

**DEPOSIT AND REIMBURSEMENT AGREEMENT
(3333 CALIFORNIA STREET/3700 CALIFORNIA STREET EIFD;
3333 CALIFORNIA STREET CFDs)**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT ("**Agreement**"), dated for convenience as of _____ 2024, is by and between the City and County of San Francisco ("**City**"), a charter city and municipal corporation, and Laurel Heights Partners, LLC, a Delaware limited liability company ("**3333 California Street Developer**").

RECITALS:

WHEREAS, the 3333 California Street Developer is proposing a mixed use development ("**3333 California Street Project**") in the City that may include residential, retail, commercial, open space, parking and related uses; and

WHEREAS, the City and the 3333 California Street Developer are parties to a Development Agreement dated for reference purposes as of ___, 2024 related to the 3333 California Street Project, which includes a Financing Plan as an exhibit; capitalized terms used herein but not defined herein have the meanings given them in the Financing Plan; and

WHEREAS, CALIFORNIA 3700, LLC, a Delaware limited liability company ("**3700 California Street Developer**") is proposing a mixed use development in the City ("**3700 California Street Project**"; together with 3333 California Street Project, "**Projects**") that may include residential, retail, commercial, open space, parking and related uses; and

WHEREAS, the 3700 California Street Developer is not a party to a development agreement with the City; and

WHEREAS, as described in the Financing Plan, the 3333 California Street Developer would like the City to establish an enhanced infrastructure financing district ("**EIFD**") under Chapter 2.99 of Part 1 of Division 2 of Title 5 of the California Government Code (as it may be amended from time to time, "**EIFD Law**") that would include the Projects; and

WHEREAS, as described in the Financing Plan, in connection with establishing the EIFD, the 3333 California Street Developer would petition the City to establish a Services CFD that would include the 3333 California Street Project, and may petition the City to establish a Facilities CFD that would include the 3333 California Street Project, in each case under Chapter 43, Article X of the San Francisco Administrative Code (as it may be amended from time to time, "**Code**"), which Code incorporates by reference the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the California Government Code ("**Act**"); and

WHEREAS, the 3333 California Street Developer is willing to advance funds to the City, the EIFD or their agents and consultants as necessary to ensure payment of any and all costs of the City or the EIFD in forming the EIFD, the Services CFD and the Facilities CFD (collectively, "**CFDs**"), provided that (i) with respect to the costs of establishing the EIFD, the City uses good

faith efforts to include any such advances in the infrastructure financing plan for the EIFD (the "IFP") as eligible costs of the EIFD, to the extent permitted by law and (ii) with respect to the Facilities CFD, any advances are reimbursed to the 3333 California Street Developer from the proceeds of any bonds issued by the City for the Facilities CFD to the extent legally permissible; and

WHEREAS, the City and the 3333 California Street Developer do not expect there to be funds from the Services CFD to reimburse the 3333 California Street Developer for the costs in forming the Services CFD; and

WHEREAS, Section 53314.9 of the Act provides that, either before or after formation of a community facilities district, the City may accept advances of funds and may provide, by resolution, for the use of those funds, including but not limited to pay any cost incurred by the local agency in creating the community facilities district, and may agree to reimburse the advances under all of the following conditions: (1) the proposal to repay the advances is included both in the resolution of intention and the resolution of formation to establish the community facilities district; and (2) any proposed special tax is approved by the qualified electors of the community facilities district and, if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election; and

WHEREAS, the City and the 3333 California Street Developer now desire to specify the terms of the advances of funds and reimbursement with respect to the EIFD and the CFDs.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

Section 1. The Advances. The 3333 California Street Developer hereby agrees to provide \$_____, in the form of cash, electronic transfer or a check payable to the City ("**Initial Advance**"); the Initial Advance shall be delivered to the Director of the Office of Public Finance of the City prior to the execution of this Agreement by the City. The City, by its execution hereof, acknowledges receipt of the Initial Advance. The Initial Advance represents costs that the City and the 3333 California Street Developer have concluded are not being funded with other moneys provided by the 3333 California Street Developer.

The 3333 California Street Developer further agrees to advance any additional amounts (collectively with the Initial Advance, "**Advances**") upon the satisfaction of the following conditions: (i) when the balance of the Advances is 10% or less of the Initial Advance, and (ii) the Director of the Office of Public Finance has provided written notice to the 3333 California Street Developer with the request for additional funds along with a proposed budget and scope for the use of the additional funds (which budget and scope shall be for costs anticipated to be imminently incurred). In the event that the 3333 California Street Developer shall fail or refuse to remit any such amounts to or at the direction of the Director of the Office of Public Finance within 45 calendar days following the satisfaction of the foregoing conditions, all processing by the City

of the proceedings for the EIFD or the CFDs or the issuance of bonds for the EIFD or the Facilities CFD, as the case may be, shall cease until such time as the requested amounts are paid by the 3333 California Street Developer.

The costs to be financed by the Advances (herein, "**Initial Costs**") include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the EIFD and the CFDs (such as engineering, legal counsel, including special counsel to the City, financial advisory, special tax consultant and fiscal consultant); (ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in forming the EIFD and the CFDs and issuing bonds for the EIFD and the Facilities CFD; (iii) costs of publication of notices, preparation and mailing of notices and other costs related to any election or hearing with respect to the EIFD and the CFDs, the allocation of property tax revenue by the City to the EIFD, or any bonded indebtedness of the EIFD and the Facilities CFD; (iv) the costs (including attorneys fees) of any action prosecuted in the superior court to validate the formation of the EIFD, the allocation of property tax revenues by the City to the EIFD and/or any EIFD bonded indebtedness; (v) the costs of any actions (including attorneys fees) challenging the formation of the EIFD and the CFDs; (vi) a reasonable charge, as determined by the Director of the Office of Public Finance, in her sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the formation of the EIFD and the CFDs, allocation of property tax revenues by the City to the EIFD, administration of the EIFD, the PFA and the CFDs, facilities acquisition and bond issuance proceedings; and (vii) any and all other actual costs and expenses incurred by the City with respect to the creation of the EIFD and the CFDs or the administration of the PFA, including, but not limited to, the costs of preparing the annual report required by Government Code Section 53398.66(j) and the audits required by Government Code Sections 53398.66(j) and 53398.88. With respect to the PFA-related costs, the costs allocated to the EIFD shall be those costs incurred for activities specifically related to the EIFD or, where the costs do not relate specifically to the EIFD or any other enhanced infrastructure financing districts, shall be proportionately allocated to the EIFD and other enhanced infrastructure financing districts for which the PFA acts as governing board based on the number of enhanced infrastructure financing districts governed by the PFA.

If the 3333 California Street Developer, in good faith, disputes any portion of the additional cost Advances requested by the City (the "**Advance Request Dispute**"), then within forty-five (45) calendar days after receipt of such request the 3333 California Street Developer shall provide the City written notice of the amount disputed and the reason for the dispute. The City and the 3333 California Street Developer may agree, but shall not be required to, meet and confer to resolve the Advance Request Dispute. The City and the 3333 California Street Developer shall use good faith efforts to reconcile the Advance Request Dispute as soon as practicable. If any Advance Request Dispute is not resolved prior to the expiration of the 45-day period, the 3333 California Street Developer shall pay the disputed amounts under protest, and the 3333 California Street Developer and the City shall continue in good faith to resolve the Advance Request Dispute. If the City and the 3333 California Street Developer determine that some or all of the disputed amounts should not have been requested, the City shall promptly return the disputed amounts to the 3333 California Street Developer. If the Advance Request Dispute is not resolved in ninety (90) days following the 3333 California Street Developer notice to the City of the Advance Request Dispute, the 3333 California Street Developer may pursue all remedies at law or in equity to recover the disputed amount.

Section 2. Use of Funds.

(a) Advances Related to the EIFD. Advances related to the EIFD are subject to reimbursement only as follows:

(i) If the EIFD is formed, and the IFP provides for the reimbursement of the Advances related to the EIFD and the PFA, the City shall use good faith efforts to cause the EIFD to pay to the 3333 California Street Developer, without interest, an amount equal to all Advances spent on Initial Costs related to the EIFD and the PFA, said reimbursement to be made solely from the tax increment allocated to the EIFD and the proceeds of any bonds issued by the EIFD and only to the extent otherwise permitted under the EIFD Law.

(ii) If the EIFD is not formed or upon thirty days written notice from an authorized officer of the 3333 California Street Developer as part of a request to abandon the EIFD formation proceedings, the Director of the Office of Public Finance shall return any then unexpended Advances related to the EIFD and the PFA to the 3333 California Street Developer, without interest, less an amount equal to any Initial Costs incurred by the City related to the EIFD and the PFA or that the City is otherwise committed to pay related to the EIFD and the PFA, which costs would be subject to payment under Section 1 above but have not yet been paid by the City, along with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement.

(iii) If the EIFD is formed, but the IFP does not provide for the reimbursement of Advances or bonds are not issued by the EIFD, the Director of the Office of Public Finance shall, within thirty (30) days of such determination, return any then unexpended Advances related to the EIFD and the PFA to the 3333 California Street Developer, without interest, less an amount equal to any Initial Costs related to the EIFD and the PFA incurred by the City or that the City is otherwise committed to pay but have not yet been paid by the City, which costs would be subject to payment under Section 1 above, along with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement.

(b) Advances Related to the Facilities CFD. Pursuant to Section 53314.9 of the Act, Advances related to the Facilities CFD are subject to reimbursement only as follows:

(i) If the Facilities CFD is formed and bonds are issued under the Code by the City secured by special taxes levied upon the land within the Facilities CFD, the City shall provide for reimbursement to the 3333 California Street Developer, without interest, of all Advances related to the Facilities CFD, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Code. On or within thirty (30) days after the date of issuance and delivery of the bonds, the Director of the Office of Public Finance shall return any then unexpended Advances related to the Facilities CFD to the 3333 California

Street Developer, without interest, together with an amount equal to the Advances theretofore expended, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Code.

(ii) If the qualified electors of the Facilities CFD do not approve the proposed special tax to be levied on the property within the Facilities CFD and the issuance of bonds by the City for the Special Tax District, the Director of the Office of Public Finance shall, within thirty (30) days of the confirmation of the election results by the City Council of the City, return any then unexpended Advances related to the Facilities CFD to the 3333 California Street Developer, without interest, less an amount equal to any Initial Costs related to the Facilities CFD which have been incurred or committed, but not yet paid by the City from the Advances, along with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement.

(iii) If the election is successful and the Facilities CFD is formed, but such bonds are not issued, the Director of the Office of Public Finance shall, within thirty (30) days after adoption of the resolution stating the intent of the City to terminate proceedings under the Code with respect to the issuance of bonds for the Facilities CFD, return any then unexpended Advances related to the Facilities CFD to the 3333 California Street Developer, without interest, less an amount equal to any Initial Costs incurred by the City related to the Facilities CFD or that the City is otherwise committed to pay related to the Facilities CFD, which costs would be subject to payment under Section 1 above but have not yet been paid by the City, along with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement.

Section 3. Reimbursement of Other 3333 California Street Developer Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the 3333 California Street Developer incurred in connection with the EIFD or the PFA from the proceeds of such EIFD bonds and tax increment. Any such reimbursement shall be made solely from the proceeds of such EIFD bonds and tax increment and only to the extent otherwise permitted under the EIFD Law and the IFP and otherwise provided for in the proceedings for the formation of the EIFD and the issuance of such EIFD bonds.

In addition, nothing contained herein shall prohibit reimbursement of other costs and expenses of the 3333 California Street Developer incurred in connection with the Facilities CFD from the proceeds of such bonds of the Facilities CFD. Any such reimbursement shall be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Code and otherwise provided for in the proceedings for the formation of the Facilities CFD and the issuance of such bonds.

Section 4. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, which is consistent with Section 53314.9 of the Act with respect to the Facilities CFD. The City shall in no event be liable hereunder other than (i) to reimburse the 3333 California Street Developer in accordance with Section 2

above, (ii) return any unexpended and uncommitted portions of any Advances as provided in Section 2 above, and (iii) provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the establishment of the EIFD or the CFDs or for any of the other purposes listed in Section 1 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. No Obligation to Form EIFD or CFDs. The provisions of this Agreement shall in no way obligate the City to form the EIFD or the CFDs, or to take any action with respect to the EIFD or the CFDs.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Accounting. The City shall use the Advances to pay Initial Costs promptly upon the receipt of invoices from consultants and professionals for Initial Costs, as such invoices shall have been reviewed and approved by the Director of the Office of Public Finance, in consultation with the City Attorney, as necessary. The Director of the Office of Public Finance shall maintain copies of all invoices paid from the Advances in accordance with this Section 7.

The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the expenditure of the Advances. The City shall provide the 3333 California Street Developer with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within thirty (30) days of receipt by the Director of the Office of Public Finance of a written request therefor submitted by an authorized officer of the 3333 California Street Developer. No more than one accounting will be provided in any calendar quarter and the cost of providing the accounting shall be considered an Initial Cost. The process for obtaining and the limitations on receiving an accounting shall not apply to the City's obligation to provide an accounting under Section 2 herein.

Section 8. Indemnification. The 3333 California Street Developer hereby agrees, to the maximum extent permitted by law, to assume the defense of, indemnify and hold harmless the City, the EIFD, and each of their respective members, officers, employees, contractors and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the 3333 California Street Developer or any of its members, officers, employees, or agents in connection with the establishment of the EIFD, the approval of the IFP, the allocation of property tax revenue by the City to the EIFD, and the issuance of any bonds by the EIFD. The City shall promptly notify the 3333 California Street Developer of any such claim, action or proceeding, and the City shall cooperate in the defense of any action against the City or its agents. The obligations of the 3333 California Street Developer under this Section 8 shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City, the EIFD or the PFA, or their respective members, officers, employees or agents.

The 3333 California Street Developer hereby agrees, to the maximum extent permitted by law, to assume the defense of, indemnify and hold harmless the City and each of its respective members, officers, employees, contractors and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of the 3333 California Street Developer or any of its members, officers, employees, or agents in connection with the establishment of the CFDs and the issuance of any bonds by the City for the Facilities CFD. The City shall promptly notify the 3333 California Street Developer of any such claim, action or proceeding, and the City shall cooperate in the defense of any action against the City or its agents. The obligations of the 3333 California Street Developer under this Section 8 shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City or its members, officers, employees or agents.

Section 9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 12. Electronic Signatures.

(a) The parties hereto acknowledge and agree that this Agreement may be executed by one or more electronic means (hereinafter referred to as “**Electronic Signatures**”). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Agreement by such party to all other parties to or relying on this Agreement. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Agreement as signed. Each party agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Agreement as (i) full and sufficient intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Agreement and (iii) constituting this Agreement an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Agreement, each party hereto hereby accepts the terms of, and intends and does sign, this Agreement by its Electronic Signature hereto.

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

3333 CALIFORNIA STREET DEVELOPER:

LAUREL HEIGHTS PARTNERS, LLC,
a Delaware limited liability company

By: _____

Name: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Clerk of the Board of Supervisors