreement shall be referred to herein as the "Funds."

B. Borrower owns a fee interest in the real property located at 4200 Geary Boulevard, San Francisco, California (the "Site"). Borrower acquired the site with loan proceeds from The San Francisco Housing Accelerator Fund (the "HAF Loan"). Borrower desires to use the Funds to repay the HAF Loan and undertake predevelopment activities for the development and construction of a 98-unit multifamily rental housing development affordable to low-income Seniors, including to construct the commercial shell of a commercial space (the "Commercial Space") which will be known as 4200 Geary (the "Project"). The maximum income and rent requirements set forth in Exhibit A shall remain in effect even if the Local Operating Subsidy is no longer available to the Project.

C. The City has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has agreed to make a loan of Funds to Borrower (the "Loan") in the amount of Eleven Million Sixty Four Thousand Three Hundred Sixty Nine and No/100 Dollars (\$11,064,369.00) (the "Acquisition Amount") to repay the HAF Loan, and Three Million Four Hundred Seventy Four Thousand Six Hundred Thirteen and No/100 Dollars (\$3,474,613.00) ("Predevelopment Amount") for certain costs related to predevelopment activities, for a total amount of Fourteen Million Five Hundred Thirty Eight Thousand Nine Hundred Eighty Two and No/100 Dollars (\$14,538,892 .00) (the "Funding Amount") under this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

### ARTICLE 1 DEFINITIONS.

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Accounts" means all depository accounts, including reserve and trust accounts, required or authorized under this Agreement or otherwise by the City in writing. All Accounts must be maintained in accordance with **Section 2.3**.

"Acquisition Amount" has the meaning set forth in **Recital C**.

"Acquisition Note" means the promissory note executed by Borrower in favor of the City in the original principal amount of the Acquisition Amount, in form and substance acceptable to the City.

"Agreement" means this Loan Agreement.

"Agreement Date" means the date first written above.

"Annual Monitoring Report" has the meaning set forth in **Section 10.3**.

"Annual Operating Budget" means an annual operating budget for the Project attached hereto as **Exhibit B-2**, which may not be adjusted without the City's prior written approval.

"Approved Plans" has the meaning set for in **Section 5.2**.

"Approved Specifications" has the meaning set forth in **Section 5.2**.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Borrower's authority to execute, deliver and perform the obligations under the City Documents to which Borrower is a party or by which it is bound.

"Borrower" means 4200 Geary Associates, L.P., a California limited partnership whose general partner is 4200 Geary LLC, a California limited liability company, whose sole member is the Tenderloin Neighborhood Development Corporation, a California nonprofit public benefit corporation, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to the City in their original form and as amended from time to time and be accompanied by a certificate of good standing for Borrower issued by the California Secretary of State and, if Borrower is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

"City Documents" means this Agreement, the Notes, the Deed of Trust, the Declaration of Restrictions, and any other documents executed or, delivered in connection with this Agreement.

"City Project" has the meaning set forth in **Exhibit E, Section 13(c)**.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements, as further described under the CNA Policy.

"CNA Policy" means MOHCD's Policy For Capital Needs Assessments dated November 5, 2013, as it may be amended from time to time.

"Commercial Income" means all receipts received by Borrower from the operation of the Commercial Space, including rents, fees, deposits (other than security deposits), any accrued interest disbursed from any reserve account authorized under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Commercial Space.

"Commercial Shell" means all components of an unfinished Commercial Space as further defined by MOHCD's commercial space policy, as it may be amended from time to time.

"Commercial Space" has the meaning set forth in **Recital B** and further defined in MOHCD's commercial space policy as it may be amended from time to time. As used in this Agreement, the term excludes non-residential space in the Project to be used primarily for the benefit of the Tenants.

"Completion Date" has the meaning set forth in **Section 5.6**.

"Compliance Term" has the meaning set forth in **Section 3.2**.



“Construction Contract” has the meaning set forth in **Section 5.2**.

“Contracting Manual” means the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor’s Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time.

“Conversion Date” means the date on which construction financing for the Project is converted into permanent financing, if applicable.

"Declaration of Restrictions" means a recorded declaration of restrictions in form and substance acceptable to the City that requires Borrower and the Project to comply with the use restrictions in this Agreement for the Compliance Term, even if the Loan is repaid or otherwise satisfied, this Agreement terminates or the Deed of Trust is reconveyed.

"Deed of Trust" means the deed of trust executed by Borrower granting the City a lien on the Site and the Project to secure Borrower's performance under this Agreement and the Notes, in form and substance acceptable to the City.

“Department of Building Inspection” has the meaning set forth in **Section 5.2**.

"Developer" means Tenderloin Neighborhood Development Corporation, a California nonprofit public benefit corporation, and its authorized successors and assigns.

"Developer Fees" has the meaning set forth in **Section 15.1**.

“Developer Fee Policy” means the MOHCD Policy on Development Fees for Tax Credit Projects dated July 29, 2016, as amended from time to time, attached hereto as **Exhibit J**.

"Development Expenses" means all costs incurred by Borrower and approved by the City in connection with the development of the Project, including: (a) hard and soft development costs; (b) deposits into required capitalized reserve accounts; (c) costs of converting Project financing, including bonds, into permanent financing; (d) the expense of a cost audit; and (e) allowed Developer Fees.

"Development Proceeds" means the sum of: (a) funds contributed or to be contributed to Borrower by Borrower's limited partner as capital contributions, equity or for any other purpose under Borrower's limited partnership agreement; and (b) the proceeds of all other financing for the Project.

"Disbursement" means the disbursement of all or a portion of the Funding Amount by the City as described in **Article 4**.

"Distributions" has the meaning set forth in **Section 13.1**.

“Early Retention Release Contractors” means contractors who will receive retention payments upon satisfaction of requirements set forth in **Section 4.7**.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and requirements relating to health and safety, industrial hygiene or the environment or to any Hazardous Substance or Environmental Activity, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" law) (42 U.S.C. §§ 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (42 U.S.C. §§ 6901 *et seq.*); the National Environmental Policy Act of 1969 (“NEPA”) (24 CFR §§ 92 and 24 CFR §§ 58); the California Hazardous Substance Account Act (also known as the Carpenter-Presley-Tanner Hazardous Substance Account Law and commonly known as the "California Superfund" law) (Cal. Health & Safety Code §§ 25300 *et seq.*); and the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (Cal. Health & Safety Code §§ 25249.2 *et seq.*); and Sections 25117 and 25140 of the California Health & Safety Code.

"Escrow Agent" has the meaning set forth in **Section 4.2**.

"Event of Default" has the meaning set forth in **Section 19.1**.

"Excess Proceeds" means Development Proceeds remaining after payment of Development Expenses. For the purposes of determining Excess Proceeds, no allowed Project Expenses may be included in Development Expenses.

"Expenditure Request" means a written request by Borrower for a Disbursement from the Funding Amount, which must certify that the Project costs covered by the Expenditure Request have been paid or incurred by Borrower.

“Federal Funding” means funding provided by the federal government for capital improvements, operations or other direct financial assistance of the Project.

"Funding Amount" has the meaning set forth in **Recital C**.

"Funds" has the meaning set forth in **Recital A**.

"GAAP" means generally accepted accounting principles in effect on the date of this Agreement and at the time of any required performance.

"General Partner" means 4200 Geary LLC, a California limited liability company, whose sole member is the Tenderloin Neighborhood Development Corporation, a California nonprofit public benefit corporation.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

"Hold Harmless Policy" means the Hold Harmless Policy for MOHCD's Income Limits & Maximum Rents dated May 3, 2019, as amended from time to time, attached hereto as **Exhibit K**.

"Homeless" means an individual or a family who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence in one or more of the following categories: (a) Anyone staying in a mission or homeless or domestic violence shelter, i.e., a supervised public or private facility that provides temporary living accommodations; (b) Anyone displaced from housing due to a disaster situation; (c) Anyone staying outdoors; for example, street, sidewalk, doorway, park, freeway underpass; (d) Anyone staying in a car, van, bus, truck, RV, or similar vehicle; (e) Anyone staying in an enclosure or structure that is not authorized or fit for human habitation by building or housing codes, including abandoned buildings ("squats") or sub-standard apartments and dwellings; (f) Anyone staying with friends and/or extended family members (excluding parents and children) because they are otherwise unable to obtain housing; (g) Any family with children staying in a Single Room Occupancy (SRO) hotel room (whether or not they have tenancy rights); (h) Anyone staying in temporary housing for less than 6 months where the accommodations provided to the person are substandard or inadequate (for example, in a garage a very small room, or an overly crowded space); (i) Anyone staying in a Single Room Occupancy (SRO) hotel room without tenancy rights; (j) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who is now incarcerated,

hospitalized, or living in a treatment program, half-way house, transitional housing; or  
(k) Anyone formerly homeless (formerly in one of the above categories (a) through (i)) who has obtained and resided in supportive housing or permanent housing for less than 30 days.

“Homeless Household” means a household that meets the referring agency’s definition of Homeless Household for initial occupancy and upon available vacancies thereafter, as per the Local Operating Subsidy contract.

“HSH” means the San Francisco Department of Homelessness and Supportive Housing, or other successor agency.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"in balance" means that the sum of undisbursed Funds and any other sources of funds that Borrower has closed or for which Borrower has firm commitments will be sufficient to complete acquisition/construction/rehabilitation of the Project, as determined by the City in its sole discretion.

"Income Restrictions" means the maximum household income limits for Qualified Tenants, as set forth in **Exhibit A**.

"Indemnitee" means, individually or collectively, (i) City, including MOHCD and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency.

“Life of the Project” means the period of time in which the Project continues to operate as a multi-family apartment project substantially similar to its current condition in terms of square footage and number of units, and in the event the Project is substantially damaged or destroyed by fire, the elements, an act of any public authority or other casualty, and is subsequently replaced by a multi-family residential project substantially similar to its current condition in terms of square footage and number of units, the life of such replacement project will be deemed to be a continuation of the life of the Project.

"Loan" has the meaning set forth in **Recital C**.

“Local Operating Subsidy” means an operating subsidy provided to Borrower by the City, the amount of which is sufficient to permit Borrower to operate the Project in accordance with the terms of this Agreement with Qualified Tenants at income levels specified by MOHCD in writing which are below those set forth in **Exhibit A**.

"Local Operating Subsidy Program" or "LOSP" means the program administered by MOHCD that regulates the distribution of Local Operating Subsidy.

"Loss" or "Losses" includes any and all loss, liability, damage, obligation, penalty, claim, action, suits, judgment, fee, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in an investigation or a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of the City's rights or in defense of any action in a bankruptcy proceeding.

"Marketing and Tenant Selection Plan" has the meaning set forth in **Section 6.1**.

"Maturity Date" has the meaning set forth in **Section 3.1**.

"Median Income" means median income as published annually by MOHCD for the City and County of San Francisco, derived in part from the income limits and area median income determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area, also referred to as "Unadjusted Median Income."

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor.

"MOHCD Monthly Project Update" has the meaning set forth in **Section 10.2**.

"Notes" means, collectively, the Acquisition Note and Predevelopment Note.

"Official Records" means the official records of San Francisco County.

"Operating Reserve Account" has the meaning set forth in **Section 12.2**.

"Opinion" means an opinion of Borrower's California legal counsel, satisfactory to the City and its legal counsel, that Borrower is a duly formed, validly existing California limited partnership in good standing under the laws of the State of California, has the power and authority to enter into the City Documents and will be bound by their terms when executed and delivered, and that addresses any other matters the City reasonably requests.

"Payment Date" means the first June 1<sup>st</sup> following the Completion Date and each succeeding June 1<sup>st</sup> until the Maturity Date.

"Permitted Exceptions" means liens in favor of the City, real property taxes and assessments that are not delinquent, and any other liens and encumbrances the City expressly approves in writing in its escrow instructions.

"Predevelopment Amount" has the meaning set forth in **Recital C**.

“Predevelopment Note” means the promissory note executed by Borrower in favor of the City in the original principal amount of the Predevelopment Amount, in form and substance acceptable to the City.

“Preferences and Lottery Manual” means MOHCD’s Housing Preferences and Lottery Procedures Manual dated March 31, 2017, as amended from time to time.

“Preferences Ordinance” means Chapter 47 of the San Francisco Administrative Code, as amended from time to time.

"Project" means the development described in **Recital B**. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

"Project Expenses" means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project; (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Site and used to finance the Project that has been approved by the City; (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account and any other reserve account required under this Agreement; (f) the approved annual asset management fees indicated in the Annual Operating Budget and approved by the City; and (g) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account); h) Supportive Services. Project Fees are not Project Expenses.

"Project Fees" means annual partnership management fees in the amount of \$[25,000] (plus whatever increase is shown in the Annual Operating Budget and approved by the City) approved by the City.

"Project Fees" means annual partnership management fees and limited partner fees in amounts approved by the City in the Annual Operating Budget.

"Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including rents, fees, deposits (other than tenant security deposits), any accrued interest disbursed from any reserve account required under this Agreement for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Borrower in connection with the Project. Interest accruing on any portion of the Funding Amount is not Project Income, or Commercial Income.

"Project Operating Account" has the meaning set forth in **Section 11.1**.

“Public Benefit Purposes” means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)(3) public benefit organizations, or have been identified by a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

"Qualified Tenant" means a Tenant household earning no more than the maximum permissible annual income level allowed under this Agreement as set forth in **Exhibit A**. The term "Qualified Tenant" includes each category of Tenant designated in **Exhibit A**.

"Rent" means the aggregate annual sum charged to Tenants for rent and utilities in compliance with **Article 7**, with utility charges to Qualified Tenants limited to an allowance determined by the SFHA.

"Replacement Reserve Account" has the meaning set forth in **Section 12.1**.

"Residual Receipts" means Project Income remaining after payment of Project Expenses and Project Fees. The amount of Residual Receipts must be based on figures contained in audited financial statements.

“Residual Receipts Policy” means the Mayor’s Office of Housing and Community Development Residual Receipts Policy effective April 1, 2016, as amended from time to time, attached hereto as Exhibit P.

"Retention" has the meaning set forth in **Section 4.7**.

“SBE Manual” means that certain Small Business Enterprise Program manual dated July 1, 2015, as the same may be amended from time to time.

"Section 8" means rental assistance provided under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. § 1437f) or any successor or similar rent subsidy programs.

“Senior Household” means a household consisting of all members 62 years old or older (except as permitted by law), or as defined by the requirements of funding from a government agency, approved by the City for the Project.

"Senior Lien" has the meaning set forth in **Section 22.1**.

“Senior Operating Subsidy” means an operating subsidy provided to Borrower by the City, the amount of which is sufficient to permit Borrower to operate the Project in accordance with the terms of this Agreement with Qualified Tenants at income levels specified by MOHCD in writing which are below those set forth in **Exhibit A**.

"SFHA" means the San Francisco Housing Authority.

"Site" means the real property described in **Recital B** of this Agreement.

"Supportive Services" means intakes and assessments, case management, supportive counselling, individualized services planning, crisis intervention, mediation, housing stabilization and eviction prevention services provided by one full time and social worker and another part-time social worker. See also **Section 3.9**.

"Surplus Cash" means Commercial Income remaining after payment of the sum of commercial debt service, operating expenses for the Commercial Space and reserve deposits for the Commercial Space but excludes depreciation, amortization, depletion, other non-cash expenses or expenditures from reserve accounts.

"Table" means: (a) the Table of Sources and Uses, (b) the Annual Operating Budget, and (c) the 20-Year Cash Flow Proforma.

"Table of Sources and Uses" means a table of sources and uses of funds attached hereto as **Exhibit B-1**, including a line item budget for the use of the Funding Amount, which table may not be adjusted without the City's prior written approval.

"TCAC" means the California Tax Credit Allocation Committee.

"Tenant" means any residential household in the Project, whether or not a Qualified Tenant.

"Tenant Screening Criteria Policy" has the meaning set forth in **Section 6.3**.

"Title Policy" means an ALTA extended coverage lender's policy of title insurance in form and substance satisfactory to the City, issued by an insurer selected by Borrower and satisfactory to the City, together with any endorsements and policies of coinsurance and/or reinsurance required by the City, in a policy amount equal to the Funding Amount, insuring the Deed of Trust and indicating the Declaration of Restrictions as valid liens on the Site, each subject only to the Permitted Exceptions.

"20-Year Cash Flow Proforma" means the 20-year cash flow proforma for the Project attached as **Exhibit B-3**.

"Unit" means a residential rental unit within the Project.

"Waiting List" has the meaning set forth in **Section 6.5**.

"Work Product" has the meaning set forth in **Section 22.21**.

1.2 Interpretation. The following rules of construction will apply to this Agreement and the other City Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means



"include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific City Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other City Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the City Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.3 Contracting Manual. Borrower shall use the Contracting Manual as a guide to Borrower's responsibilities under Laws and regulations regarding soliciting, awarding and administering contracts associated with projects assisted by Federal Funds and some City funds. In the event of a conflict between the terms of the Contracting Manual and this Agreement, the terms of the Agreement shall prevail.

## ARTICLE 2 FUNDING.

2.1 Funding Amount. The City agrees to lend to Borrower a maximum principal amount equal to the Funding Amount in order to finance the acquisition of Site and predevelopment activities for the construction of a 98-unit building with affordable housing for Seniors. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in this Agreement.

2.2 Use of Funds. Borrower acknowledges that the City's agreement to make the Loan is based in part on Borrower's agreement to use the Funds solely for the purpose set forth in **Section 2.1** and agrees to use the Funds solely for that purpose in accordance with the approved Table of Sources and Uses. Notwithstanding anything to the contrary contained herein, City will not approve expenditure of Funds for expenses incurred by Borrower prior to the Agreement Date.

2.3 Accounts; Interest. Each Account to be maintained by Borrower under this Agreement must be held in a bank or savings and loan institution acceptable to the City as a segregated account that is insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program. With the exception of tenant security deposit trust accounts, any interest earned on funds in any Account must be used for the benefit of the Project.

2.4 Records. Borrower must maintain and provide to the City upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures from each Account authorized under this Agreement or by the City in writing and keep all estimates, invoices, receipts and other documents related to expenditures from each Account. In addition Borrower must provide to the City promptly following Borrower's receipt, complete copies of all monthly bank statements, together with a reconciliation, for each Account until all funds (including accrued interest) in each Account have been disbursed for eligible uses.

2.5 Conditions to Additional Financing. The City may grant or deny any application by Borrower for additional financing for the Project in its sole discretion. Borrower must satisfy the following conditions before applying to the City for additional financing:

- a. Borrower will provide MOHCD with detailed monthly updates on Community Outreach completed, outcomes achieved related to racial equity goals, and commercial-use programming (this may be included in the standard MOHCD monthly report form).
- b. Borrower will provide operating and development budgets that meet MOHCD underwriting guidelines and Commercial Space Policy requirements.
- c. Borrower will provide MOHCD with a services plan and proposed staffing levels that meet MOHCD underwriting standards prior to gap/construction loan approval. Any changes to the current proposed staffing will need to be presented to MOHCD at least 90 days prior to gap/construction loan approval.
- d. Borrower will work with MOHCD staff and project's General Contractor to Value Engineer construction budget with the goal of reducing construction costs to \$600 Per Square Foot inclusive of contractor contingency, bid contingency and escalation to start of construction.
- e. Borrower will work with MOHCD staff to revise unit mix so that the Project will include a higher number of units serving households at 50% Median Income (MOHCD AMI).
- f. Borrower will provide signed Letter of Intent from commercial tenants prior to MOHCD's gap loan closing.
- g. Borrower will provide MOHCD with information outlining cost containment, efficiencies and innovation strategies to reduce overall project costs and maximize efficiency of MOHCD gap loans.
- h. Borrower will work with MOHCD staff to revise project cash flow so that it meets MOHCD's underwriting requirement of a Debt Service Coverage Ratio between 1.10:1 and 1.15: 1 a year 15.
- i. Borrower will provide a commercial space plan to MOHCD no less than 90 days prior to Loan Committee date for gap/construction loan.
- j. Borrower will work with MOHCD and HSH to establish the LOSP budget and income restrictions for the referrals from Coordinated Entry.
- k. Borrower will provide for MOHCD review any Request for Proposals (RFPs) for equity investors before it is finalized and released for investors.
- l. Borrower will provide for MOHCD review all raw financial data from developer or financial consultant prior to selection.
- m. Borrower will provide for MOHCD review and approval all selected investors.

- n. Borrower will provide for MOHCD review and approval all Letters of Intent from financial partners.
- o. Borrower will provide initial draft marketing plan within 2 months of anticipated TCO, outlining the affirmative steps TNDC will take to market the project to the City's preference program participants, including COP Holders, Displaced Tenants, and Neighborhood Residents, as well as how the marketing is consistent with the Mayor's Racial Equity statement and promotion of positive outcomes for African American San Franciscans.

ARTICLE 3 TERMS. Borrower's repayment obligations with respect to the Funding Amount will be evidenced and governed by the Notes, which will govern in the event of any conflicting provision in this Agreement.

3.1 Maturity Date. Borrower must repay all amounts owing under the City Documents on the date that is the later of (a) the fifty-seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the fifty-fifth (55th) anniversary of the Conversion Date (the "Maturity Date").

3.2 Compliance Term; Declaration of Restrictions. Borrower must comply with all provisions of the City Documents relating to the use of the Site and the Project as set forth in the Declaration of Restrictions to be recorded in the Official Records, for the period commencing on the date the Deed of Trust is recorded in the Official Records and continue for the Life of the Project (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed before the end of the Compliance Term.

3.3 Interest. The outstanding principal balance of the Loan will bear simple interest at a rate of three percent (3.00%) per annum, as provided in the Notes, provided, however, that the Director of MOHCD shall have the right, in his or her reasonable discretion, to reduce the interest rate to as low as zero percent (0%) upon receipt of adequate documentation supporting the need for such reduction in order to make the Project financially feasible.

3.4 Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, the principal balance of the Loan will bear interest at the default interest rate set forth in the Notes, with such default interest rate commencing as of the date an Event of Default occurs and continuing until such Event of Default is fully cured. In addition, the default interest rate will apply to any amounts to be reimbursed to the City under any City Document if not paid when due or as otherwise provided in any City Document.

3.5 Repayment of Principal and Interest. Except as set forth in Section 3.7 below, the outstanding principal balance of the Loan, together with all accrued and unpaid interest, if any, will be due and payable on the Maturity Date according to the terms set forth in full in the Notes.

3.6 Changes In Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Notes is based in part on Borrower's projected sources and uses of all funds for the Project, as set forth in the Table of Sources and Uses. Borrower covenants to give written notice to the City within thirty (30) days of any significant changes in

budgeted funding or income set forth in documents previously provided to the City. Examples of significant changes include loss or adjustments (other than regular annual adjustments) in funding under Shelter + Care, Section 8 or similar programs.

3.7 Notification and Repayment of Excess Proceeds. Borrower must notify the City in writing within thirty (30) days after the later of the date on which Borrower receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Borrower receives Excess Proceeds from its limited partner or other financing sources. Borrower must repay all Excess Proceeds to the City no later than sixty (60) days after receipt of such notification, unless the City has elected to waive such payment. The City must use such Excess Proceeds to reduce the balance of the Loan.

3.8 Land Banking Provisions.

(a) Borrower acknowledges that the City's willingness to provide financing is contingent upon the City's approval of the proposed Project, including Borrower's identification of sources of funding acceptable to the City sufficient to complete the Project. In the event the City determines in its sole discretion by December 31<sup>st</sup>, 2024 that the Project is unlikely to be developed within a reasonable time period for any reason, including Borrower's inability to obtain necessary financing for the Project, upon thirty (30) days' prior written notice to Borrower, the City may require either that: (i) Borrower transfer the fee title to the Site to another nonprofit corporation, limited partnership or limited liability company designated by the City with the intention that the transferee develop the Site as affordable housing; or (ii) Borrower convey the fee title to the Site to City for an amount equal to the outstanding principal balance of the Loan, plus accrued and unpaid interest, and City will cancel and return the Notes to the Borrower.

(b) In the event Borrower realizes income from the use of the Site before the initiation of the construction or sale, the income must be used solely for costs associated with maintenance of the Site, with any excess placed in an interest-bearing account to be applied towards Project costs or remitted to the City to repay the Loan. Borrower must obtain the City's prior written approval to use the Site for any purpose other than the Project at any time during the Compliance Term.

3.9 Failure to Provide Budgeted Supportive Services.

If Borrower fails to provide Supportive Services in the amount shown in the approved 20-Year Cash Flow Proforma, Borrower shall provide notice to the City within 10 business days of the date the Supportive Services were terminated, which notice shall include, at a minimum, a proposed plan to restore the Supportive Services within a reasonable period of time. If at the time such notice is provided, Borrower is unable to propose a feasible plan for restoring the Supportive Service, Borrower shall include in the notice a detailed explanation as to the cause of the termination of Supportive Services and the reasons why it would not be feasible to restore the Supportive Services within a reasonable period of time.

3.10 Additional City Approvals. Borrower understands and agrees that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Borrower understands and agrees that neither entry by City into this Agreement nor any approvals given by City under this Agreement shall be deemed to imply that Borrower will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, City is in no way modifying or limiting the obligations of Borrower to develop the Property in accordance with all local laws. Borrower understands that any development of the Property shall require approvals, authorizations and permits from governmental agencies with jurisdiction over the Property, which may include, without limitation, the San Francisco City Planning Commission and the San Francisco Board of Supervisors. Notwithstanding anything to the contrary in this Agreement, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Project, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Project.

#### ARTICLE 4 CLOSING; DISBURSEMENTS.

4.1 Generally. Subject to the terms of this Agreement, the City will make Disbursements in an aggregate sum not to exceed the Funding Amount to or for the account of Borrower in accordance with this Agreement and the approved line item budget contained in the Table of Sources and Uses.

4.2 Closing. Unless otherwise agreed by the City and Borrower in writing, Borrower will establish an escrow account with the title company issuing the Title Policy, or any other escrow agent Borrower chooses, subject to the City's approval (the "Escrow Agent"). The parties will execute and deliver to the Escrow Agent written instructions consistent with the terms of this Agreement. In the event the escrow does not close on or before the expiration date of escrow instructions signed by the City, or any other mutually agreed date, the City may declare this Agreement to be null and void. In the event Borrower does not satisfy all of the conditions to closing within a reasonable time, as determined by the City in its sole discretion, the City may declare this Agreement to be null and void.

4.3 Conditions Precedent to Closing. The City will authorize the close of the Loan upon satisfaction of the conditions in this Section.

(a) Borrower must have delivered to the City fully executed (and for documents to be recorded, acknowledged) originals of the following documents, in form and substance satisfactory to the City: (i) the Predevelopment Note; (ii) Acquisition Note (iii) this Agreement (in triplicate); (iv) the Deed of Trust; (v) the Declaration of Restrictions;

(vi) Certificate of Good Standing; (vii) the Authorizing Resolutions; and (viii) any other City Documents reasonably requested by the City.

(b) Borrower must have delivered to the City: (i) Borrower's Charter Documents; (ii) a comprehensive maintenance and operating plan for the Project duly approved by Borrower's governing body that includes, but is not limited to, plans for emergencies and emergency maintenance, vacant unit turnover, preventive maintenance and inspection schedule, and marketing and resident selection.

(c) Borrower must have delivered to the City insurance endorsements and, if requested by the City, copies of policies for all insurance required under **Exhibit L** of this Agreement.

(d) Borrower must have delivered to the City a preliminary report on title for the Site dated no earlier than thirty (30) days before the Agreement Date.

(e) Borrower must have submitted a "Phase I" environmental report for the Site, or any other report reasonably requested by the City, prepared by a professional hazardous materials consultant acceptable to the City.

(f) The Declaration of Restrictions and Deed of Trust must have been recorded as valid liens in the official records of San Francisco County, subject only to the Permitted Exceptions.

(g) The Escrow Agent must have committed to provide to the City the Title Policy in form and substance satisfactory to the City.

4.4 Disbursement of Funds. Following satisfaction of the conditions in **Section 4.3**, the City will authorize the Escrow Agent to disburse Funds as provided in the City's escrow instructions.

4.5 Disbursements. The City's obligation to approve any expenditure of Funds after Loan closing is subject to Borrower's satisfaction of the following conditions precedent.

(a) Borrower must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.

(b) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

(c) With respect to any Expenditure Request that covers rehabilitation or construction costs, Borrower must have certified to the City that the Project complies with the labor standards set forth in **Exhibit E, Section 1**, if applicable.

(d) With respect to any Expenditure Request that covers travel expenses, Borrower's travel expenses must be reasonable and must comply with the following:

(i) Lodging, meals and incidental expenses shall not exceed the then-current per diem rates set forth by the United States General Services Administration for the County of San Francisco found at: <https://www.gsa.gov/portal/category/104711>.

(ii) Air transportation expenses must use fares for coach-class accommodations, provided that purchases for air travel must occur no less than one week before the travel day.

(iii) If ground transportation is required, the City urges the use of public transit or courtesy shuttles if provided by a lodging. If courtesy transportation is not provided by a lodging, ground transportation expenses for travel to or from regional airports must not exceed Fifty Dollars (\$50.00) each way. Other ground transportation expenses must not exceed then-current San Francisco taxi rates found at: <https://www.sfmta.com/getting-around/taxi/taxi-rates>. Ground transportation must not include any expenses for luxury transportation services, such as a limousine, or any expenses related to travel to or from Project site meetings by Borrower's employees.

(iv) Miscellaneous travel expenses must not exceed Fifty Dollars (\$50.00) without prior written approval of the City.

(v) Any Expenditure Request for travel expenses must include supporting documentation, including, without limitation, original itemized receipts showing rates and cost, air travel itinerary, proof of payment, and any written justification requested by the City.

For the purpose of this Section, the terms "lodging," "meals" and "incidental expenses" shall have the same meanings defined in 41 CFR Part 300-3; the term "coach-class" shall have the same meaning defined in 41 CFR Part 301-10.121(a); and the term "miscellaneous" means copying services, printing services, communication services, or other services reasonably related to travel for the Project and approved by the City.

4.6 Loan In Balance. From and after the closing date of Borrower's financing for construction the Project, the City may require Borrower to pay certain costs incurred in connection with the Project from sources of funds other than the Loan at any time the City determines that the Loan is out of balance. When the City is satisfied that the Loan is again in balance, the City will recommence making Disbursements for Expenditure Requests meeting the conditions set forth above.

4.7 Retention. In addition to the other conditions to Disbursements, Borrower acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. The remaining ten percent (10%) of approved budgeted hard costs or tenant improvement costs associated with rehabilitation or construction will be held by the City and/or other Project lenders (the “Retention”) and may be released only upon satisfaction of all requirements listed in the Construction Manager’s Checklist for Release of Retention included in the Contracting Manual and as follows:

(a) Early Retention Release. After fifty percent (50%) of the rehabilitation or construction of the Project is complete as determined by the City, Borrower may submit a written request to the City to release up to fifty percent (50%) of the Retention, provided that the following prerequisites have been met: (i) all work required to be performed by all parties for whom the City agrees to release the Retention (the “Early Retention Release Contractors”) has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (ii) the applicable Early Retention Release Contractors have filed unconditional lien waivers satisfactory to the City; (iii) no liens or stop notices have been filed against the Project and no claims are pending; (iv) the City determines that the contingency is in balance and adequate to complete the Project; (v) the Project is on schedule, and (vi) Expenditure Requests will not exceed 95% of the approved budgeted costs on a line item basis.

(b) Retention Release After Project Completion. Borrower may request disbursement of the remaining percentage amount of the Retention only upon the satisfaction of each of the following conditions, unless otherwise approved in writing by the City: (i) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (ii) timely recordation of a notice of completion; and (iii) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project.

4.8 Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Borrower under this Agreement exceed the Funding Amount.



## ARTICLE 5 DEMOLITION, REHABILITATION OR CONSTRUCTION.

5.1 Selection Requirements. In the selection of all contractors and professional consultants for the Project, Borrower must comply with the City's procurement requirements and procedures as described in the Contracting Manual and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.

5.2 Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Site, Borrower must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Project entered into between Borrower and Borrower's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance to Borrower regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Project, Borrower must retain the Approved Plans as well as "as-built" plans for the Project, the Approved Specifications and the Construction Contract, all of which Borrower must make available to the City upon request.

5.3 Change Orders. Borrower may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Borrower must provide adequate and complete justification for analysis of any change order request to the City. The City will provide any questions, comments or requests for additional information to Borrower within five (5) business days of receipt of a change order request. City will review and approve or disapprove of a change order request within ten (10) business days of a complete submission by Borrower. In the event the City fails to approve or disapprove the change order request within such ten (10) business day period, the change order shall be deemed approved. Borrower acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.

5.4 Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Site, Borrower must deliver to the City insurance endorsements and bonds as described in **Exhibit L**. At all times, Borrower must take prudent measures to ensure the security of the Site.

5.5 Notice to Proceed. No demolition, rehabilitation or construction may commence until Borrower has issued a written notice to proceed with the City's approval.

5.6 Commencement and Completion of Project. Unless otherwise extended in writing by the City, Borrower must: (a) commence demolition, rehabilitation or construction by a date no later than February 7, 2023 (b) complete demolition, rehabilitation or construction by a date no later than November 7, 2024, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date"); and (c) achieve occupancy of ninety five percent (95%) of the Units by a date no later than October 31, 2024.

5.7 Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

## ARTICLE 6 MARKETING.

6.1 Marketing and Tenant Selection Plan. No later than six (6) months before the Completion Date, Borrower must deliver to the City for the City's review and approval an affirmative plan for initial and ongoing marketing of the Units and a written Tenant selection procedure for initial and ongoing renting of the Units based on MOHCD's then-current form of marketing and tenant selection plan (the "Marketing and Tenant Selection Plan"), all in compliance with the restrictions set forth in **Exhibit A** and in form and substance acceptable to the City. Borrower must obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower must market and rent the Units in the manner set forth in the Marketing and Tenant Selection Plan, as approved by the City.

6.2 Affirmative Marketing and Tenant Selection Plan Requirements. Borrower's Marketing and Tenant Selection Plan must address how Borrower intends to market vacant Units and any opportunity for placement on the Waiting List, as defined in 6.5. The Marketing and Tenant Selection Plan shall include as many of the following elements as are appropriate to the Project, as determined by the City:

(a) A reasonable accommodations policy that indicates how Borrower intends to market Units to disabled individuals, including an indication of the types of accessible Units in the Project, the procedure for applying, and a policy giving disabled individuals a priority in the occupancy of accessible Units.

(b) A plan that satisfies the requirement to give preference in occupying units in accordance with the Preferences and Lottery Manual and the Preferences Ordinance.

(c) Advertising in local neighborhood newspapers, community-oriented radio stations, on the internet and in other media that are likely to reach low-income households. All advertising must display the Equal Housing Opportunity logo.

(d) Notices to neighborhood-based, nonprofit housing corporations and other low-income housing advocacy organizations that maintain waiting lists or make referrals for below-market-rate housing.

(e) Notices to SFHA.

(f) Notices to MOHCD

(g) To the extent practicable, without holding Units off the market, the community outreach efforts listed above must take place before advertising vacant Units or open spots on the Waiting List to the general public.

(h) An acknowledgement that, with respect to vacant Units, the marketing elements listed above shall only be implemented if there are no qualified applicants interested or available from the Waiting List.

(i) Borrower must use access points and accept referrals from HSH, or its successor agencies.

#### 6.3 Marketing and Tenant Selection Plan & Tenant Screening Criteria Requirements:

(a) Borrower's Marketing and Tenant Selection Plan shall comply with the requirements of the Tenant Selection Plan Policy as set forth in the attached Exhibit H. The Marketing and Tenant Selection Plan must be kept on file at the Project at all times.

(b) Borrower's tenant screening criteria must comply with the Tenant Screening Criteria Policy set forth in the attached Exhibit I.

6.4 Marketing Records. Borrower must keep records of: (a) activities implementing the Marketing and Tenant Selection Plan; (b) advertisements; and (c) other community outreach efforts.

6.5 Waiting List. Borrower's Marketing and Tenant Selection Plan must contain, at a minimum, policies and criteria that provide for the selection of tenants from a written waiting list that complies with the Marketing and Tenant Selection Plan (the "Waiting List"). The Marketing and Tenant Selection Plan may allow an applicant to refuse an available Unit for good cause without losing standing on the Waiting List but shall limit the number of refusals without cause as approved by the City. Borrower shall at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower shall first attempt to select the new Tenant for such Unit from the Waiting List, and shall only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List must be kept on file at the Project at all times.

## ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

This Article 7 will apply upon the Project receiving a temporary certificate of occupancy.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article will remain in full force and effect: (a) for the Compliance Term and survive the prior repayment or other satisfaction of the Loan, termination of this Agreement or reconveyance of the Deed of Trust; (b) for any Unit that has been subject to a regulatory agreement with TCAC, for a period ending three (3) years after the date of any transfer of the Project by foreclosure or deed-in-lieu of foreclosure; and (c) with respect to any Unit occupied by a Qualified Tenant at expiration of either the Compliance Term or the 3-year period referred to in **Subsection (b)** above, until the Qualified Tenant voluntarily vacates his/her Unit or is evicted lawfully for just cause. The requirements to comply with the provisions of Internal Revenue Code Section 42, including Section 42(h)(6)(E)(ii), are hereby acknowledged.

### 7.2 Borrower's Covenant.

(a) Borrower covenants to rent all Units (except one Unit reserved for the manager of the Project) at all times to households certified as Qualified Tenants at initial occupancy, as set forth in **Exhibit A**. In addition, twenty (20) Units must be rented to seniors at-risk of homelessness during the period in which the City's Local Operating Subsidy Program is in operation, and thirty (30) Units must be rented to Senior Households with a maximum income of 15% of Median Income during the period in which the City's Senior Operating Subsidy is in operation and the City provides the Senior Operating Subsidy to the Project.

(b) A Tenant who is a Qualified Tenant at initial occupancy may not be required to vacate the Unit due to subsequent rises in household income, except as provided in **Section 7.3**. After the over-income Tenant vacates the Unit, the vacant Unit must be rented only to Qualified Tenants as provided in this **Article 7**.

### 7.3 Rent Restrictions.

(a) Rent charged to each Qualified Tenant may not exceed the amounts set forth in **Exhibit A**, *provided that* Rents may be adjusted annually, subject to the limitations below.

(b) Subject to the Hold Harmless Policy, rents for all Units may be increased once annually up to the maximum monthly rent by unit type as published by MOHCD.

(c) With the City's prior written approval, Rent increases for Units exceeding the amounts permitted under **Section 7.3(b)** may be permitted once annually in order to recover increases in approved Project Expenses, provided that: (i) in no event may single or aggregate increases exceed ten percent (10%) per year unless such an increase is contemplated in a City-approved temporary relocation plan or is necessary due to the expiration of Section 8 or other

rental subsidies; and (ii) Rents for each Unit may in no event exceed the maximum Rent permitted under **Section 7.3(a)**. City approval for such Rent increases that are necessary to meet all approved Project Expenses shall not be unreasonably withheld.

(d) For any Qualified Tenant participating in a Rent or operating subsidy program where the Rent charged is calculated as a percentage of household income, adjustments to Rent charged may be made according to the rules of the relevant subsidy program. There is no limit on the increase/decrease in Rent charged under this provision, as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**. There is no limit on the number of Rent adjustments that can be made in a year under this provision.

(e) For any Qualified Tenant that becomes ineligible to continue participating in a rent or operating subsidy program, there is no limit on the increase in Rent charged as long as it does not exceed the maximum Rent permitted under **Section 7.3(a)**.

(f) Unless prohibited under any applicable Laws, including without limitation Section 42 of the Internal Revenue Code of 1986, as amended, if the household income of a Qualified Tenant exceeds the maximum permissible income during occupancy of a Unit, then, upon no less than thirty (30) days' prior written notice to the Tenant or as otherwise required under the Tenant's lease or occupancy agreement, Borrower may adjust the charges for Rent for the previously Qualified Tenant to be equal to thirty percent (30%) of the Tenant's adjusted household income. Rents charged under this provision may exceed the Maximum Rent permitted under **Section 7.3(a)**.

#### 7.4 Certification.

(a) As a condition to initial occupancy, each person who desires to be a Qualified Tenant in the Project must be required to sign and deliver to Borrower a certification in the form shown in **Exhibit C** in which the prospective Qualified Tenant certifies that he/she or his/her household qualifies as a Qualified Tenant. In addition, each person must be required to provide any other information, documents or certifications deemed necessary by the City to substantiate the prospective Tenant's income. Certifications provided to and accepted by the SFHA will satisfy this requirement.

(b) Each Qualified Tenant in the Project must recertify to Borrower on an annual basis his/her household income.

(c) Income certifications with respect to each Qualified Tenant who resides in a Unit or resided therein during the immediately preceding calendar year must be maintained on file at Borrower's principal office, and Borrower must file or cause to be filed copies thereof with the City promptly upon request by the City.

7.5 Form of Lease. The form of lease for Tenants must provide for termination of the lease and consent to immediate eviction for failure to qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification. The initial term of the

lease must be for a period of not less than one (1) year. Borrower may not terminate the tenancy or refuse to renew any lease of a Unit except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for a Unit must be preceded by not less than thirty (30) days' written notice to the Tenant specifying the grounds for the action.

7.6 Nondiscrimination. Borrower agrees not to discriminate against or permit discrimination against any person or group of persons because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability, gender identity, height, weight, source of income or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC) in the operation and use of the Project except to the extent permitted by law or required by any other funding source for the Project. Borrower agrees not to discriminate against or permit discrimination against Tenants using Section 8 certificates or vouchers or assistance through other rental subsidy programs.

7.7 Security Deposits. Security deposits may be required of Tenants only in accordance with applicable state law and this Agreement. Any security deposits collected must be segregated from all other funds of the Project in an Account held in trust for the benefit of the Tenants and disbursed in accordance with California law. The balance in the trust Account must at all times equal or exceed the aggregate of all security deposits collected plus accrued interest thereon, less any security deposits returned to Tenants.

7.8 Commercial Space. At least sixty (60) days prior to the date that build-out of the Commercial Space begins, MOHCD must have reviewed and approved proposed leases and development plans for the Commercial Space. All leases of Commercial Space must be to bona fide third party tenants capable of performing their financial obligations under their leases, which must reflect arms'-length transactions at the then-current market rental rate for comparable space, *provided that*, leases for Public Benefit Purposes may be at below-market rates so long as the sum of Project Income and Commercial Income meets approved cash flow requirements for the Project. Allowed uses of Commercial Space must be consistent with all applicable redevelopment plans and local planning and building codes and be reasonably compatible with the design and purpose of the Project. Each lease of Commercial Space must restrict its use to Public Benefit Purposes or all Surplus Cash generated as a result of a market-rate lease of the Commercial Space must be directed toward repayment of the Loan or used for a Public Benefit Purpose. All surplus cash shall be subject to the MOHCD Policy on the Use of Residual Receipts. Each lease of Commercial Space must comply with the MOHCD Commercial Underwriting Guidelines as set forth in **Exhibit O** herein.

ARTICLE 8 MAINTENANCE AND MANAGEMENT OF THE PROJECT.

8.1 Borrower's Responsibilities.

(a) Subject to the rights set forth in **Section 8.2**, Borrower will be specifically and solely responsible for causing all maintenance, repair and management functions performed in connection with the Project, including selection of tenants, recertification of income and household size, evictions, collection of rents, routine and extraordinary repairs and replacement of capital items. Borrower must maintain or cause to be maintained the Project, including the Units and common areas, in a safe and sanitary manner in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35.

(b) Borrower must take prudent measures to ensure the security of the Site. Measures may include erecting a fence; covering and securing all openings in any vacant building and hiring security guards, as appropriate for the circumstances.

8.2 Contracting With Management Agent.

(a) Borrower may contract or permit contracting with a management agent for the performance of the services or duties required in **Section 8.1(a)**, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Borrower and the management agent, *provided, however*, that the arrangement will not relieve Borrower of responsibility for performance of those duties. Any management contract must contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice.

(b) The City will provide written notice to Borrower of any determination that the contractor performing the functions required in **Section 8.1(a)** has failed to operate and manage the Project in accordance with this Agreement. If the contractor has not cured the failure within a reasonable time period, as determined by the City, Borrower must exercise its right of termination immediately and make immediate arrangements for continuous and continuing performance of the functions required in **Section 8.1(a)**, subject to the City's approval.

8.3 Borrower Management. Borrower may manage the Project itself only with the City's prior written approval. The City will provide written notice to Borrower of any determination that Borrower has failed to operate and manage the Project in accordance with this Agreement, in which case, the City may require Borrower to contract or cause contracting with a management agent to operate the Project, or to make other arrangements the City deems necessary to ensure performance of the functions required in **Section 8.1(a)**.

ARTICLE 9 GOVERNMENTAL APPROVALS AND REQUIREMENTS.

9.1 Approvals. Borrower covenants that it has obtained or will obtain in a timely manner and comply with all federal, state and local governmental approvals required by Law to be obtained for the Project. Subject to **Section 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

9.2 Borrower Compliance. Borrower must comply, and where applicable, require its contractors to comply, with all applicable Laws governing the use of Funds for the construction, rehabilitation and/or operation of the Project, including those set forth in **Exhibit E** and **Exhibit L**. Borrower acknowledges that its failure to comply with any of these requirements will constitute an Event of Default under this Agreement. Subject to **Section 17.2**, this Section does not prohibit Borrower from contesting any interpretation or application of Laws in good faith and by appropriate proceedings.

ARTICLE 10 PROJECT MONITORING, REPORTS, BOOKS AND RECORDS.

10.1 Generally.

(a) Borrower understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Borrower acknowledges that the City may also conduct periodic on-site inspections of the Project. Borrower must cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

(b) Borrower must keep and maintain books, records and other documents relating to the receipt and use of all Funds, including all documents evidencing any Project Income and Project Expenses. Borrower must maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower must provide written notice of the replacement of its executive director, director of housing development, director of property management and/or any equivalent position within thirty (30) days after the effective date of such replacement.

10.2 Monthly Reporting. Borrower must submit monthly reports (the “MOHCD Monthly Project Update”) describing progress toward developing the Project with respect to obtaining necessary approvals from other City departments, procuring architects, consultants and contractors, changes in scope, cost or schedule and significant milestones achieved in the past month and expected to be achieved in the coming month. The MOHCD Monthly Project Update must be submitted by email in substantially the form to be found in the Contracting Manual until



such time as the Project Completion Report is submitted to the City pursuant to **Section 10.5** below.

10.3 Annual Reporting.

(a) From and after the Completion Date, Borrower must file with the City annual report forms (the "Annual Monitoring Report") that include audited financial statements with an income and expense statement for the Project covering the applicable reporting period, a statement of balances, deposits and withdrawals from all Accounts, line item statements of Project Expenses, Project Income, Project Fees (if any), Residual Receipts and any Distributions made, evidence of required insurance, a description of marketing activities and a rent roll, no later than one hundred fifty (150) days after the end of Borrower's fiscal year. The Annual Monitoring Report must be in substantially the form attached as **Exhibit G** or as later modified during the Compliance Term.

(b) If the source of Funds is Federal Funding, Borrower must also provide an annual accounting of program income, as defined in applicable federal regulations.

10.4 Capital Needs Assessment. In accordance with the CNA Policy, Borrower must deliver to MOHCD an updated CNA every five (5) years after the Completion Date for approval.

10.5 Project Completion Report. Within the specific time periods set forth below after the completion of rehabilitation or construction, the lease-up and/or permanent financing of the Project, as applicable, Borrower must provide to the City the reports listed below certified by Borrower to be complete and accurate. Subsequent to the required submission of the reports listed below, Borrower must provide to the City information or documents reasonably requested by the City to assist in the City's review and analysis of the submitted reports:

(a) within ninety (90) days after the Completion Date, a draft cost certification (or other similar project audit performed by an independent certified public accountant identifying the sources and uses of all Project funds including the Funds;

(b) within one hundred-eighty (180) days after the Completion Date, a report on use of Small Disadvantaged Business Enterprises as defined in the SBE Manual, including the type of work and the dollar value of such work;

(c) within ninety (90) days after seventy-five percent (75%) occupancy, and one hundred percent (100%) occupancy, respectively, a report on the lease-up of the Units including number of leases by race, ethnicity and single-headed household by gender, to the extent available, location of previous residence, and also indicating the Units by income category; and

(d) within ninety (90) days after the Completion Date, a report demonstrating compliance with all requirements regarding relocation, including the names of all individuals or

businesses occupying the Site on the date of the submission of the application for Funds, those moving in after that date, and those occupying the Site upon completion of the Project.

(e) within one hundred-eighty (180) days after the Completion Date, and if the Project has used Federal Funds, a report demonstrating compliance with all requirements regarding HUD Section 3, including documentation of total labor hours worked on the Project, total Section 3 hours worked, total wages paid, total Section 3 wages paid, and the names of all individuals employed to comply with the Section 3 and Section 3 goals, including the total hours worked for each individual and total wages paid to each individual.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower must respond promptly and specifically to questions relating to the income, expenditures, assets, liabilities, contracts, operations and condition of the Project, the status of any mortgage encumbering the Project and any other requested information with respect to Borrower or the Project.

10.7 Delivery of Records. At the request of the City, made through its agents, employees, officers or attorneys, Borrower must provide the City with copies of each of the following documents, certified in writing by Borrower to be complete and accurate:

(a) all tax returns filed with the United States Internal Revenue Service, the California Franchise Tax Board and/or the California State Board of Equalization on behalf of Borrower and any general partner or manager of Borrower;

(b) all certified financial statements of Borrower and, if applicable, its general partner or manager, the accuracy of which must be certified by an auditor satisfactory to the City; and

(c) any other records related to Borrower's ownership structure and the use and occupancy of the Site.

10.8 Access to the Project and Other Project Books and Records. In addition to Borrower's obligations under **Sections 2.4, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6** and **10.7** and any other obligations to provide reports or maintain records in any City Document, Borrower agrees that duly authorized representatives of the City will have: (a) access to the Project throughout the Compliance Term to monitor the progress of work on the Project and compliance by Borrower with the terms of this Agreement; and (b) access to and the right to inspect, copy, audit and examine all books, records and other documents Borrower is required to keep at all reasonable times, following reasonable notice, for the retention period required under **Section 10.9.**

10.9 Records Retention. Borrower must retain all records required for the periods required under applicable Laws.

ARTICLE 11 USE OF INCOME FROM OPERATIONS.

11.1 Project Operating Account.

(a) Borrower must deposit all Project Income promptly after receipt into a segregated depository account (the "Project Operating Account") established exclusively for the Project. Withdrawals from the Project Operating Account may be made only in accordance with the provisions of this Agreement and the approved Annual Operating Budget, as it may be revised from time to time with the City's approval. Borrower may make withdrawals from the Project Operating Account solely for the payment of Project Expenses and Project Fees. Withdrawals from the Project Operating Account (including accrued interest) for other purposes may be made only with the City's express prior written approval.

(b) Borrower must keep accurate records indicating the amount of Project Income deposited into and withdrawn from the Project Operating Account and the use of Project Income. Borrower must provide copies of the records to the City upon request.

ARTICLE 12 REQUIRED RESERVES.

12.1 Replacement Reserve Account.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the City designates in writing, Borrower must establish or cause to be established a segregated interest-bearing replacement reserve depository account (the "Replacement Reserve Account"). On or before the 15<sup>th</sup> day of each month following establishment of the Replacement Reserve Account, Borrower must make monthly deposits from Project Income into the Replacement Reserve Account in the amount necessary to meet the requirements of this Section. The City may review the adequacy of deposits to the Replacement Reserve Account periodically and require adjustments as it deems necessary.

(b) Monthly deposits must equal the lesser of: (i) 1/12<sup>th</sup> of 0.6% of Replacement Cost; or (ii) 1/12<sup>th</sup> of the following amount: \$49,000.

After the Project's first five (5) years of operation, Borrower may request adjustments every five (5) years based on its most recently approved CNA.

Borrower may request adjustments every five (5) years based on its most recently approved CNA. If the Project is unable to make a required replacement reserve deposit due to unavailable cash flow, the Borrower must submit a plan for review and approval to MOHCD that addresses the cash flow shortfall.

(c) Borrower may withdraw funds from the Replacement Reserve Account solely to fund capital improvements for the Project, such as replacing or repairing structural elements, furniture, fixtures or equipment of the Project that are reasonably required to preserve

the Project. Borrower may not withdraw funds (including any accrued interest) from the Replacement Reserve Account for any other purpose without the City's prior written approval.

## 12.2 Operating Reserve Account.

(a) Commencing no later than sixty (60) days after the Completion Date, or any other date the City designates in writing, Borrower must establish or cause to be established a segregated interest-bearing operating reserve depository account (the "Operating Reserve Account") by depositing funds in an amount equal to twenty-five percent (25%) of the approved budget for Project Expenses for the first full year of operation of the Project. The City may review the adequacy of deposits to the Operating Reserve Account periodically and require adjustments as it deems necessary.

(b) No less than annually after establishing the Operating Reserve Account and continuing until the Compliance Term has expired, Borrower must make additional deposits, if necessary, to bring the balance in the Operating Reserve Account to an amount equal to twenty-five percent (25%) of the prior year's actual Project Expenses.

(c) Borrower may withdraw funds from the Operating Reserve Account solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies and other expenses that vary seasonally or from month to month in the Project. Borrower may not withdraw funds (including any accrued interest) from the Operating Reserve Account for any other purpose without the City's prior written approval.

## ARTICLE 13 DISTRIBUTIONS.

13.1 Definition. "Distributions" refers to cash or other benefits received as Project Income from the operation of the Project and available to be distributed to Borrower or any party having a beneficial interest in the Project, but does not include reasonable payments for property management, asset management and approved deferred Developer Fees or other services performed in connection with the Project.

13.2 Conditions to Distributions. The 20-Year Cash Flow Proforma attached hereto as Exhibit B-2 includes projections of annual Distributions. Exhibit B-2 is not intended to impose limits on the amounts to be annually distributed. Distributions for a particular fiscal year may be made only following: (a) City approval of the Annual Monitoring Report submitted for that year; (b) the City's determination that Borrower is not in default under this Agreement or any other agreement entered into with the City and County of San Francisco or the City for the Project; and (c) the City's determination that the amount of the proposed Distribution satisfies the conditions of this Agreement. The City will be deemed to have approved Borrower's written request for approval of a proposed Distribution unless the City delivers its disapproval or request for more information to Borrower within thirty (30) business days after the City's receipt of the request for approval.

13.3 Prohibited Distributions. No Distribution may be made in the following circumstances:

- (a) when a written notice of default has been issued by any entity with an equitable or beneficial interest in the Project and the default is not cured within the applicable cure periods; or
- (b) when the City determines that Borrower or Borrower's management agent has failed to comply with this Agreement; or
- (c) if required debt service on all loans secured by the Project and all operating expenses have not been paid current; or
- (d) if the Replacement Reserve Account, Operating Reserve Account or any other reserve account required for the Project is not fully funded under this Agreement; or
- (e) if the Loan is to be repaid from Residual Receipts, Borrower failed to make a payment when due on a Payment Date and the sum remains unpaid; or
- (f) during the pendency of an uncured Event of Default (including Borrower's failure to provide its own funds at any time from and after the closing date of Borrower's financing for construction or rehabilitation of the Project that the City determines the Loan is out of balance) under any City Document.

13.4 Borrower's Use of Residual Receipts for Development. To the extent that making a Distribution is not inconsistent with any other financing agreement for the Project, and subject to the limitations in this Article, with the City's prior written approval Borrower may retain a portion of Residual Receipts in lieu of using them to repay the Loan in an amount consistent with the Residual Receipts Policy attached hereto as **Exhibit P**. Borrower acknowledges that the City may withhold its consent to a Distribution in any year in which Residual Receipts are insufficient to meet Borrower's payment obligations under the Notes.

#### ARTICLE 14 SYNDICATION PROCEEDS.

14.1 Distribution and Use. If Borrower is a limited partnership or limited liability company, and unless otherwise approved by the City in writing, Borrower must allocate, distribute and pay or cause to be allocated, distributed and paid all net syndication proceeds and all loan and grant funds as specified in the Table. Borrower must notify the City of the receipt and disposition of any net syndication proceeds received by Borrower during the term of this Agreement.

#### ARTICLE 15 DEVELOPER FEES.

15.1 Amount. The City has approved the payment of development fees from the Loan in an amount not to exceed Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) for predevelopment activities related to the Project prior to the closing date of

Borrower's financing for construction of the Project and may be entitled to receive additional fees for developing the Project (collectively, "Developer Fees"), subject to the Developer Fee Policy. Borrower agrees to limit the Developer's use of Developer Fee to pay only for eligible activities including, but not limited to, the following:

(a) Developer's organizational capacity building and maintenance programs; working capital; housing development production and related programs; physical improvements to existing housing owned or sponsored by Developer; increasing housing operations and asset management activities; improving tenant improvements or commercial space in existing housing owned or sponsored by Developer; funding community facilities associated with existing housing owned or sponsored by Developer providing supplemental tenant rental assistance for existing housing owned or sponsored by Developer; or programs supporting the welfare of residents residing in existing housing owned or sponsored by Developer; and

(b) Predevelopment, preconstruction and construction costs, including reasonable administrative expenses, of future affordable housing development sponsored by Developer in San Francisco.

#### ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower may not cause or permit any voluntary transfer, assignment or encumbrance of its interest in the Site or Project or of any ownership interests in Borrower, or lease or permit a sublease on all or any part of the Project, other than: (a) leases, subleases or occupancy agreements to occupants of Units and/or Commercial Space in the Project; or (b) security interests for the benefit of lenders securing loans for the Project as approved by the City on terms and in amounts as approved by City in its reasonable discretion (c) transfers from Borrower to a limited partnership or limited liability company formed for the tax credit syndication of the Project, where Borrower or an affiliated nonprofit public benefit corporation is the sole general partner or manager of that entity or is the manager of a limited liability company that is the sole general partner or manager of that entity; (d) transfers of the general partnership or manager's interest in Borrower to a nonprofit public benefit corporation approved in advance by the City; (e) transfers of any limited partnership or membership interest in Borrower to an investor pursuant to the tax credit syndication of the Project; (f) the grant or exercise of an option agreement between Borrower and Borrower's general partner or manager or any of its affiliates in connection with the tax credit syndication of the Project where such agreement has been previously approved in writing by the City; or (g) to remove or replace the General Partner in accordance with the terms of the Partnership Agreement, a transfer of any general partnership interest to a new general partner approved in advance by the City. Any other transfer, assignment, encumbrance or lease without the City's prior written consent will be voidable and, at the City's election, constitute an Event of Default under this Agreement. The City's consent to any specific assignment, encumbrance, lease or other transfer will not constitute its consent to any subsequent transfer or a waiver of any of the City's rights under this Agreement.

ARTICLE 17 INSURANCE AND BONDS; INDEMNITY.

17.1 Borrower's Insurance. Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or cause to be obtained and maintained, insurance and bonds as set forth in **Exhibit L** from the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County until the expiration of the Compliance Term at no expense to the City.

17.2 Borrower's Indemnity Obligations. Borrower must indemnify, protect, defend and hold harmless each of the Indemnitees from and against any and all Losses arising out of: (a) any default by Borrower in the observance or performance of any of Borrower's obligations under the City Documents (including those covenants set forth in **Article 18** below); (b) any failure of any representation by Borrower to be correct in all respects when made; (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Site or the Project, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction, rehabilitation or maintenance or any other condition or otherwise; (d) any claim of any surety in connection with any bond relating to the construction or rehabilitation of any improvements or offsite improvements; (e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee that relates to or arises out of the City Documents, the Loan, the Site or the Project or any transaction contemplated by, or the relationship between Borrower and the City or any action or inaction by the City under, the City Documents; (f) the occurrence, until the expiration of the Compliance Term, of any Environmental Activity or any failure of Borrower or any other person to comply with all applicable Environmental Laws relating to the Project or the Site; (g) the occurrence, after the Compliance Term, of any Environmental Activity resulting directly or indirectly from any Environmental Activity occurring before the expiration of the Compliance Term; (h) any liability of any nature arising from Borrower's contest of or relating to the application of any Law, including any contest permitted under **Sections 9.1, 9.2 and 18.2**; or (i) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency, whether meritorious or not, that directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (h) above, *provided that* no Indemnitee will be entitled to indemnification under this Section for matters caused solely by its own gross negligence or willful misconduct.

17.3 Duty to Defend. Borrower acknowledges and agrees that its obligation to defend the Indemnitees under **Section 17.2**: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of **Section 17.2**, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Borrower by the Indemnitee and continues at all times thereafter. In the event any action or proceeding is brought against an Indemnitee by reason of a claim arising out of any Loss for which Borrower has indemnified the Indemnitees, upon written notice, Borrower must answer and otherwise defend the action or proceeding using counsel approved in writing by the Indemnitee at Borrower's sole expense. Each Indemnitee will have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim,

obligation, debt, demand, suit or judgment against the Indemnitee in connection with the matters covered by this Agreement. The Indemnitee must give Borrower prompt notice of any Loss and Borrower has the right to defend, settle and compromise any such Loss; provided, however, that the Indemnitee has the right to retain its own counsel at the expense of Borrower if representation of such Indemnitee by the counsel retained by Borrower would be inappropriate due to conflicts of interest between such Indemnitee and Borrower. An Indemnitee's failure to notify Borrower promptly of any Loss does not relieve Borrower of any liability to such Indemnity under **Section 17.2**, unless such failure materially impairs Borrower's ability to defend such Loss. Borrower must seek the Indemnified Party's prior written consent to settle or compromise any Loss if Borrower contends that such Indemnitee shares in liability with respect thereto.

17.4 No Limitation. Borrower's obligations under **Section 17.2** are not limited by the insurance requirements under this Agreement.

17.5 Survival. The provisions of this Section will survive the repayment of the Loan and/or termination of this Agreement.

## ARTICLE 18 HAZARDOUS SUBSTANCES.

18.1 Borrower's Representations. Borrower represents and warrants to the City that, to the best of Borrower's actual knowledge, without independent investigation or inquiry as of the Agreement Date, the following statements are true and correct except as disclosed in the Phase I report by Harris and Lee Environmental Sciences, LLC, dated November 18, 2019, or otherwise in writing: (a) the Site is not in violation of any Environmental Laws; (b) the Site is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Substances, except in limited quantities customarily used in residences and offices and in compliance with Environmental Laws; (c) the Site does not consist of any landfill or contain any underground storage tanks; (d) the improvements on the Site do not consist of any asbestos-containing materials or building materials that contain any other Hazardous Substances; (e) no release of any Hazardous Substances in the improvements on the Site has occurred or in, on, under or about the Site; and (f) the Site is not subject to any claim by any Governmental Agency or third party related to any Environmental Activity or any inquiry by any Governmental Agency (including the California Department of Toxic Substances Control and the Regional Water Quality Control Board) with respect to the presence of Hazardous Substances in the improvements on the Site or in, on, under or about the Site, or the migration of Hazardous Substances from or to other real property.

18.2 Covenant. Unless the City otherwise consents in writing, at all times from and after the date of this Agreement, at its sole expense, Borrower must: (a) comply with all applicable Environmental Laws relating to the Site and the Project, and not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Laws or that is not customary and incidental to the intended use of the Site, *provided that* nothing contained in this Section will prevent Borrower from contesting, in good faith and by appropriate proceedings, any interpretation or application of Environmental Laws; and (b) deliver to the City notice of the discovery by Borrower of any event rendering any



representation contained in this Section incorrect in any respect promptly following Borrower's discovery.

18.3 Survival . Borrower and City agree that this Article 18 is intended as City's written request for information (and Borrower's response) concerning the environmental condition of the Site as security as required by California Code of Civil Procedure § 726.5; and each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the Site as security is intended by City and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify City hereunder shall survive: (a) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Property in lieu thereof, (b) the release and reconveyance or cancellation of the Deed of Trust; and (c) the satisfaction of all of Borrower's obligation under the City Documents.

#### ARTICLE 19 DEFAULT.

19.1 Event of Default. Any material breach by Borrower of any covenant, agreement, provision or warranty contained in this Agreement or in any of the City Documents that remains uncured upon the expiration of any applicable notice and cure periods contained in any City Document will constitute an "Event of Default," including the following:

(a) Borrower fails to make any payment required under this Agreement within ten (10) days after the date when due; or

(b) Any lien is recorded against all or any part of the Site or the Project without the City's prior written consent, whether prior or subordinate to the lien of the Deed of Trust or Declaration of Restrictions, and the lien is not removed from title or otherwise remedied to the City's satisfaction within thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(c) Borrower fails to perform or observe any other term, covenant or agreement contained in any City Document, and the failure continues for thirty (30) days after Borrower's receipt of written notice from the City to cure the default, or, if the default cannot be cured within a 30-day period, Borrower will have sixty (60) days to cure the default, or any longer period of time deemed necessary by the City, *provided that* Borrower commences to cure the default within the 30-day period and diligently pursues the cure to completion; or

(d) Any representation or warranty made by Borrower in any City Document proves to have been incorrect in any material respect when made; or

(e) All or a substantial or material portion of the improvements on the Site is damaged or destroyed by fire or other casualty, and the City has determined upon restoration or repair that the security of the Deed of Trust has been impaired or that the repair, restoration or

replacement of the improvements in accordance with the requirements of the Deed of Trust is not economically practicable or is not completed within two (2) years of the receipt of insurance proceeds; or all or a substantial or material portion of the improvements is condemned, seized or appropriated by any non-City Governmental Agency or subject to any action or other proceeding instituted by any non-City Governmental Agency for any purpose with the result that the improvements cannot be operated for their intended purpose; or

(f) Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower is a corporation, partnership, limited liability company or trust, Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the jurisdiction of formation and California for any period of more than ten (10) days; or, if Borrower is an individual, Borrower dies or becomes incapacitated; or all or substantially all of the assets of Borrower are sold or otherwise transferred except as permitted under **Section 16.1**; or

(g) Without the City's prior written consent, Borrower assigns or attempts to assign any rights or interest under any City Document, whether voluntarily or involuntarily, except as permitted under **Section 16.1**; or

(h) Without the City's prior written consent, Borrower voluntarily or involuntarily assigns or attempts to sell, lease, assign, encumber or otherwise transfer all or any portion of the ownership interests in Borrower or of its right, title or interest in the Project or the Site except as permitted under **Article 16**; or

(i) Without the City's prior written consent, Borrower transfers, or authorizes the transfer of, funds in any Account required or authorized under this Agreement; or

(j) Either the Deed of Trust or the Declaration of Restrictions ceases to constitute a valid and indefeasible perfected lien on the Site and improvements, subject only to Permitted Exceptions; or

(k) Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its property (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its property under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the Site, the improvements or any other property of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(l) Any material adverse change occurs in the financial condition or operations of Borrower, such as a loss of services funding or rental subsidies, that has a material adverse impact on the Project; or

(m) Borrower fails to make any payments or disbursements required to bring the Loan in balance after the City determines that the Loan is out of balance; or

(n) Before a certificate of occupancy or equivalent certification is issued for the Project, Borrower ceases rehabilitation or construction of the Project for a period of twenty five (25) consecutive calendar days, and the cessation is not excused under **Section 19.3** (but only after the closing date of Borrower's financing for construction or rehabilitation of the Project); or

(o) Borrower is in default of its obligations with respect to any funding obligation (other than the Loan) for the Project, and the default remains uncured following the expiration of any applicable cure periods; or

(p) Borrower is in default of its obligations under any other agreement entered into with the City and County of San Francisco, and the default remains uncured following the expiration of any applicable cure periods.

19.2 Remedies. During the pendency of an uncured Event of Default, the City may exercise any right or remedy available under this Agreement or any other City Document or at law or in equity. All of the City's rights and remedies following an Event of Default are cumulative, including:

(a) The City at its option may declare the unpaid principal balance of the Notes, together with default interest as provided in the Notes and any other charges due under the Notes and the other City Documents, immediately due and payable without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which Borrower expressly waives.

(b) The City at its option may terminate all commitments to make Disbursements or to release the Site from the Deed of Trust or Declaration of Restrictions, or, without waiving the Event of Default, the City may determine to make further Disbursements or to release all or any part of the Site from the Deed of Trust or Declaration of Restrictions upon terms and conditions satisfactory to the City in its sole discretion.

(c) The City may perform any of Borrower's obligations in any manner, in the City's reasonable discretion.

(d) The City, either directly or through an agent or court-appointed receiver, may take possession of the Project and enter into contracts and take any other action the City deems appropriate to complete or construct all or any part of the improvements, subject to modifications and changes in the Project the City deems appropriate.

(e) The City may apply to any court of competent jurisdiction for specific performance, or an injunction against any violation, of this Agreement or for any other remedies or actions necessary or desirable to correct Borrower's noncompliance with this Agreement.

(f) Upon the occurrence of an Event of Default described in **Section 19.1(k)**, the unpaid principal balance of the Notes, together with default interest as provided in the Notes and any other charges due under the Notes and the other City Documents, will become due and payable automatically.

(g) All costs, expenses, charges and advances of the City in exercising its remedies or to protect the Project will be deemed to constitute a portion of the principal balance of the Notes, even if it causes the principal balance to exceed the face amount of the Notes, unless Borrower reimburses the City within ten (10) days of the City's demand for reimbursement.

19.3 Force Majeure. The occurrence of any of the following events will excuse performance of any obligations of the City or Borrower rendered impossible to perform while the event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes for either; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental actions; civil commotion; fire or other casualty and other causes beyond the control of the party obligated to perform. The occurrence of a force majeure event will excuse Borrower's performance only in the event that Borrower has provided notice to the City within thirty (30) days after the occurrence or commencement of the event or events, and Borrower's performance will be excused for a period ending thirty (30) days after the termination of the event giving rise to the delay.

19.4 City's Recourse. The City's recourse against Borrower following an Event of Default is limited as set forth more specifically in the Notes.

## ARTICLE 20 REPRESENTATIONS AND WARRANTIES.

20.1 Borrower Representations and Warranties. As a further inducement for the City to enter into this Agreement, Borrower represents and warrants as follows:

(a) The execution, delivery and performance of the City Documents will not contravene or constitute a default under or result in a lien upon assets of Borrower under any applicable Law, any Charter Document of Borrower or any instrument binding upon or affecting Borrower, or any contract, agreement, judgment, order, decree or other instrument binding upon or affecting Borrower.

(b) When duly executed, the City Documents will constitute the legal, valid and binding obligations of Borrower. Borrower hereby waives any defense to the enforcement of the City Documents related to alleged invalidity of the City Documents.

(c) No action, suit or proceeding is pending or threatened that might affect Borrower or the Project adversely in any material respect.

(d) Borrower is not in default under any agreement to which it is a party, including any lease of real property.

(e) None of Borrower, Borrower's principals or Borrower's general contractor has been suspended or debarred by the Department of Industrial Relations or any Governmental Agency, nor has Borrower, any of its principals or its general contractor been suspended, disciplined or prohibited from contracting with any Governmental Agency.

(f) Reserved.

(g) All statements and representations made by Borrower in connection with the Loan remain true and correct as of the date of this Agreement.

(h) The Borrower is duly organized and in good standing under applicable laws of the State of California and is qualified to do business in the City and County of San Francisco.

#### ARTICLE 21 NOTICES.

21.1 Written Notice. All notices required by this Agreement must be made in writing and may be communicated by personal delivery, by a nationally recognized courier that obtains receipts, facsimile (if followed within one (1) business day by first class mail) or by United States certified mail, postage prepaid, return receipt requested. Delivery will be deemed complete as of the earlier of actual receipt (or refusal to accept proper delivery) or five (5) days after mailing, *provided that* any notice that is received after 5 p.m. on any day or on any weekend or holiday will be deemed to have been received on the next succeeding business day. Notices must be addressed as follows:

To the City: Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Director

To Borrower: 4200 Geary Associates, L.P.  
201 Eddy Street  
San Francisco, CA 94102  
Attn: Donald Falk

or any other address a party designates from time to time by written notice sent to the other party in manner set forth in this Section.

21.2 Required Notices. Borrower agrees to provide notice to the City in accordance with **Section 21.1** of the occurrence of any change or circumstance that: (a) will have an adverse effect on the physical condition or intended use of the Project; (b) from and after the closing

date of Borrower's financing for construction or rehabilitation of the Project, causes the Loan to be out of balance; or (c) will have a material adverse effect on Borrower's operation of the Property or ability to repay the Loan.

## ARTICLE 22 GENERAL PROVISIONS.

22.1 Subordination. The Deed of Trust may be subordinated to other financing secured by and used for development of the Project (in each case, a "Senior Lien"), but only if MOHCD determines in its sole discretion that subordination is necessary to secure adequate acquisition, construction, rehabilitation and/or permanent financing to ensure the viability of the Project. Following review and approval by MOHCD and approval as to form by the City Attorney's Office, the Director of MOHCD or his/her successor or designee will be authorized to execute any approved subordination agreement without the necessity of any further action or approval.

22.2 No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of the City, may be interpreted or construed as creating the relationship of third party beneficiary, limited or general partnership, joint venture, employer and employee, or principal and agent between the City and Borrower or Borrower's agents, employees or contractors.

22.3 No Claims by Third Parties. Nothing contained in this Agreement creates or justifies any claim against the City by any person or entity with respect to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project. Borrower must include this requirement as a provision in any contracts for the development of the Project.

22.4 Entire Agreement. This Agreement and its Exhibits incorporate the terms of all agreements made by the City and Borrower with regard to the subject matter of this Agreement. No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto. No oral understandings or agreements not incorporated herein will be binding on the City or Borrower.

22.5 City Obligations. The City's sole obligation under this Agreement is limited to providing the Funds as described in this Agreement, up to the Funding Amount. Under no circumstances, including breach of this Agreement, will the City be liable to Borrower for any special or consequential damages arising out of actions or failure to act by the City in connection with any of the City Documents.

22.6 Borrower Solely Responsible. Borrower is an independent contractor with the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance contemplated under this Agreement. Borrower is solely responsible for: (a) its own acts and those of its agents, employees and contractors and all matters relating to their performance, including compliance with Social Security, withholding and all other Laws governing these matters and requiring that contractors include in each contract that they will be solely responsible for similar matters relating to their employees; (b) any losses or damages incurred by Borrower, any of its contractors or subcontractors and the

City and its officers, representatives, agents and employees on account of any act, error or omission of Borrower in the performance of this Agreement or any other City Document and the development and operation of the Project; and (c) all costs and expenses relating to Borrower's performance of obligations under the City Documents, the delivery to the City of documents, information or items under or in connection with any of the City Documents and taxes, fees, costs or other charges payable in connection with the execution, delivery, filing and/or recording of any City Document or document required under any City Document.

22.7 No Inconsistent Agreements. Borrower warrants that it has not executed and will not execute any other agreement(s) with provisions materially contradictory or in opposition to the provisions of this Agreement.

22.8 Inconsistencies in City Documents. In the event of any conflict between the terms of this Agreement and any other City Document, the terms of this Agreement control unless otherwise stated; *provided, however*, that any provision in this Agreement in conflict with any Law will be interpreted subject to that Law.

22.9 Governing Law. This Agreement is governed by California law without regard to its choice of law rules.

22.10 Joint and Several Liability. If Borrower consists of more than one person or entity, each is jointly and severally liable to the City for the faithful performance of this Agreement.

22.11 Successors. Except as otherwise limited herein, the provisions of this Agreement bind and inure to the benefit of the undersigned parties and their heirs, executors, administrators, legal representatives, successors and assigns. This provision does not relieve Borrower of its obligation under the City Documents to obtain the City's prior written consent to any assignment or other transfer of Borrower's interests in the Loan, the Site or the ownership interests in Borrower.

22.12 Attorneys' Fees. If any legal action is commenced to enforce any of the terms of this Agreement or rights arising from any party's actions in connection with this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees (including allocated fees of the City Attorney's Office) and costs of suit from the other party, whether incurred in a judicial, arbitration, mediation or bankruptcy proceeding or on appeal. For the purposes of this Agreement, reasonable fees of attorneys in the City Attorney's office will be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter of law for which the City Attorney's services were rendered, who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. An award of attorneys' fees and costs will bear interest at the default rate under the Notes from the date of the award until paid.

22.13 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

22.14 Time. Time is of the essence in this Agreement. Whenever the date on which an action must be performed falls on a Saturday, Sunday or federal holiday, the date for performance will be deemed to be the next succeeding business day.

22.15 Further Assurances. Borrower agrees to: (a) pursue in an effective and continuous manner; (b) use best efforts to achieve; and (c) take all actions reasonably required by the City from time to time to confirm or otherwise carry out the purpose of this Agreement.

22.16 Binding Covenants. The provisions of the City Documents constitute covenants running with the land and will be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title or interest in whatever form, including leasehold interests (other than Tenants and approved commercial tenants), in or to any part of the Property, except that the same will terminate and become void automatically at the expiration of the Compliance Term of this Agreement. Any attempt to transfer any right, title or interest in the Property in violation of these covenants will be void.

22.17 Consent. Except as expressly provided otherwise, whenever consent or approval of a party is required in any City Document, that party agrees not to withhold or delay its consent or approval unreasonably.

22.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which will constitute but one agreement.

22.19 Borrower's Personnel. The Project shall be implemented only by competent personnel under the direction and supervision of Borrower.

22.20 Borrower's Board of Directors. Borrower, or Borrower's manager or general partner, as applicable, shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in the bylaws and other governing documents of Borrower, Borrower's manager or Borrower's general partner, as applicable, and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Such board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Borrower of its obligations under this Agreement.

22.23 Exhibits. The following exhibits are attached to this Agreement and incorporated by reference:

EXHIBITS

- A Schedules of Income and Rent Restrictions
- B-1 Table of Sources and Uses of Funds
- B-2 Annual Operating Budget
- B-3 20-Year Cash Flow Proforma



C	Form of Tenant Income Certification
D	First Source Hiring Requirements and Numerical Goals
E	Governmental Requirements
F	Lobbying/Debarment Certification Form
G	Form of Annual Monitoring Report
H	Tenant Selection Plan Policy
I	MOHCD Tenant Screening Criteria Policy
J	Developer Fee Policy
K	Hold Harmless Policy
L	Insurance Requirements
M	Reserved
N	Reserved
O	MOHCD Commercial Underwriting Guidelines
P	MOHCD Residual Receipts Policy

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

**THE CITY:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: \_\_\_\_\_  
London N. Breed  
Mayor

By: \_\_\_\_\_  
Eric D. Shaw  
Director, Mayor's Office of Housing and Community Development

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**BORROWER:**

4200 Geary Associates, L.P.,  
A California limited partnership  
By: 4200 Geary LLC,  
a California limited liability company  
Its: General Partner

By: Tenderloin Neighborhood  
Development Corporation,  
a California nonprofit public benefit  
corporation  
Its: sole member

By:  
Name: Donald Falk  
Title: Chief Executive Officer

**EXHIBIT A**  
**Schedules of Income and Rent Restrictions**

1. **Income and Rent Restrictions.** Maximum rent is 30% of maximum income level. As used in this Agreement, the term "Qualified Tenant" includes each category of Tenant included below:

Unit Type	Proposed Number of Units	Max. % MOHCD AMI	Rent or Operating Subsidy
Studio	8	30%	LOSP
1BR	12	30%	LOSP
Studio	15	60%	SOS
1BR	15	60%	SOS
Studio	18	60%	
1 BR	29	60%	
1BR*	1	N/A	
Total Units Income Average	98		

All Units must be rented at all times to tenants who are Seniors. 20 Units must be made available to the chronically homeless or those at risk of homelessness during the period in which the City's Local Operating Subsidy program is in operation and the City provide such subsidy to the project under LOSP. 30 Units must be made available to Senior Households with a maximum income of 15% of Median Income during the period in which the City's Senior Operating Subsidy program is available.

If the LOSP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that:

(a) Borrower diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(b) One hundred percent (100%) of the Units formerly under the LOSP must at all times be occupied by Qualified Tenants whose Adjusted Income does not exceed fifty percent (50%) of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of fifty percent (50%) of Median Income, (b) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of

Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

**EXHIBIT B-1**

**Table of Sources and Uses of Funds**

**EXHIBIT B-2**  
**Annual Operating Budget**

**EXHIBIT B-3**

20-Year Cash Flow Proforma

[This Proforma must include the same line items as the Annual Operating Budget shown in Exhibit B-2.]

**EXHIBIT C**  
**Tenant Income Certification Form**

[To be attached.]



## EXHIBIT D

### First Source Hiring Requirements and Numerical Goals

Borrower's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83). Borrower will, or will require its general contractor to, separately execute a First Source Hiring Agreement with the City as set forth below, although the lack of such a separate execution will not affect the requirements of Chapter 83 as incorporated herein.

A. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor will comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement have the meanings assigned to such terms in Chapter 83.

B. First Source Hiring Agreement. On or before the effective date of the Ground Lease, Borrower will, or will require its general contractor to, enter into a first source hiring agreement ("FSH Agreement") with the City, that will include the terms as set forth in Section 83.9(b). Borrower also enter into a FSH Agreement with the City for any other work that it performs in the City.

C. Hiring Decisions. Borrower or its general contractor will make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

D. Exceptions. Upon application by Contractor, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

E. Liquidated Damages. Borrower agrees:

1. To be liable to the City for liquidated damages as provided in this Section;
2. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;
3. That the Borrower's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result

of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4. That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5. That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

a. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

b. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to a contractor and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6. That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

7. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

F. Subcontracts. Any subcontract entered into by Borrower or its general contractor will require the subcontractor to comply with the requirements of Chapter 83 and will contain contractual obligations substantially the same as those set forth in this Section.

**EXHIBIT E**  
**Governmental Requirements**

1. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 6.1. Every contract for the rehabilitation or construction of housing assisted with Funds must contain a provision requiring: (1) the payment of not less than the Prevailing Rate of Wage in accordance with Administrative Code Section 6.22(e)(3) to all laborers and mechanics employed in the development of any part of the housing, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 6.22(n), (collectively, “Prevailing Wage Requirements”). The Prevailing Wage Requirements of this Section apply to all laborers and mechanics employed in the development of the Project, including portions other than the assisted Units. Borrower agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements. If applicable, Borrower must include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Chapter 6.

2. Environmental Review. The Project must meet the requirements of the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.

3. Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no employee, agent, consultant, officer or official of Borrower or the City who exercises or has exercised any function or responsibilities with respect to activities assisted by Funds, in whole or in part, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in or benefit from the activities assisted under this Agreement, or have an interest, direct or indirect, in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower must incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under the Agreement, a provision similar to that of this Section. Borrower will be responsible for obtaining compliance with conflict of interest provisions by the parties with whom it contracts and, in the event of a breach, Borrower must take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

(b) Borrower represents that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Sections 1090 through 1097 and 87100 *et seq.* of the California Government Code, all of which relate to prohibited conflicts of interest in connection with government contracts. Borrower certifies that it knows of no facts that constitute a violation of any of these provisions and agrees to notify the City immediately if Borrower at any time obtains knowledge of facts constituting a violation.

(c) In the event of any violation of the conflict of interest prohibitions, Borrower agrees that the City may refuse to consider any future application for funding from Borrower or any entity related to Borrower until the violation has been corrected to the City's satisfaction, in the City's sole discretion.

4. Disability Access. Borrower must comply with all applicable disability access Laws, including the Americans With Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Borrower is responsible for determining which disability access Laws apply to the Project, including those applicable due to the use of Funds. In addition, before occupancy of the Project, Borrower must provide to the City a written reasonable accommodations policy that indicates how Borrower will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

5. Lead-Based Paint. Borrower must satisfy the requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Borrower must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.

6. Relocation. Borrower must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code and similar Laws.

7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), To ensure compliance with those requirements, Borrower must include the provisions attached as **Exhibit D** in its contract with the general contractor for the Project. Borrower will be responsible to the City for ensuring compliance with the requirements listed on **Exhibit D**.

8. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Borrower Shall Not Discriminate. In the performance of this Agreement, Borrower agrees not to discriminate against any employee, City and County employee working with Borrower or any subcontractor, applicant for employment with Borrower or any subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services or membership in all business, social or other establishments or organizations operated by Borrower. on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, height, weight, 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.

(b) Subcontracts. Borrower shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code. Borrower's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Borrower does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Contract. As a condition to this Agreement, Borrower shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the executed form by the San Francisco Contract Monitoring Division.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B ("Nondiscrimination in Contracts") and 12C ("Nondiscrimination in Property Contracts") of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Borrower shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Borrower understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this

Agreement may be assessed against Borrower and/or deducted from any payments due Borrower.

9. MacBride Principles. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Borrower acknowledges and agrees that he or she has read and understood this Section.

10. Tropical Hardwood & Virgin Redwood Ban. Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees and borrowers not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

11. Preservative-Treated Wood Containing Arsenic. Borrower may not purchase preservative-treated wood products containing arsenic until the Deed of Trust has been fully reconveyed unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Borrower may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Borrower from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

12. Submitting False Claims; Monetary Penalties. Any borrower, grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A borrower, grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the borrower, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

13. Sunshine Ordinance.

(a) Borrower acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Borrower that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request. Further, Borrower specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Borrower's performance under this Agreement as a passive meeting. Further, Borrower specifically agrees that any meeting of the governing body of its general partner/manager that addresses any matter relating to the Project or to Borrower's performance under this Agreement will be conducted as a passive meeting.

(b) By executing this Agreement, Borrower agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code to the extent applicable. By executing this Agreement, Borrower agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. Borrower further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Borrower acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Borrower further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

(c) In accordance with the Citizen's Right to Know Act of 1998 (S. F. Admin. Code Chapter 79), no officer, department, board or commission of the City may approve a City Project, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days before approval. A City Project is a project



that involves new construction, a change in use or a significant expansion of an existing use where the City funding for the project is \$50,000 or more. If the Loan will be used for a City Project, this Agreement will not become effective until fifteen (15) days following the posting of the requisite sign, or, in the alternative, thirty (30) days following the delivery of written notices to residents and owners within 300 feet of the Site, and the City will have the right to nullify or revoke this Agreement without cost or liability of any sort whatsoever at any time before that date. If Borrower believes that this Agreement relates to a City Project and that the requisite sign has not been posted, Borrower must notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

14. Prohibition on Use of Public Funds for Political Activities. Borrower shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Borrower is subject to the enforcement and penalty provisions in Chapter 12G.

15. Nondisclosure of Private Information. Borrower has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information", and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Borrower agrees that any failure of Borrower to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Borrower pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Borrower.

16. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

(a) Borrower shall remove all graffiti from any real property owned or leased by Borrower in the City and County of San Francisco within forty eight (48) hours of the earlier of Borrower's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Borrower to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on

any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

(b) Any failure of Borrower to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

17. Resource-Efficient Building Ordinance. Borrower acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Borrower hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Property.

18. Consideration of Criminal History in Hiring and Employment Decisions.

(a) Borrower agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Borrower's obligations under Chapter 12T is set forth in this Section. Borrower is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Borrower's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Borrower shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Borrower's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Borrower or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Borrower or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Borrower or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Borrower or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Borrower or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Borrower and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Borrower or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Borrower understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

19. Food Service Waste Reduction Requirements. Borrower agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Borrower agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Borrower agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation,

established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Borrower's failure to comply with this provision.

20. Bottled Drinking Water. Unless exempt, Borrower agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth.

21. Public Power. From and after the effective date of a ground lease between City and Borrower, Borrower must procure water and sewer service from the City and electricity, telephone, natural gas, and any other utility service from the City or utility companies providing such services, and must pay all connection and use charges imposed in connection with such services. From and after the effective date of the Ground Lease, as between the City and Borrower, Borrower will be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not installed or maintained by the City or the utility providing such service. All electricity necessary for operations on the Site must be purchased from the San Francisco Public Utilities Commission ("PUC"), at PUC's standard rates charged to third parties, unless PUC determines, in its sole judgment, that it is not feasible to provide such service to the Premises. PUC is the provider of electric services to City property, and the Interconnection Services Department of SFPUC's Power Enterprise coordinates with Pacific Gas and Electric Company and others to implement this service. To arrange for electric service to the Site, Borrower must contact the Interconnection Services Department in the Power Enterprise of the SFPUC.

**EXHIBIT F**  
**Lobbying/Debarment Certification Form**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

*This lobbying certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.*

3. Neither the undersigned nor its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. The undersigned will review the list to ensure that any contractor or subcontractor who bids for a contract in excess of \$100,000 is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities and will obtain the certification of each contractor or subcontractor whose bid is accepted that such contractor or subcontractor is not debarred, suspended, ineligible or voluntarily excluded from participating in federal programs and activities.

4200 Geary Associates, L.P., by 4200 Geary LLC, its general partner, by Tenderloin Neighborhood Development Center, a California nonprofit public benefit corporation, its sole member

BY: \_\_\_\_\_

NAME: Don Falk

TITLE: Chief Executive Officer

DATE: \_\_\_\_\_

**EXHIBIT G**  
**Form of Annual Monitoring Report**

[To be attached]

## **EXHIBIT H**

### **Tenant Selection Plan Policy**

This policy is in addition to the obligations to comply with applicable federal, state and local civil rights laws, including laws pertaining to reasonable accommodation and limited English proficiency (LEP),<sup>1</sup> **and the applicable provision of the Violence Against Women Act, Pub. Law 109-62 (January 5, 2006), as amended.**

#### **Application Process**

- **Application Materials.** MOHCD shall provide an application to be used prior to the housing lottery. The housing provider agrees to use this application to determine lottery eligibility. The housing provider's written and/or electronic application materials should:
  - outline the screening criteria that the housing provider will use;
  - be in compliance with San Francisco Police Code Article 49 or the Fair Chance Ordinance,
  - outline how an applicant may request a modification of the admission process and/or a change in admission policies or practices as a reasonable accommodation;
  - be written in language that is clear and readily understandable,
- **First Interview.** In accordance with the housing provider policies, an initial interview is required to assess each applicant's minimum eligibility requirements for housing units. All applicants shall be offered the opportunity for an interview in lottery rank order.
- **Second Interview.** Before issuing a denial, the housing provider should consider offering a second interview to resolve issues and inconsistencies, gather additional information, and assist as much as possible with a determination to admit the applicant.
- **Confidentiality.** All information provided will be kept confidential and be used only by the housing provider, the referring agency and the funding agency for the purpose of assisting and evaluating the applicant in the admission process. All applicant information shall be retained for 12 months after the final applicant interview.
- **Delays in the Process.** If delays have occurred or are likely to occur in the application and screening process or the process exceeds the housing provider's normal timeline for application and screening, the housing provider must immediately inform the referring agency and the funding agency, of the status of the application, the reason for the delay and the anticipated time it will take to complete the application process.

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<sup>1</sup>See for e.g., Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 42 U.S.C. §§ 3601, et seq.; 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-7; Executive Order 13,166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000); Department of Housing and Urban Development Limited English Proficiency Guidance, 72 Fed. Reg. 2732 (Jan. 22, 2007); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 24 C.F.R. Parts 8 and 9; Title II of the Americans with Disabilities Act of 1990, as amended; California Fair Employment and Housing Act, Gov't Code §§ **12,955-12,956.2**; **Unruh Civil Rights Act, Civil Code § 51**; **California Disabled Persons Act, Civil Code § 51.4**; Dymally-Alatorre Bilingual Services Act, Gov't Code **§7290-7299.8**; **San Francisco Language Access Ordinance, No. 202-09 (April 14, 2009)**



- **Problems with the Referring Agency.** If at any point the housing provider has difficulty reaching or getting a response from the applicant and referring agency, the housing provider must immediately contact the referring agency, if possible, and the funding agency, DPH or HSA.
- **Limited English Proficiency Policy.** Throughout the application process, the housing provider must comply with City policy for language access requirements for applicants with limited English proficiency.

### **Reasonable Accommodation and Modification Policy**

**Reasonable Accommodation:** The application process should provide information about how an applicant may make a reasonable accommodation request. At any stage in the admission process, an applicant may request a reasonable accommodation, if the applicant has a disability and as a result of the disability needs a modification of the provider's rules, policies or practices, including a change in the way that the housing provider communicates with or provides information to the applicant that would give the applicant an equal chance to be selected by the housing provider to live in the unit.

**Reasonable Modification:** Applicant may request a reasonable modification if he or she has a disability and as a result of the disability needs:

- a physical change to the room or housing unit that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site;
- a physical change in some other part of the housing site that would give the applicant an equal chance to live at the development and use the housing facilities or take part in programs on site.

**Response to Request:** The housing provider shall respond to a request for reasonable accommodation or modification within ten (10) business days. The response may be to grant, deny, or modify the request, or seek additional information in writing or by a meeting with the applicant. The housing provider will work with the applicant and referring agency to determine if there are ways to accommodate the applicant.

The housing provider shall grant the request if the provider determines that:

- the applicant has a disability;
- reasonable accommodation or modification is necessary because of the disability; and
- the request is reasonable (i.e., does not impose an undue financial or administrative burden or fundamentally alter the nature of the housing program.)

If the reasonable accommodation request is denied, the rejection must explain the reasons in writing. If the denial of the reasonable accommodation request results in the applicant being denied admission to the unit, the provisions of the section on Notice of Denial and Appeal Process apply.

## **Notice of Denial and Appeal Process**

- The housing provider shall:
  - Hold a comparable unit for the household during the entire appeal process.
  - promptly send a written and electronic notice (to the addresses provided) to each applicant denied admission with a written and/or electronic copy to the referring agency and the funding agency. The notice should:
    - list all the reasons for the rejection, including the particular conviction or convictions that led to the decision in cases where past criminal offenses were a reason for rejection;
    - explain how the applicant can request an in person appeal to contest the decision;
    - state that an applicant with a disability is entitled to request a reasonable accommodation to participate in the appeal;
    - inform the applicant that he or she is entitled to bring an advocate or attorney to the in person appeal;
    - provide referral information for local legal services and housing rights organizations;
    - describe the evidence that the applicant can present at the appeal;
  - give applicants denied admission a date within which to file the appeal, which shall be at least ten (10) business days from the date of the notice;
  - unless an extension is agreed to by the applicant and the housing provider, hold the appeal within ten (10) business days of the request for the appeal;
  - confine the subject of the appeal to the reason for denial listed in the notice;
  - give the applicant a chance to present documents and/or witnesses showing that he or she will be a suitable tenant;
  - have an impartial supervisor or manager from the housing provider, but who is not the person who made the initial decision or a subordinate of the person who made the initial decision, conduct the appeal;
  - within 5 business days of the in person appeal, provide the applicant with a written decision that states the reason for the decision and the evidence relied upon. A copy of the written decision must be sent (electronically or otherwise) to the referring agency and the funding agency.
  
- If the rejection is based on a criminal background check obtained from a tenant screening agency, the Fair Chance Ordinance imposes additional notice requirements.

## **EXHIBIT I**

### **Tenant Screening Criteria Policy**

The screening criteria and considerations outlined below encourage providers to “screen in” rather than “screen out” applicants. These requirements are also designed to satisfy the requirements of San Francisco Police Code Article 49, Sections 4901-4920 or the Fair Chance Ordinance. This policy describes a minimum level of leniency; providers are encouraged to adopt less restrictive policies and processes whenever appropriate. For example, providers may opt not to review or consider applicant criminal records at all.

#### **Screening Criteria**

- Housing providers shall not automatically bar applicants who have a criminal record<sup>2</sup> in recognition of the fact that past offenses do not necessarily predict future behavior, and many applicants with a criminal record are unlikely to re-offend.
- Housing providers shall not consider:
  - arrests that did not result in convictions, except for an open arrest warrant;
  - convictions that have been expunged or dismissed under Cal. Penal Code § 1203.4 or 1203.4a;<sup>3</sup>
  - juvenile adjudications.
- Housing providers shall consider:
  - the individual circumstances of each applicant; and
  - the relationship between the offense, and
    - (1) the safety and security of other tenants, staff and/or the property; and
    - (2) mitigating circumstances such as those listed below.
  - only those offenses that occurred in the prior 7 years, except in exceptional situations, which must be documented and justified, such as where the housing provider staff is aware that the applicant engaged in violent criminal activity against staff, residents or community members and/or that the applicant intentionally submitted an application with materially false information regarding criminal activity.
  - mitigating factors, including, but not limited to:
    - (1) the seriousness of the offense;
    - (2) the age and/or circumstances of the applicant at the time of the offense;
    - (3) evidence of rehabilitation, such as employment, participation in a job training program, continuing education, participation in a drug or alcohol treatment program, or letters of support from a parole or probation officer, employer, teacher, social worker, medical professional, or community leader;

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<sup>2</sup> The policy recognizes that some housing may be subject to mandatory laws that require the exclusion of an applicant based upon certain types of criminal activity.

<sup>3</sup> The purpose of the statute is allow a petitioner to request a dismissal of the criminal accusations, a change in plea or setting aside of a verdict and to seek to have certain criminal records sealed or expunged and a release “from all penalties and disabilities resulting from the offense.”

- (4) if the offense is related to acts of domestic violence committed against the applicant;
- (5) if the offense was related to a person's disability.

**EXHIBIT J**

Developer Fee Policy

[To be attached]

**EXHIBIT K**

**Hold Harmless Policy**

[To be attached]

**EXHIBIT L**  
**Insurance Requirements**

Subject to approval by the City's Risk Manager of the insurers and policy forms, Borrower must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement or other applicable date set forth below throughout the Compliance Term at no expense to the City:

1. **Liability Insurance.** Borrower must obtain and maintain, or cause its contractors, subcontractors, property managers and/or agents, as appropriate for each, to obtain and maintain, insurance and bonds as follows:

(a) to the extent Borrower or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and Four Million Dollars (\$4,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Borrower is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Borrower's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Borrower shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Borrower's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(f) as applicable, pollution liability and/or asbestos pollution liability covering the work being performed with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This

coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy must be "claims made" coverage and Borrower must require Borrower's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance. Borrower must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Borrower as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Borrower or its contractor. For rehabilitation/construction projects that are unoccupied by residential or commercial tenants, Tenant must obtain Property Insurance by the date that the project receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Borrower for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such



machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

3. Commercial Space. Borrower must require that all nonresidential tenants' liability insurance policies include Borrower and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Project, Borrower must require commercial tenants to maintain insurance as follows:

(a) to the extent the tenant has "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident;

(b) commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months; owners' and contractors' protective; broadform property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars (\$1,000,000), as appropriate;

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(f) full coverage plate glass insurance covering any plate glass on the commercial space.

4. General Requirements.

(a) General and automobile liability policies of Borrower, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective. The endorsement must provide the City with the same rights as the named insured in the event of cancellation or intended non-renewal.

(c) With respect to any property insurance, Borrower hereby waives all rights of subrogation against the City to the extent of any loss covered by Borrower's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Borrower's insurance by the City will not relieve or decrease the liability of Borrower under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Borrower must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

**Exhibit M**  
**Deed of Trust**

[To be attached]

**EXHIBIT N**  
**Declaration of Restrictions**

[To be attached]

**EXHIBIT O**  
**Commercial Underwriting Guidelines**

[To be attached]

**EXHIBIT P**  
Residual Receipts Policy

[To be attached]





**SECURED ACQUISITION PROMISSORY NOTE**  
(Affordable Housing Fund Inclusionary)

Principal Amount: \$ 11,064,369

San Francisco, CA

Date: May \_\_\_\_, 2021

FOR VALUE RECEIVED, the undersigned, **4200 GEARY ASSOCIATES, L.P.**, a California limited partnership ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum of Eleven Million Sixty Four Thousand Three Hundred Sixty Nine and No/100 Dollars (\$11,064,369.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("Note") is given under the terms of a Loan Agreement by and between Maker and Holder (the "Agreement") dated as of the date set forth above, which Agreement is incorporated herein by reference. Maker's obligations under this Note and the Agreement are secured by that certain Deed Of Trust, Assignment Of Rents, Security Agreement And Fixture Filing dated as of the date of this Note, made by Maker for the benefit of Holder. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3.00%) per annum, simple interest, from the date of the close of escrow through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date the Funding Amount is disbursed through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the City Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Document.

4. Repayment of Funding Amount.

4.1 Subject to Section 13.4 of the Agreement, Maker must make annual payments of principal and interest (each, a "Payment") in an amount equal to the Residual Receipts, if any, attributable to the prior calendar year beginning on the first June 30th after the end of the calendar year of the Completion Date, and continuing each June 30th thereafter up to and including the Maturity Date, as defined below (each, a "Payment Date"). All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The

unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the date that is the later of (a) the fifty-seventh (57<sup>th</sup>) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the fifty-fifth (55<sup>th</sup>) anniversary of the Conversion Date (the "Maturity Date") Any Payment Date, including any Excess Proceeds Payment Date and the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

4.2 Subject to Sections 3.7 and 13.4 of the Agreement, Maker must make payments of principal and interest (each, an "Excess Proceeds Payment") in an amount equal to the Excess Proceeds, if any, on the date that is thirty (30) days after the later of the date on which Maker receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Maker receives Excess Proceeds from its limited partner or other financing sources (the "Excess Proceeds Payment Date"). All Excess Proceeds Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan.

5. Security. Maker's obligations under this Note are secured by the Deed of Trust.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.6 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note shall be permitted without Holder's prior written consent.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

(a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Project.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or demands specified in the City Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

7.3 Subject to this Section, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or nonjudicial foreclosure of the Deed of Trust, and Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, provided, however, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan Funds and Rents (as defined in the Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

**"MAKER"**

4200 Geary Associates, L.P.  
A California Limited Partnership

By: 4200 Geary LLC  
Its: General Partner

By: Tenderloin Neighborhood Development Corporation ,  
a California nonprofit public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Donald Falk  
Title: Chief Executive Officer

**SECURED PREDEVELOPMENT PROMISSORY NOTE**  
(Affordable Housing Fund Inclusionary)

Principal Amount: \$ 3,474,613

San Francisco, CA

Date: May \_\_\_\_, 2021

FOR VALUE RECEIVED, the undersigned, **4200 GEARY ASSOCIATES, L.P.**, a California limited partnership ("Maker"), hereby promises to pay to the order of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, or holder (as the case may be, "Holder"), the principal sum of Three Million Four Hundred Seventy Four Thousand Six Hundred Thirteen and No/100 Dollars (\$3,474,613.00) (the "Funding Amount"), or so much of the Funding Amount as may be disbursed from time to time pursuant to the Agreement described in **Section 1** below, together with interest thereon, as provided in this Note.

1. Agreement. This Secured Promissory Note ("Note") is given under the terms of a Loan Agreement by and between Maker and Holder (the "Agreement") dated as of the date set forth above, which Agreement is incorporated herein by reference. Maker's obligations under this Note and the Agreement are secured by that certain Deed Of Trust, Assignment Of Rents, Security Agreement And Fixture Filing dated as of the date of this Note, made by Maker for the benefit of Holder. Definitions and rules of interpretation set forth in the Agreement apply to this Note. In the event of any inconsistency between the Agreement and this Note, this Note will control.

2. Interest. Interest will accrue on the principal balance outstanding under this Note from time to time at the rate of three percent (3.00%) per annum, simple interest, from the date of disbursement of funds by Holder through the date of full payment of all amounts owing under the City Documents. Interest will be calculated on the basis of actual days elapsed and a 360-day year, which will result in higher interest charges than if a 365-day year were used.

3. Default Interest Rate. Upon the occurrence of an Event of Default under any City Document, interest will be deemed to have accrued on the outstanding principal balance of the Loan at a compounded annual rate equal to the lesser of: (a) ten percent (10%); or (b) the maximum lawful rate of interest, commencing on the date the Funding Amount is disbursed through the earlier of: (x) the date on which the Event of Default is cured; or (y) the date on which all amounts due under the City Documents are paid to Holder. Maker acknowledges and agrees that the default interest that must be paid in the event of an Event of Default pursuant to this Section represents a reasonable sum considering all the circumstances existing on the date of this Note and represents a fair and reasonable estimate of the costs that will be sustained by Holder if Maker defaults. Maker further agrees that proof of actual damages would be costly and inconvenient and that default interest will be paid without prejudice to Holder's right to collect any other amounts to be paid or to exercise any of its other rights or remedies under any City Document.

4. Repayment of Funding Amount.

4.1 Subject to Section 13.4 of the Agreement, Maker must make annual payments of principal and interest (each, a "Payment") in an amount equal to the Residual Receipts, if any, attributable to the prior calendar year beginning on the first June 30th after the end of the calendar year of the Completion Date, and continuing each June 30th thereafter up to and including the Maturity Date, as defined below (each, a "Payment Date"). All Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan. The

unpaid principal balance of the Loan, together with all accrued and unpaid interest and unpaid costs and fees incurred, will be due and payable on the date that is the later of (a) the fifty-seventh (57th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County or (b) the fifty-fifth (55th) anniversary of the Conversion Date (the "Maturity Date") Any Payment Date, including any Excess Proceeds Payment Date and the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

4.2 Subject to Sections 3.7 and 13.4 of the Agreement, Maker must make payments of principal and interest (each, an "Excess Proceeds Payment") in an amount equal to the Excess Proceeds, if any, on the date that is thirty (30) days after the later of the date on which Maker receives its Form 8609 from the California Tax Credit Allocation Committee or the date on which Maker receives Excess Proceeds from its limited partner or other financing sources (the "Excess Proceeds Payment Date"). All Excess Proceeds Payments will be applied to the following in the following order: (a) costs and fees incurred and unpaid; (b) accrued and unpaid interest; and (c) reduction of the principal balance of the Loan.

5. Security. Maker's obligations under this Note are secured by the Deed of Trust.

6. Terms of Payment.

6.1 All Payments must be made in currency of the United States of America then lawful for payment of public and private debts.

6.2 All Payments must be made payable to Holder and mailed or delivered in person to Holder's office at One South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103, or to any other place Holder from time to time designates.

6.3 In no event will Maker be obligated under the terms of this Note to pay interest exceeding the lawful rate. Accordingly, if the payment of any sum by Maker pursuant to the terms of this Note would result in the payment of interest exceeding the amount that Holder may charge legally under applicable state and/or federal law, the amount by which the payment exceeds the amount payable at the lawful interest rate will be deducted automatically from the principal balance owing under this Note.

6.4 Maker waives the right to designate how Payments will be applied pursuant to California Civil Code Sections 1479 and 2822. Holder will have the right in its sole discretion to determine the order and method of application of Payments to obligations under this Note.

6.6 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note shall be permitted without Holder's prior written consent.

7. Default.

7.1 Any of the following will constitute an Event of Default under this Note:

(a) Maker fails to make any Payment required under this Note within ten (10) days of the date it is due; or

(b) the occurrence of any other Event of Default under the Agreement or other instrument securing the obligations of Maker under this Note or under any other agreement between Maker and Holder with respect to the Project.

7.2 Upon the occurrence of any Event of Default, without notice to or demand upon Maker, which are expressly waived by Maker (except for notices or demands otherwise required by applicable laws to the extent not effectively waived by Maker and any notices or

demands specified in the City Documents), Holder may exercise all rights and remedies available under this Note, the Agreement or otherwise available to Holder at law or in equity. Maker acknowledges and agrees that Holder's remedies include the right to accelerate the Maturity Date by declaring the outstanding principal balance of the Loan, together with all accrued and unpaid interest and unpaid fees and costs incurred, due and payable immediately, in which case, the Maturity Date will be superseded and replaced by the date established by Holder.

7.3 Subject to this Section, Holder will not seek or obtain judgment against Maker for the payment of any amounts due under this Note following a judicial or nonjudicial foreclosure of the Deed of Trust, and Holder's sole recourse against Maker for any default under this Note will be limited to the collateral for the Loan, *provided, however*, that this Section will be deemed void and of no effect if Maker challenges Holder's right to foreclose following an Event of Default in any legal proceeding on the grounds that the City Documents are not valid and enforceable under California law. This provision does not limit in any way Holder's right to recover sums arising under any obligation of Maker to indemnify Holder of sums incurred by Holder as a result of Maker's fraud, willful misrepresentation, misapplication of funds (including Loan Funds and Rents (as defined in the Deed of Trust)), waste or negligent or intentional damage to the collateral for the Loan.

## 8. Waivers.

8.1 Maker expressly agrees that the term of this Note or the date of any payment due hereunder may be extended from time to time with Holder's consent, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Maker.

8.2 No extension of time for any Payment made by agreement by Holder with any person now or hereafter liable for the payment of this Note will operate to release, discharge, modify, change or affect the original liability of Maker under this Note, either in whole or in part.

8.3 The obligations of Maker under this Note are absolute, and Maker waives any and all rights to offset, deduct or withhold any Payments or charges due under this Note for any reason whatsoever.

## 9. Miscellaneous Provisions.

9.1 All notices to Holder or Maker must be given in the manner and at the addresses set forth in the Agreement, or to the addresses Holder and/or Maker hereafter designate in accordance with the Agreement.

9.2 In the event of any legal proceedings arising from the enforcement of or a default under this Note or in any bankruptcy proceeding of Maker, the non-prevailing party promises to pay all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the proceeding, as provided in the Agreement.

9.3 This Note may be amended only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.4 This Note is governed by and must be construed in accordance with the laws of the State of California, without regard to the choice of law rules of the State.

9.5 Time is of the essence in the performance of any obligations hereunder.

[  
**"MAKER"**

4200 Geary Associates, L.P.  
A California Limited Partnership

By: 4200 Geary LLC  
Its: General Partner

By: Tenderloin Neighborhood Development Corporation ,  
a California nonprofit public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Donald Falk  
Title: Chief Executive Officer



Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:  
City and County of San Francisco  
Mayor's Office of Housing  
and Community Development  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: \_\_\_\_\_  
APN#:  
Address:

-----Space Above This Line for Recorder's Use-----

**DECLARATION OF RESTRICTIONS AND  
AFFORDABLE HOUSING COVENANTS**

4200 Geary Boulevard

**THIS DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING COVENANTS** (this "Declaration") is made as of April \_\_, 2021, by **4200 GEARY ASSOCIATES, L.P.**, A California Limited Partnership ("Borrower"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (the "City").

**RECITALS**

A. The City is making a loan (the "Loan") to Borrower of Affordable Housing Fund Inclusionary Affordable Housing Program funds to finance costs associated with the development of the real property described in **Exhibit A** attached hereto and incorporated herein by reference (the land, the "Property") as low-income affordable housing (the "Project"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and Borrower dated as of the date of this Declaration, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Pursuant to the Agreement, Borrower has agreed to comply with certain affordability covenants and other use and occupancy restrictions set forth in the Agreement (collectively, the "Regulatory Obligations"), commencing on the Agreement Date, and continuing for the Life of the Project (the "Compliance Term"), even if the Loan is repaid or otherwise satisfied or the Deed of Trust is reconveyed.

## AGREEMENT

Now, therefore, in consideration of the City providing the Loan in accordance with the City Documents, Borrower agrees as follows:

1. Borrower will comply with the Regulatory Obligations and this Declaration through the expiration of the Compliance Term, regardless of any reconveyance of the Deed of Trust. Until commencement of construction of the Project, Borrower may use the Site for interim uses with the prior written approval of the City, in its reasonable discretion and will not be unreasonably withheld, delayed, or conditioned. Upon receiving a temporary certificate of occupancy for the Project, specifically, Borrower agrees as follows, subject to additional terms as set forth in the Agreement:

1.1 With the exception of one Unit reserved for the manager of the Project, Units in the Project will at all times be rented only to tenants who qualify as Qualified Tenants at initial occupancy, specifically:

Unit Type	Proposed Number of Units	Max. % MOHCD AMI	Rent or Operating Subsidy
Studio	8	30%	LOSP
1BR	12	30%	LOSP
Studio	15	60%	SOS
1BR	15	60%	SOS
Studio	18	60%	
1 BR	29	60%	
1BR*	1	N/A	Manager's Unit
Total Units Income Average	98		

97 Units must be rented at all times to Qualified Tenants who are Senior Households. 20 Units must be made available to the chronically homeless or those at risk of homelessness during the period in which the City's Local Operating Subsidy program is in operation and the City provides such subsidy to the Project under the LOSP Agreement. 30 Units must be made available to Senior Households with a maximum income of 15% of Median Income during the period in which the City's Senior Operating Subsidy program is available.

If the LOSP is terminated, discontinued or reduced at no fault of Borrower with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that:

(a) Borrower diligently pursues an additional or alternative source of income or subsidy acceptable to the City to replace the rental subsidies.

(b) One hundred percent (100%) of the Units formerly under the LOSP must at all times be occupied by Qualified Tenants whose income does not exceed fifty percent (50%) of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (i) thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for household size, (ii) less utility allowance. The maximum initial occupancy income level restrictions when averaged for all Residential Units in the Project may not exceed sixty percent (60%) of Median Income and subject to any applicable regulatory agreement, restrictive covenant, or other encumbrance. To the extent financially feasible, as mutually determined by the Parties, any such rent increase will be limited to (or will be first implemented with) any vacant units.

1.2 The total amount for rent and utilities (with the maximum allowance for utilities determined by the San Francisco Housing Authority) charged to a Qualified Tenant may not exceed:

(i) thirty percent (30%) of the applicable maximum income level, adjusted for household size; or

(ii) the tenant paid portion of the contract rent as determined by the San Francisco Housing Authority for Qualified Tenants holding Section 8 vouchers or certificates.

1.3 For the avoidance of any doubt, notwithstanding any repayment of the Loan or otherwise satisfied or if the Deed of Trust is reconveyed, Borrower will comply with the applicable terms of the Agreement as if fully set forth herein, including, without limitation, Article 6 (Marketing), Article 7 (Affordability and Other Leasing Restrictions), Article 8 (Maintenance and Management of the Project), Article 9 (Governmental Approvals and Requirements), Article 10 (Project Monitoring, Reports, Books and Records), Article 11 (Use of Income From Operations), Article 12 (Required Reserves), Article 16 (Transfers), Article 17 (Insurance and Bonds; Indemnity), Article 18 (Hazardous Substances), and Article 19 (Default).

2. Borrower hereby subjects the Property to the covenants, reservations and restrictions set forth in this Declaration and the Agreement. This Declaration and the Regulatory Obligations constitute covenants running with the land and bind successors and assigns of Borrower and any non-borrower owner of the Property and will pass to and be binding upon Borrower's successors in title to the Property. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof will conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions in this Declaration, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

3. If Borrower fails to (i) comply with the Regulatory Obligations and this Declaration to the City's satisfaction, in its sole discretion, and (ii) cure such default as set forth in **Section 19.1(c)** of the Agreement, the City will have the right to pursue any available remedy at equity or in law, including as set forth in **Section 19.2** of the Agreement, to enforce this Declaration. During the Compliance Term, the City may rely on the Deed of Trust and/or this Declaration, in the City's discretion, to enforce any of the City's rights under the City Documents. Borrower will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration and Regulatory Obligations, including, without limitation, the City's attorneys' fees and costs.

Borrower has executed this Declaration as of the date first written above.

**"BORROWER"**

4200 Geary Associates, L.P.  
A California Limited Partnership

By: 4200 Geary LLC  
Its: General Partner

By: Tenderloin Neighborhood Development Corporation ,  
a California nonprofit public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Donald Falk  
Title: Chief Executive Officer

[ALL SIGNATURES MUST BE NOTARIZED.]

**EXHIBIT A**

(Legal Description of the Property)

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO,  
COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS  
FOLLOWS:

Street Address:

4200 Geary Boulevard

Free Recording Requested Pursuant to  
Government Code Section 27383

When recorded, mail to:  
Mayor's Office of Housing and Community Development  
of the City and County of San Francisco  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, California 94103  
Attn: \_\_\_\_\_

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**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

(Property Address: 4200 Geary Boulevard)

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** ("Deed of Trust") is made as of April \_\_\_\_, 2021, by **4200 GEARY ASSOCIATES, L.P.**, a California Limited Partnership ("Trustor"), whose address is 201 Eddy Street, San Francisco, California 94111, to **OLD REPUBLIC TITLE COMPANY**, a California corporation ("Trustee"), whose address is 275 Battery Street, San Francisco, California, for the benefit of the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, represented by the Mayor, acting through the Mayor's Office of Housing and Community Development ("Beneficiary"). This Deed of Trust is executed pursuant to a Loan Agreement by and between Trustor and Beneficiary dated \_\_\_\_\_, as it may be amended from time to time (the "Agreement"), the provisions of which are incorporated herein by reference. Definitions and rules of interpretation set forth in the Agreement apply to this Deed of Trust.

1. Grant in Trust. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee, in trust, with power of sale, for the benefit of Beneficiary, all right, title and interest Trustor now has or may have in the future in the following (all or any part of the following, or any interest in all or any part of it, as the context requires, the "Property"):

(a) that real property situated in the City and County of San Francisco, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the "Land"), on which Trustor intends to construct a 98-unit building providing low-income housing for seniors (the "Project"); and

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements"); and

(c) all existing and future leases, subleases, tenancies, subtenancies, licenses, occupancy agreements and concessions, and any guarantees thereof ("Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of the Leases; and

(d) except for personal property and removable fixtures installed by tenants or subtenants, all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which will be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; and

(e) all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; and

(f) all Loan funds, whether disbursed or not, and all funds now or in the future on deposit in the Replacement Reserve Account, the Operating Reserve Account and any other account required or authorized for the Project; and

(g) all proceeds, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements; and

(h) all books and records pertaining to any and all of the property described above, including records relating to tenants under any Leases, the qualifications of any tenants and any certificates, vouchers and other documents in any way related thereto and records relating to the application and allocation of any federal, state or local tax credits or benefits; and

(i) all rents, revenues, issues, royalties, proceeds, profits, income, reimbursements, royalties, receipts and similar items, including prepaid rent and security deposits, in whatever form (including, but not limited to, cash, checks, money orders, credit card receipts or other instruments for the payment of money) paid or payable in connection with the Property ("Rents"), from the Land and the Improvements, subject to: (i) Trustor's

right to collect and retain the same as they become due and payable; and (ii) Beneficiary's rights under **Section 3 below**; and

(j) all intangible personal property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, deposits for utility services, installations, refunds due Trustor, trade names, trademarks, and service marks; and

(k) all proceeds of, interest accrued on, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

2. Obligations Secured. This Deed of Trust is given for the purpose of securing the following (collectively, the "Secured Obligations"):

(a) performance of all present and future obligations of Trustor set forth in the Agreement, specifically compliance with certain restrictions on the use of the Property recited in that certain Declaration of Restrictions executed by Trustor, dated as of the date of and being recorded concurrently with this Deed of Trust, as it may be amended from time to time, the Secured Acquisition Promissory Note dated the date of this Deed of Trust, made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "Acquisition Note"), the Secured Predevelopment Promissory Note dated the date of this Deed of Trust, made by Trustor to the order of Beneficiary (as it may be amended from time to time, the "Predevelopment Note," and together with the Acquisition Note, collectively the "Notes"), and performance of each agreement incorporated by reference, contained therein, or entered into in connection with the Agreement;

(b) payment of the indebtedness evidenced by the Agreement and the Acquisition Note in the original principal amount of Eleven Million Sixty Four Thousand Three Hundred Sixty Nine and No/100 Dollars (\$11,064,369.00), with interest, according to the terms of the Agreement and the Acquisition Note;

(c) payment of the indebtedness evidenced by the Agreement and the Predevelopment Note in the original principal amount of Three Million Four Hundred Seventy Four Thousand Six Hundred Thirteen and No/100 Dollars (\$3,474,613.00), with interest, according to the terms of the Agreement and the Predevelopment Note; and

(d) payment of any additional sums Trustor may borrow or receive from Beneficiary, when evidenced by another note (or any other instrument) reciting that payment is secured by this Deed of Trust.



3. Assignment of Rents.

(a) Assignment as Additional Security. Trustor hereby irrevocably grants, transfers, and assigns to Beneficiary all of its right, title, and interest in and to the Rents as additional security for the Secured Obligations. Subject to the provisions of subsection 3(d) below, Beneficiary hereby confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default exists and is continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Trustor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

(b) Collection and Application of Rents. Subject to the License granted to Trustor under subsection 3(a) above, Beneficiary has the right, power, and authority to collect any and all Rents. Subject to the License granted to Trustor under subsection 3(a) above, Trustor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

1. Demand, receive, and enforce payment of any and all Rents; or
2. Give receipts, releases, and satisfactions for any and all Rents; or
3. Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents.

Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, it may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under this Deed of Trust. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder.

(c) Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property and Improvements, Beneficiary is not and shall not be deemed to be:

1. A "mortgagee in possession" for any purpose; or
2. Responsible for performing any of the obligations of the lessor under any lease; or
3. Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property; or
4. Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

(d) Election by Beneficiary. Upon the occurrence and during the continuance of an Event of Default, Beneficiary, at its option, may exercise its rights under this Section or otherwise provided under applicable law (including, but not limited to, under Section 2938 of the California Civil Code).

4. Trustor's Covenants. To protect the security of this Deed of Trust, Trustor agrees as follows:

(a) to perform the Secured Obligations in accordance with their respective terms;

(b) to keep the Land and the Improvements in good condition and repair, normal wear and tear and acts of God excepted; not to remove or demolish any Improvements without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any Improvement constructed, damaged or destroyed on the Land; to pay when due all claims for labor performed and materials furnished therefor, subject to Trustor's right to contest any claim in good faith; to comply with all laws affecting the Project, subject to Trustor's right to contest any claim in good faith; not to commit or permit waste with respect to the Land or the Improvements; not to commit, suffer or permit any act upon the Land or the Improvements in violation of law, including Environmental Laws; and to do all other acts made reasonably necessary by the character or use of the Land and the Improvements;

(c) to provide, maintain and deliver to Beneficiary property and liability insurance as required under the Agreement and apply any insurance proceeds as provided below;

(d) 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 cost of evidence of title and reasonable attorneys' fees and costs incurred in any such action or proceeding in which Beneficiary or Trustee may appear and in any suit brought by Beneficiary to foreclose this Deed of Trust following an Event of Default;

(e) to pay in accordance with the Agreement, but in each case prior to delinquency: (i) all taxes and assessments affecting the Property, including assessments on appurtenant water stock; and (ii) all encumbrances, charges and liens, with interest, on the Property or any part thereof that appear to be prior or superior hereto;

(f) should Trustor fail to make any payment or to do any act as herein provided, then, without: (i) obligation to do so; (ii) notice to or demand upon Trustor; or (iii) releasing Trustor from any obligation hereof, Beneficiary or Trustee may: (A) make or do the same in any manner and to the extent as it deems necessary to protect the security hereof; (B) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (C) pay, purchase, contest or compromise any encumbrance, charge or lien that in its judgment appears to be prior or superior hereto; and

(D) in exercising these powers, pay necessary expenses, employ counsel and pay reasonable attorneys' fees and costs, and Trustor consents to Beneficiary's and/or Trustee's entry upon the Land and Improvements for any purpose set forth in this Subsection, including Beneficiary's exercise of its rights under California Code of Civil Procedure Section 564(c); and

(g) to reimburse within five (5) days of demand all sums expended by Beneficiary or Trustee pursuant to this Deed of Trust, with interest at an annual rate of interest equal to the lesser of: (i) ten percent (10%); or (ii) the maximum lawful rate from date of expenditure to the date of payment.

5. Security Agreement and Fixture Filing.

(a) Grant of Security Interest. Without limiting any of the other provisions of this Deed of Trust, to secure the payment, performance and observance of the Secured Obligations, Trustor, as debtor (referred to in this Section 5 as "Debtor"), expressly grants to Beneficiary, as secured party (referred to in this Section 5 as "Secured Party"), a continuing security interest in all the Property (including now and hereafter existing) to the full extent that any portion of the Property may be subject to the Uniform Commercial Code. For purposes of this Section 5, "Collateral" means the personal property (tangible or intangible) and fixtures included in the Property.

(b) Debtor's Covenants, Representations, and Warranties.

(i) Debtor covenants and agrees with Secured Party that:

(1) In addition to any other remedies granted in this Deed of Trust to Secured Party or Trustee (including specifically, but not limited to, the right to proceed against the Property in accordance with the rights and remedies in respect of the Property that is real property under the Uniform Commercial Code), Secured Party may, if an Event of Defaults occurs and is continuing, proceed under the Uniform Commercial Code as to all or any part of the Collateral, and shall have and may exercise with respect to the Collateral all the rights, remedies, and powers of a secured party under the Uniform Commercial Code.

(2) Without limiting the foregoing, Secured Party shall have the right upon any public sale or sales, and, to the extent permitted by law, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees to allow Secured Party to use or occupy the Property, without charge, for the purpose of effecting any of Secured Party's remedies in respect of the Collateral.

(3) To the extent permitted by applicable law, Debtor waives all claims, damages, and demands against Secured Party arising out of the repossession, retention, or sale of the Collateral, except for claims, damages, and demands due to the active gross negligence or willful misconduct of Secured Party in dealing with such Collateral. Trustor agrees that Secured Party need not give more than five (5) days' notice of the time and place of any public sale or of the time at which a private sale will take place and that such notice is reasonable notification of such matters. Secured Party may disclaim any warranties that might arise in connection with the sale, lease, license, or other disposition of

the Collateral and have no obligation to provide any warranties at such time. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(4) To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay, or appraisal which it has or may have under any law now existing or hereafter enacted.

(ii) Debtor hereby authorizes Secured Party to file financing and continuation statements with respect to the Collateral as Secured Party may reasonably require.

(iii) Debtor hereby represents and warrants that no financing statement is on file in any public office except as authorized by Secured Party. Debtor will at its own cost and expense, upon demand, furnish to Secured Party such further information and will execute and deliver to Secured Party financing statements and other documents in form reasonably satisfactory to Secured Party and will do all such acts that Secured Party may at any time or from time to time reasonably require to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject only to liens or encumbrances approved by or benefiting Secured Party. Debtor will pay the actual expense of filing or recording such financing statements or other documents, and this instrument, as and where reasonably required by Secured Party.

(iv) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all rents, royalties, issues and profits, and all inventory accounts, accounts receivable and other revenues of the Property.

(c) Fixture Filing. Certain of the Collateral is or will become "fixtures" (as that term is defined in the Uniform Commercial Code). This Deed of Trust, upon being filed for record in the real estate records of San Francisco County, shall operate also as a financing statement and fixture filing upon such of the Collateral that is or may become fixtures under the Uniform Commercial Code. Debtor's name and type and jurisdiction of entity are set forth in the introductory paragraph hereof. Debtor's address is set forth above. Debtor's EIN Number is [REDACTED]. [JG1] Secured Party's name and mailing address are set above.

#### 6. Insurance and Condemnation Proceeds.

(a) Trustor hereby assigns to Beneficiary any award of damages arising from the condemnation of all or any part of the Property for public use and any insurance proceeds arising from injury to all or any part of the Property or the Project.

(b) Any condemnation award or insurance proceeds must be paid to Beneficiary or, if Beneficiary has consented to subordinate the lien of this Deed of Trust to

the lien of another lender for the Project, according to the provisions in the senior lender's loan documents.

(c) If a condemnation award or insurance proceeds are paid to Beneficiary, Beneficiary will release or authorize the release of funds to Trustor, provided that the funds will be used for the reconstruction of the Project in accordance with: (i) projections demonstrating that reconstruction is economically feasible; and (ii) Trustor's construction budget, each of which must be satisfactory to Beneficiary in its reasonable discretion. In all other cases, Beneficiary may choose in its discretion to apply funds to Trustor's obligations under the Notes and the Agreement or to any senior obligations, in accordance with the respective priorities of the approved lienholders as their interests may appear of record, with the remaining funds, if any, released to Trustor.

(d) Trustor agrees that Beneficiary's application or release of funds pursuant to this Section will not cure or waive any default or Notice of Default (as defined below) or invalidate any act by Beneficiary performed following a default pursuant to any City Document unless the default has been cured by the application or release of funds.

7. Further Agreements. Trustor further acknowledges and agrees as follows:

(a) Beneficiary does not waive its right either to require prompt payment when due of all other sums secured by this Deed of Trust or to declare Trustor in default for failure to pay timely by accepting payment of any sum secured hereby after its due date.

(b) Trustee may reconvey any part of the Property at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Notes for endorsement without affecting the liability of any entity or person for payment of the indebtedness secured hereby.

(c) Upon: (i) written request of Beneficiary stating that all obligations secured hereby have been paid or performed; (ii) Beneficiary's surrender of this Deed of Trust and the Notes to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose; and (iii) payment of its fees, if any, Trustee shall reconvey the Property then held hereunder without covenant or warranty.

(d) Any voluntary or involuntary conveyance, sale, encumbrance, pledge or other transfer of all or any interest in the Property or in Trustor, including a security interest, in violation of the Agreement will constitute an Event of Default (as defined below) giving Beneficiary the right to exercise its remedies at law or in equity.

(e) For the purposes of this Deed of Trust, Beneficiary from time to time may substitute a successor or successors to Trustee named herein or acting hereunder by instrument in writing executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of San Francisco County, which instrument shall be conclusive proof of

proper substitution of a successor trustee or trustees. Without conveyance from Trustee, any successor or substitute trustee will succeed to all title, estate, rights, powers, and duties of Trustee. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the recording information for this Deed of Trust and the name and address of the new Trustee.

(f) This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns, provided that this subsection does not constitute Beneficiary's consent to any transfer in violation of this Deed of Trust. The term Beneficiary shall mean the holder of the Notes, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(g) Trustee accepts this Trust when this duly executed and acknowledged Deed of Trust is made a public record as provided 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.

8. Beneficiary's Rights Following Default. Upon any default by Trustor in performance of the Secured Obligations following expiration of any applicable notice and cure periods ("Event of Default"):

(a) Trustor's license to collect and retain Rents will terminate automatically.

(b) Trustor consents to Beneficiary's entry upon and taking possession of the Property or any part thereof, at any time after the occurrence of an Event of Default without notice, either in person, by agent or by a receiver to be appointed by a court without regard to the adequacy of any security for the indebtedness hereby secured to sue for or otherwise collect and apply Rents, less costs and expenses of operation and collection, including those of the Property, in its own name or in the name of Trustor. Beneficiary's collection and application of Rents shall not cure or waive any Event of Default or Notice of Default or invalidate any act done pursuant to any notice.

(c) 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 to be sold the Property ("Notice of Default"), and:

i. Trustee shall cause the Notice of Default to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Notes and all documents evidencing expenditures secured hereby.

ii. After the lapse of time then required by law following the recordation of a Notice of Default, and notice of sale ("Notice of Sale") having been given as then required by law, Trustee without demand on Trustor may sell the Property at the time and place fixed in the Notice of Sale either as a whole or in separate parcels in any order at public auction to the highest bidder for cash in lawful money of the United States payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to any purchaser a trustee's deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the trustee's deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale.

iii. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: (A) all sums expended under the terms of this Deed of Trust not then repaid, with accrued interest at the highest rate allowed by law in effect at the date hereof; (B) all other sums then secured hereby; and (C) the remainder, if any, to the person or persons legally entitled thereto.

9. Notice of Default to Trustor. The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address set forth above or any succeeding address given by notice in accordance with the Agreement.

*Remainder of Page Intentionally Left Blank; Signatures Appear On Following Page*

**"TRUSTOR:"**

4200 Geary Associates, L.P.  
A California Limited Partnership

By: 4200 Geary LLC  
Its: General Partner

By: Tenderloin Neighborhood Development Corporation ,  
a California nonprofit public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Donald Falk  
Title: Chief Executive Officer

ALL SIGNATURES MUST BE NOTARIZE



[ALL SIGNATURES MUST BE NOTARIZED.]

EXHIBIT A  
Legal Description of the Land

THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY  
OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Street Address:  
4200 Geary Boulevard

EXHIBIT A



## GENERAL PLAN REFERRAL

March 5, 2021

**Case No.:** 2020-006779GPR  
**Block/Lot No.:** 1428/017A; 1428/017; 1428/16

**Project Sponsor:** Mayor's Office of Housing and Community Development  
One South Van Ness Avenue  
San Francisco, CA 94103

**Staff Contact:** Celina Chen – (628) 652-7468  
[celina.chan@sfgov.org](mailto:celina.chan@sfgov.org)

**Recommended By:**   
Rich Hillis, Director of Planning

**Recommendation:** Finding the project, on balance, is **in conformity** with the General Plan

### Project Description

The Mayor's Office of Housing and Community Development (MOHCD) is proposing to acquire and demolish an existing underutilized mortuary and parking lot in order to construct a 7-story building with 98 affordable housing units and 1,150 square feet of ground floor commercial space. The project site is located at 4200 Geary Boulevard and consists of 3 parcels. All 98 housing units will be 100% affordable housing for the formerly homeless population and extremely low-income and low-income seniors earning between 15% to 60% of MOHCDAMI. MOHCD anticipates renting the ground floor space at a reduced cost to a community-serving retail business or nonprofit organization.

The City and County of San Francisco will acquire the site from the current owner, 4200 Gear Associates, L.P. an affiliate of the Tenderloin Neighborhood Development Corporation (TNDC). A construction loan closing, the City and County of San Francisco will enter into a ground lease with 4200 Geary Associates, L.P.. The City and County of San Francisco will also provide up to \$35 million to fund construction and development costs. Of this \$35 million, \$25 million will be made up of 2019 General Obligation bond funds.

## Environmental Review

The project is approved under California Senate Bill 35; considered a ministerial approval and is not subject to the California Environmental Quality Act (CEQA).

## General Plan Compliance and Basis for Recommendation

The proposal to acquire and demolish an existing mortuary and parking lot to build 100% affordable housing is in conformity with the General Plan, as described in the body of this Report.

The Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

### HOUSING ELEMENT

#### OBJECTIVE 1

**IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.**

##### Policy 1.1

Plan for the full range of housing needs in the City and County of San Francisco, especially affordable housing.

##### Policy 1.10

Support new housing projects, especially affordable housing, where households can rely on public transportation, walking and bicycling for the majority of daily trips.

*Comment: This project would result in 98 new housing units that will be 100% affordable housing for formerly homeless individuals and extremely low-income and low-income seniors earning between 15% to 60% of MOHCD AMI. The project is located on Geary Boulevard, which is the Muni 38 and 38-R transit corridor, providing convenient access to transit and reducing reliance on automobiles.*

#### OBJECTIVE 4

**FOSTER A HOUSING STOCK THAT MEETS THE NEEDS OF ALL RESIDENTS ACROSS LIFECYCLES.**

##### Policy 4.3

Provide a range of housing options for residents with special needs for housing support and services.

##### Policy 4.5

Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.

##### Policy 4.6

Ensure that new permanently affordable housing is located in all of the city's neighborhoods, and encourage integrated neighborhoods, with a diversity of unit types provided at a range of income levels.

**OBJECTIVE 8**

**BUILD PUBLIC AND PRIVATE SECTOR CAPACITY TO SUPPORT, FACILITATE, PROVIDE AND MAINTAIN AFFORDABLE HOUSING**

**POLICY 8.1**

Support the production and management of permanently affordable housing.

*Comment: the project would provide housing options for different types of households, with a focus on formerly homeless and low-income seniors. By prioritizing these populations for the new housing units, the City is supporting populations that typically face bias in finding suitable housing options.*

**OBJECTIVE 12**

**BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION**

**Policy 12.1**

Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

**Policy 12.2**

Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

*Comment: The project is located in the Geary Boulevard Neighborhood Commercial District, which would provide future tenants access to neighborhood services and retail.*

**COMMERCE & INDUSTRIAL ELEMENT**

**OBJECTIVE 3**

**PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.**

**Policy 3.1**

**Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.**

*Comment: The project would provide employment opportunities for workers of different skill levels and would create between 6-12 full-time jobs related to the management of the property.*

**Planning Code Section 101 Findings**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project—an exchange in property enabling the eventual merger of contiguous City owned parcels—is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The project will not displace or restrict access to any existing neighborhood-serving retail or restrict future opportunities.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The project will enhance the economic diversity of our neighborhoods by producing new affordable housing options geared towards low-income populations.*

3. That the City’s supply of affordable housing be preserved and enhanced;

*The project will directly enhance of the City’s supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed project will not impede Muni transit service, nor overburden our streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The project will not displace any individual businesses.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed project will not hinder earthquake preparedness efforts.*

7. That the landmarks and historic buildings be preserved;

*The project would not have an adverse effect on landmarks or historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The project will not impact parks and open spaces.*

**Recommendation: Finding the project, on balance, is in conformity with the General Plan**



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 210363

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Jonathan Gagen	415-701-5517
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
MYR Mayor's Office of Housing	jonathan.gagen@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> 4200 Geary Associates, L.P.	<b>TELEPHONE NUMBER</b> (415) 776-2151
<b>STREET ADDRESS (including City, State and Zip Code)</b> 201 Eddy Street, San Francisco, CA 94102	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 210363
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$14,538,982		
<b>NATURE OF THE CONTRACT (Please describe)</b> The contract is a resolution approving a loan for acquisition costs and predevelopment activities related to the construction of new affordable housing located at 4200 Geary Boulevard.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	<b>THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM</b>
<input checked="" type="checkbox"/>	<b>A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES</b> Board of Supervisors
<input type="checkbox"/>	<b>THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS</b>



**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Falk	Don	CEO
2	Orlin	Elizabeth	COO
3	Lathouwers	Ron	CFO
4	Blakely	Lisa	Board of Directors
5	Martin	Freddy	Board of Directors
6	Johnson	Susan	Board of Directors
7	Edwards	Tracey	Board of Directors
8	Kroot	Dave	Board of Directors
9	McLean	Jme	Board of Directors
10	wilson	Peter	Board of Directors
11	Barahona	Luis	Board of Directors
12	Bohee	Tiffany	Board of Directors
13	Cervantes	Jim	Board of Directors
14	Cloutier	Mark	Board of Directors
15	Kim	Kenneth	Board of Directors
16	Liu	wylie	Board of Directors
17	Pujals	Fernando	Board of Directors
18	Rock	Kathy	Board of Directors
19	Siswandi	Jennifer	Board of Directors

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Skurdenis	Birute	Board of Directors
21	wolfe	Kathy	Board of Directors
22	Young	Cheryl	Board of Directors
23	Johnson	Jesse James	Board of Directors
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
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**From:** [Peacock, Rebecca \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Kittler, Sophia \(MYR\)](#); [Chan, Amy \(MYR\)](#); [Fregosi, Ian \(BOS\)](#); [Groth, Kelly \(BOS\)](#)  
**Subject:** Mayor -- [Resolution] -- [Loan Agreement – 4200 Geary Associates, L.P. – 100% Affordable Housing at 4200 Geary Boulevard– Not to Exceed \$14,538,982]  
**Date:** Tuesday, April 6, 2021 5:09:23 PM  
**Attachments:** [\(6\) Reso MOHCD 4200 Geary Loan.zip](#)

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Attached for introduction to the Board of Supervisors is a **resolution approving and authorizing the Director of the Mayor’s Office of Housing and Community Development to execute loan documents relating to a loan to provide financing for the acquisition of real property located at 4200 Geary Boulevard, and predevelopment activities for the construction of a 100% affordable multifamily rental housing project consisting of 98 units for senior households and ancillary commercial space, known as 4200 Geary Boulevard, in an aggregate amount not to exceed \$14,538,982; approving the form of the loan agreement and ancillary documents; ratifying and approving any action heretofore taken in connection with the project; granting general authority to City officials to take actions necessary to implement this Resolution; and finding that the loan is consistent the City’s General Plan and the priority policies of Planning Code Section 101.1.**

Please note that Supervisor Connie Chan is a co-sponsor of this legislation.

Please let me know if you have any questions.

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**Rebecca Peacock** ([they/them](#))  
(415) 554-6982 | [Rebecca.Peacock@sfgov.org](mailto:Rebecca.Peacock@sfgov.org)  
Office of Mayor London N. Breed  
City & County of San Francisco