

File No. 230927

Committee Item No. 2

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

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**Committee:** Homelessness and Behavioral Health Select **Date:** September 22, 2023

**Board of Supervisors Meeting:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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- \_\_\_\_\_

**Prepared by:** Stephanie Cabrera

**Date:** September 14, 2023

**Prepared by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Prepared by:** \_\_\_\_\_

**Date:** \_\_\_\_\_

1 [Loan Agreement - 440 Geary LLC - 440 Geary Street - 100% Permanent Supportive Housing  
2 - Loan Not to Exceed \$47,390,000]

3 **Resolution approving and authorizing a Loan Agreement with 440 Geary LLC in an**  
4 **amount not to exceed \$47,390,000 for a minimum loan term of 55 years (“Loan**  
5 **Agreement”)** to provide permanent financing for a 122-unit single-room occupancy  
6 **residential building consisting of 121 units of permanent supportive housing to**  
7 **homeless households, one manager unit, and two ancillary ground floor commercial**  
8 **units (the “Project”) located at 440 Geary Street, adopting findings that the Project and**  
9 **proposed transactions are consistent with the General Plan, and the eight priority**  
10 **policies of Planning Code, Section 101.1; authorizing the Mayor and the Director of**  
11 **Mayor’s Office of Housing and Community Development (“MOHCD”) to execute the**  
12 **Loan Agreement, and make certain modifications to such agreements, as defined**  
13 **herein, and take certain actions in furtherance of this Resolution, as defined herein;**  
14 **and authorizing the Director of MOHCD to enter into any additions, amendments, or**  
15 **other modifications to the Loan Agreement that do not materially increase the**  
16 **obligations or liabilities to the City and are necessary to effectuate the purposes of the**  
17 **Loan Agreement or this Resolution.**

18  
19 WHEREAS, The mission of the Department of Homelessness and Supportive Housing  
20 (‘HSH’) is to prevent homelessness when possible and to make homelessness a rare, brief,  
21 and one-time experience in San Francisco through the provision of coordinated,  
22 compassionate, and high-quality services; and

23 WHEREAS, Permanent supportive housing (“PSH”) is the most effective evidence-  
24 based solution to ending chronic homelessness and also prevents new incidents of  
25 homelessness among highly vulnerable people with long experiences of homelessness; and

1           WHEREAS, As of July 2020, the City had approximately 8,000 units of PSH under its  
2 control to provide permanent homes and services to approximately 10,000 San Franciscans,  
3 and had the goal of adding 1,500 additional units of such housing over the following two years  
4 as part of the Mayor’s Homelessness Recovery Plan; and

5           WHEREAS, As of December 31, 2022, the City had more than doubled this goal with  
6 3,081 units of site-based and scattered site PSH that were active or under contract with a  
7 non-profit provider since July 2020; and

8           WHEREAS, In April 2023, the City released the five-year strategic plan “Home by the  
9 Bay: An Equity-Driven Plan to Prevent and End Homelessness in San Francisco,” which calls  
10 for 3,250 new units of permanent housing to meet the goals set out in the plan; and

11           WHEREAS, Additional PSH furthers the City’s commitment to dismantle systematic  
12 racial inequities that disproportionately affect communities of color; and

13           WHEREAS, The California Department of Housing and Community Development  
14 (“HCD”) began accepting applications for Homekey on July 22, 2020, and within a year,  
15 created 6,000 affordable housing units in record time and at a fraction of the cost; and

16           WHEREAS, The City and County of San Francisco (“City”) acting through HSH,  
17 together with Episcopal Community Services, a nonprofit corporation (“ECS”), as its co-  
18 applicant, was awarded \$26,000,000 in Homekey funds from HCD in October 2020 to  
19 purchase a tourist hotel known as Hotel Diva at 440 Geary Street (Assessor’s Parcel Block  
20 No. 0306, Lot No. 007, the “Property”) for use as permanent supportive housing for formerly  
21 homeless adults; and

22           WHEREAS, Pursuant to Resolution No. 527-20, in November 2020, the Board of  
23 Supervisors authorized the Director of HSH, in consultation with the City Attorney, to enter  
24 into, execute and deliver Standard Agreement No. 20-HK-00050 with HCD and ECS, a copy  
25

1 of which is on file with the Clerk of the Board of Supervisors in File No. 230927 (“Standard  
2 Agreement”), that enabled ECS to purchase the Property; and

3 WHEREAS, Pursuant to Resolution No. 527-20, the Board also affirmed the Planning  
4 Department’s determination that actions contemplated by this Resolution are not subject to or  
5 are exempt from environmental review under CEQA, and a copy of these determinations are  
6 on file with the Clerk of the Board of Supervisors in File No. 201193 and are incorporated  
7 herein by reference; and

8 WHEREAS, The Standard Agreement required a local match from the City in an  
9 amount no less than \$27,473,340 for permanent financing of the Property to be provided to  
10 ECS under one or more future agreements with the City, which was granted through  
11 Resolution No. 527-20; and

12 WHEREAS, ECS established 440 Geary LLC, a California limited liability company (the  
13 “Borrower”), as a separate entity under which to own and rehabilitate the Property; and

14 WHEREAS, The Borrower has rehabilitated the Property into a 122-unit single-room  
15 occupancy residential building consisting of 121 units of PSH for adults experiencing chronic  
16 formerly homeless households, one manager unit, and two ancillary ground floor commercial  
17 spaces (the “Project”); and

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

23 WHEREAS, MOHCD enters into loan agreements with affordable housing developers  
24 and operators; administers loan agreements; reviews annual audits and monitoring reports;

1 monitors compliance with affordable housing requirements in accordance with capital funding  
2 regulatory agreements; and if necessary, takes appropriate action to enforce compliance; and

3 WHEREAS, On August 25, 2023, the Citywide Affordable Housing Loan Committee,  
4 consisting of MOHCD, HSH, the Office of Community Investment and Infrastructure, and the  
5 Controller’s Office of Public Finance recommended approval to the Mayor of a loan to the  
6 Borrower for refinancing the Project in an amount not to exceed \$47,390,000 in local funds  
7 (the “Loan”); and

8 WHEREAS, The City, through MOHCD, will make the Loan to the Borrower under a  
9 Loan Agreement and evidenced by a promissory note with the following material terms: (i) a  
10 minimum term of 55 years; (ii) an interest rate of zero percent (0%); (iii) annual repayment of  
11 the Loan by Borrower through residual receipts, if any, from the Project; (iv) the Project shall  
12 be restricted for life of the Project as affordable housing to low-income households with  
13 annual maximum rent and income established by MOHCD, but no less than 55 years as PSH;  
14 and (v) the Loan Agreement shall be secured by a deed of trust recorded against the  
15 Borrower’s fee interest in the Property; a copy of the substantially final forms of the Loan  
16 Agreement, promissory note, deed of trust, and declaration of restrictions is on file with the  
17 Clerk of the Board of Supervisors in File No. 230927, and is incorporated herein by reference;  
18 and

19 WHEREAS, As a condition of the Loan, the Borrower will enter into a purchase option  
20 agreement under terms and conditions to have been reviewed in consultation with the Office  
21 of the City Attorney, providing the City with an option and right of first refusal to acquire the  
22 Property upon any proposed transfer of the Property and/or other certain events; and

23 WHEREAS, The Planning Department determined that the Project is consistent with  
24 the General Plan, and eight priority policies of Planning Code, Section 101.1 (the “General  
25 Plan Referral”); a copy of the Planning Department’s General Plan Referral dated August 30,

1 2023 (“General Plan Referral”), is on file with the Clerk of the Board of Supervisors in File No.  
2 230927, and is incorporated herein by reference; now, therefore, be it

3 RESOLVED, That the Board of Supervisors hereby finds that the Project (and  
4 associated actions necessary to effectuate the Project) is consistent with the General Plan,  
5 and with the eight priority policies of Planning Code, Section 101.1, for the same reasons as  
6 set forth in the General Plan Referral, and hereby incorporates such findings by reference as  
7 though fully set forth in this Resolution; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Loan  
9 Agreement and the transaction contemplated thereby in substantially the form presented to  
10 the Board, and authorizes the Mayor and the Director of MOHCD, to execute and deliver the  
11 Loan Agreement and any such other documents that are necessary or advisable to complete  
12 the transaction contemplated by the Loan Agreement and to effectuate the purpose and intent  
13 of this Resolution; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
15 MOHCD, in consultation with the City Attorney, to enter into any additions, amendments, or  
16 other modifications to the Loan Agreement, and any other documents or instruments  
17 necessary in connection therewith (including, without limitation, a purchase option and any of  
18 all of the exhibits and ancillary agreements), that the Director of MOHCD determine are in the  
19 best interests of the City, do not materially decrease the benefits to the City with respect to the  
20 Property, do not materially increase the obligations or liabilities of the City, and are necessary  
21 or advisable to complete the transaction contemplated in the Loan Agreement, and that  
22 effectuate the purpose and intent of this Resolution, such determination to be conclusively  
23 evidenced by the execution and delivery by the Director of MOHCD of any such additions,  
24 amendments, or other modifications; and, be it

1           FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and  
2 delegates to the Director of MOHCD and/or the Director of Property, the authority to  
3 undertake any actions necessary to protect the City’s financial security in the Property and  
4 enforce the affordable housing restrictions, which may include, without limitation, acquisition  
5 of the Property upon foreclosure and sale at a trustee sale, acceptance of a deed in lieu of  
6 foreclosure, or curing the default under a senior loan; and, be it

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

10           FURTHER RESOLVED, That within thirty (30) days of the Loan Agreement being fully  
11 executed by all parties, MOHCD shall provide the final agreements to the Clerk of the Board  
12 for inclusion into the official file.

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RECOMMENDED:

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

/s/  
Shireen McSpadden  
Executive Director  
Homelessness and Supportive Housing



<b>Item 2</b> <b>File 23-0927</b>	<b>Department:</b> Mayor’s Office of Housing and Community Development, Homelessness & Supportive Housing
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve a not-to-exceed \$47,390,000 loan agreement for a term of 55 years between the City and 440 Geary LLC to provide permanent financing for permanent supportive housing.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• Hotel Diva, located at 440 Geary Street, was one of the City’s first Homekey projects. The City and co-applicant, Episcopal Community Services (ECS), received an award of \$26 million in Homekey funds to acquire the property. In November 2020, the Board of Supervisors approved a Standard Agreement with the California Department of Housing and Community Development (HCD) for the Homekey grant and approved \$27,473,340 in matching City funds to acquire the site.</li> <li>• In December 2020, ECS privately acquired Hotel Diva for \$50 million, using Homekey funds and \$32.0 million in bridge financing from the San Francisco Housing Accelerator Fund (HAF), pending receipt of permanent financing from the City. In December 2021, HSH and MOHCD committed to an increase of \$15,386,810 to the HAF loan for a total loan of \$47,386,810 to add seismic strengthening to the rehabilitation scope of work.</li> <li>• The Hotel Diva includes 121 units of permanent supportive housing for single adults experiencing homelessness.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Total development costs are \$73.4 million or \$601,531 per unit. The City’s total subsidy for the housing development costs is \$47.4 million, or \$388,416 per unit. Remaining costs of \$26.0 million are funded by the Homekey grant.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• Total costs for acquisition and rehabilitation and the City’s subsidy to the project are \$20 million greater than what was estimated in November 2020 when the Board of Supervisors approved execution of the Standard Agreement for Homekey funding due in part to less due diligence than what is typical for City funded affordable housing projects due to the short timeline of the acquisition under Homekey.</li> <li>• HSH’s commitment to repay the initial \$32.0 million bridge loan from the HAF did not require Board of Supervisors’ approval. Similarly, HSH’s commitment to repay a \$15.4 million increase in the loan after the property was already acquired did not require approval.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</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

### 440 Geary Street

Hotel Diva, located at 440 Geary Street, was one of the City's first Homekey projects. The City and co-applicant, Episcopal Community Services (ECS), received an award of \$26 million in Homekey funds to acquire the property. In November 2020, the Board of Supervisors approved a Standard Agreement with the California Department of Housing and Community Development (HCD) for the Homekey grant and approved \$27,473,340 in matching City funds to acquire and subsidize operations for five years (File 20-1193). In December 2020, ECS privately acquired Hotel Diva for \$50 million, using Homekey funds and bridge financing from the San Francisco Housing Accelerator Fund (HAF), pending receipt of permanent financing from the City.<sup>1</sup>

The Hotel Diva includes 121 units of permanent supportive housing (110 single room occupancy units and 11 one-bedroom units) for single adults experiencing homelessness with incomes at or below 50 percent of the Mayor's Office of Housing and Community Development (MOHCD) Annual Median Income (AMI), and one staff unit. The building's ground floor has two commercial spaces, one of which is occupied by Starbucks with a lease renewal in 2027 and the other is vacant. ECS plans to use the vacant space to expand a workforce development program.

### Vendor Selection

ECS was selected as one of the providers under the June 2020 Request for Qualifications (RFQ)<sup>2</sup> to solicit bids to provide services at Shelter-in-Place Sites. Upon release of the Homekey Program NOFA, HSH issued a Request for Information (RFI) to identify properties that were available for acquisition and could be used as a permanent supportive housing site. ECS, in partnership with the Hotel Diva, was determined to be the only qualified RFI respondent to possess experience in running a Shelter-in-Place site as well as with affordable housing acquisition and development. ECS also acquired the Granada in partnership with HSH for the first round of Homekey funds. In subsequent Homekey funding competitions, HSH, the Mayor's Office, and the Real Estate Division

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<sup>1</sup> The HAF is a non-profit organization that provides bridge financing for preservation projects after MOHCD provides a soft commitment letter indicating that the City intends to repay the bridge loan.

<sup>2</sup> The RFQ established that in the event the City has the opportunity to convert these sites into more permanent settings or secure additional permanent sites, applicants may have the opportunity to qualify to provide ongoing services such as property management or support services.

have coordinated to directly acquire sites, rather than partnering with a non-profit organization, due to the fast pace and competition for Homekey funds according to HSH staff.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would:

1. approve a not-to-exceed \$47,390,000 loan agreement for a term of 55 years between the City and 440 Geary LLC to provide permanent financing for permanent supportive housing;
2. find that the loan is consistent with the City's General Plan and policy priorities in the Planning Code;
3. authorize the Mayor and the Director of MOHCD to execute the Loan Agreement; and
4. authorize the Director of MOHCD to amend the Loan Agreement provided amendments do not increase the obligations or liabilities to the City.

### Rehabilitation and Conversion to Permanent Financing

The initial City commitment of \$27,473,340 in matching funds for the project included \$3.5 million for rehabilitation to perform minor upgrades to conform with code requirements, anchoring of the façade, and creation of program space. A structural engineer recommended completing larger life safety upgrades during a second phase within five years of building purchase, but the full scope of seismic needs were not yet known. A subsequent Capital Needs Assessment identified \$713,200 in immediate and short-term improvement costs, including \$200,000 for plumbing repair of water supply and drains, \$175,000 for elevator repairs, \$175,000 for accessibility upgrades, and \$163,200 for smaller upgrades (improvements to windows, stairs, and basement, and electrical and seismic work).

The HAF's initial loan for acquisition and rehabilitation was \$32.0 million. In December 2021, HSH and MOHCD committed to an increase of \$15,386,810 to the HAF loan for a total loan of \$47,386,810 to add seismic strengthening to the rehabilitation scope of work. This funded higher than anticipated costs for seismic upgrades and allowed rehabilitation to occur in one phase instead of two to reduce costs.

The scope of the completed rehabilitation included:

- structural strengthening (steel soft-story upgrade and bracing on upper floors);
- life safety upgrades, including a new electric fire pump, installation of an emergency radio response system, and elevator improvements;
- conversion of eight original hotel units for other uses, including three units converted for office space for supportive services and property management and five units converted into lounges with warming stations to heat and prepare food since the units do not have kitchens;
- floor and wall finish upgrades for 122 remaining residential units; and
- accessibility upgrades for seven units.

Rehabilitation work began in January 2022 and was completed in August 2023. The project is requesting permanent financing from the City to pay off the HAF bridge loan, which expires on September 30, 2023. The HAF was responsible for monitoring during rehabilitation because the HAF funded rehabilitation.

#### *Selection of General Contractor*

According to MOHCD staff, ECS selected the general contractor based on qualification and experience. The general contractor has experience with rehabilitation projects that were occupied as well as experience on several of the City's past Rental Demonstration Program (RAD) sites to rehabilitate previous San Francisco Housing Authority sites. Because the HAF funded rehabilitation, typical City procurement processes, such as issuing a request for proposals or checking conflicts of interest, were not required.

#### **Loan Agreement**

Under the proposed loan agreement, the total loan amount to 440 Geary LLC would be \$47,386,810. 440 Geary LLC must repay the zero-interest loan by the 55<sup>th</sup> anniversary date of the deed of trust.

The Standard Agreement with HCD for the Homekey award requires ongoing affordability of the project for at least 55 years. Affordability restrictions to preserve the affordability of the housing units in the proposed development are included in the loan agreement between the City and the permanent supportive housing operator and a declaration of restrictions. These agreements specify the affordability levels for each unit and require the operator to maintain these for the duration of the agreements unless agreed to by the City.

MOHCD is underwriting the project and will be responsible for asset monitoring because the site is owned by a non-profit, and HSH only manages sites that it owns.

#### **Option to Purchase**

MOHCD does not require City ownership for affordable housing preservation projects because non-profit developers must move quickly to purchase buildings in the private market. Instead MOHCD places long-term affordability restrictions on the property, and for some projects has agreed to purchase options with the non-profit to provide the City with the right of first refusal in the event the property should be sold at a future date. The City and ECS have agreed to a purchase option agreement for Hotel Diva, providing the City with an option and right of first refusal to acquire the property upon any proposed transfer. MOHCD staff report that the purchase option agreement is substantially complete but not yet finalized.

If ECS could no longer operate the site and the City were to exercise its option to purchase, the City must pay fair market value of the property. The City would receive credit for any outstanding balance of the MOHCD loan as part of the negotiation with the seller on the price. MOHCD staff report that the appraised value of a property with affordability restrictions is normally less than the principal amount of the MOHCD loan. City purchase of the property would require approval by the Board of Supervisors.

### Sponsor Performance

According to HSH staff, HSH did not complete program monitoring for Hotel Diva in FY 2021-22 because the program was new and still in the lease-up period. The program manager visited the site on September 12, 2023 for the annual FY 2022-23 monitoring, and HSH anticipates that program monitoring will be completed by later this fall. In addition, results from the City's fiscal and compliance monitoring of ECS in June 2023 identified no findings.

### FISCAL IMPACT

#### Total Development Costs

The total development cost for the 122 units of housing is \$73.4 million, as shown in Exhibit 1 below. Of the approximate \$73.4 million, \$47.4 million (64.6%) are City funds and \$26.0 million (35.4%) are State funds from the HCD Homekey Grant. The proposed City loan would be funded by the Our City, Our Home Fund from Proposition C Gross Receipts Tax Revenues.

#### Exhibit 1: Total Development Sources and Uses of Funds

	City	State	Total
<b>Sources</b>			
MOHCD Loans	\$47,386,810		\$47,386,810
HCD Homekey Grant		26,000,000	26,000,000
<b>Total Sources</b>	<b>\$47,386,810</b>	<b>\$26,000,000</b>	<b>\$73,386,810</b>
<b>Uses</b>			
Acquisition	24,000,000	26,000,000	50,000,000
Hard Costs	13,901,186		13,901,186
Soft Costs	7,960,424		7,960,424
Reserves	525,000		525,000
Developer Fees	1,000,000		1,000,000
<b>Total Uses</b>	<b>\$47,386,610</b>	<b>\$26,000,000</b>	<b>\$73,386,610</b>

Source: MOHCD

#### The City's Subsidy per Housing Unit

Total development costs are \$73.4 million or \$601,531 per unit. The City's total subsidy for the housing development costs is \$47.4 million, or \$388,416 per unit, as shown in Exhibit 2 below.

**Exhibit 2: City Subsidy for Affordable Housing Units**

Number of Units	122
Total residential area (sq. ft.)	49,326
Development Cost	\$73,386,810
Total City subsidy	\$47,386,810
Development cost per unit	\$601,531
City Subsidy per unit	\$388,416
City Subsidy per sq. ft.	\$961

Source: MOHCD

According to the August 2023 MOHCD loan evaluation memo for the proposed loan, the City's per unit subsidy is high relative to other City affordable housing projects because Homekey funds are the only other available funding source. However, the City subsidy per unit is 34 percent higher than the average subsidy for other HSH acquisitions that have received Homekey funds to date due to higher than average rehabilitation costs per unit, as shown in Exhibit 3 below.

**Exhibit 3: Comparison to Other HSH Acquisitions**

Name	Units	Acquisition Cost per Unit <sup>a</sup>	Rehabilitation Cost per Unit	Total Cost per Unit	City Cost per Unit
Hotel Diva	122	\$409,836	\$191,694	\$601,530	\$388,415
Other Projects Average	112	397,858	77,538	475,396	256,675 <sup>c</sup>
The Granada	232	198,276	290,774	489,050	306,576
The Margot	160	541,706	0	541,706	252,394
Eula Hotel	25	228,600	60,000	288,600	58,069
Mission Inn	52	333,462	106,250	439,712	172,885
City Gardens	200	737,700	0	737,700	493,450
835 Turk Street*	114	225,450	79,493 <sup>b</sup>	304,943	304,943 up to
681-687 Ellis *	74	269,459	83,784 <sup>b</sup>	353,243	353,243 up to
1174 Folsom*	42	648,214	0	648,214	648,214 up to
42 Otis*	24	593,333	0	593,333	593,333

Source: HSH

\*Projects have not received Homekey awards as of September 2023; City cost per unit are pending homekey awards for these projects. No application has been submitted for 835 Turk Street;

<sup>a</sup> Excludes Phase II rehabilitation work for both projects, including seismic rehabilitation, estimated at \$43 million total for both sites;

<sup>b</sup> Excludes Phase II rehabilitation work for both projects, including seismic rehabilitation, estimated at \$43 million total for both sites;

<sup>c</sup> Average city cost per unit calculated based on five projects with Homekey awards and excludes the other four projects.

## Operating Revenues and Expenses

According to the 20-year cash flow analysis for the Hotel Diva, the project's revenues together with commercial revenues are just sufficient to cover operating expenses, replacement reserves, and management fees, with commercial revenues subsidizing the project. Project revenues consist of tenant rents and rental subsidies from the City's Local Operating Subsidy (LOSP) program. Commercial revenues are assumed over the 20-year period for the space currently occupied by Starbucks, which is eligible for lease renewal in 2027, with assumed 2.5 percent annual increases. The other commercial space, which is currently vacant, is anticipated to generate annual rental revenue of \$1 starting in 2026. The project is not expected to make any residual receipts payments on the MOHCD loan, as the project is projected to have zero net income.

## POLICY CONSIDERATION

### **\$20 Million Increase in City Subsidy**

Total costs for acquisition and rehabilitation and the City's subsidy to the project are \$20 million greater than what was estimated in November 2020 when the Board of Supervisors approved execution of the Standard Agreement for Homekey funding due in part to less due diligence than what is typical for City funded affordable housing projects to meet the short timeline of the acquisition under Homekey, as discussed below. We recommend approval because the rehabilitation work has been done and interest is accruing to the HAF loan of \$47.4 million. Failure to approve the loan would put the property at risk of foreclosure and put the housing of residents in jeopardy.

### **Due Diligence for Acquisitions for Permanent Supportive Housing**

According to the August 2023 MOHCD loan evaluation memo for the proposed loan, the project had less due diligence than what is typical for City funded affordable housing projects due to the short timeline of the acquisition under Homekey.<sup>3</sup> HSH staff report that MOHCD's construction management team provided expertise and oversight for the Granada but not for Hotel Diva. The Department of Public Works (Public Works) has not assisted with due diligence for these acquisitions because Public Works either did not have the expertise or could not assist within Homekey deadlines.

In February 2022, HSH entered into a contract with the San Francisco Housing Accelerator Fund to provide affordable housing consultants with experience in overseeing occupied residential rehabilitations and the City's multi-unit residential housing to conduct due diligence on all acquisitions. According to the First Amendment to the agreement, the HAF will provide initial feasibility assessment, coordination of third-party consultants, evaluation of program requirements, and closing due diligence and financial modeling. If the City enters into a letter of

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<sup>3</sup> The 2020 Homekey Round 1 Notice of Funding Availability was issued on July 16, 2020 and accepted applications on a rolling basis. The expenditure deadline was December 30, 2020.

intent for acquisition, the contractor will provide a due diligence report, including but not limited to physical needs assessment and estimate of probable costs.

### **Commitment of City Funding to Repay Bridge Loans Prior to Board Approval**

Because the process of securing and closing on purchasing a building needs to move quickly due to industry conditions many affordable housing preservation projects utilize bridge financing to close on a project before permanent City funding is available. The Housing Accelerator Fund is the most common lender for City acquisition and preservation projects and provided bridge financing to the Hotel Diva project. This model assisted with meeting the deadlines of the Homekey grant. The City repays bridge loans at permanent conversion, which may occur after rehabilitation work has been completed. If the loan exceeds \$10 million, the City's permanent loan must be approved by the Affordable Housing Loan Committee and the Board of Supervisors.<sup>4</sup>

HSH's commitment to repay the initial \$32.0 million bridge loan from the HAF did not require Board of Supervisors' approval. Similarly, HSH's commitment to repay a \$15.4 million increase in the loan after the property was already acquired did not require a approval. Historically, the HAF has assisted mostly with acquisitions of small sites, often with loans that fall below the \$10 million threshold for Board of Supervisors' approval. However, the City is now funding preservation projects for larger sites that cost more. In addition, HAF-funded rehabilitation does not require typical City procurement processes for selection of contractors, such as issuing a request for proposals or checking conflicts of interest, as mentioned above. The Board of Supervisors could consider amending Chapter 120 of the Administrative Code to place limits on commitments to repay bridge financing prior to Board of Supervisors' approval, such as specifying that soft commitments of City funding in excess of a certain threshold require Board of Supervisors' approval and/or that bridge financing may be used to fund acquisition and predevelopment for larger preservation projects, but not for rehabilitation to provide for review by the Board of Supervisors earlier in the process and ensure that rehabilitation adheres to City procurement processes for larger projects.

## **RECOMMENDATION**

Approve the proposed resolution.

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<sup>4</sup> Chapter 120 of the City's Administrative Code delegates the authority to approve loans and grants that do not exceed \$10 million for multifamily housing development and acquisition programs to the MOHCD Director.





## 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 #: 230927

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>
Sophie Rubin	628-652-5854
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
MYR Mayor's Office of Housing and Comm. Dev	sophie.rubin@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> 440 Geary LLC	<b>TELEPHONE NUMBER</b> 415-487-3300 x1209
<b>STREET ADDRESS (including City, State and Zip Code)</b> 165 Eighth St, San Francisco, CA 94103	<b>EMAIL</b> mleung@ecs-sf.org

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> 230927
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$47,386,810		
<b>NATURE OF THE CONTRACT (Please describe)</b> Permanent Loan to take out HAF acquisition and rehabilitation loan for the Hotel Diva. The loan was used to purchase the Hotel, renovate it, and make it suitable for permanent Homeless Housing.		

7. COMMENTS
Episcopal Community Services (ECS) is the manager and sole member of the 440 Geary LLC which owns the Hotel Diva.

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

**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	Andrus	Marc	Board of Directors
2	Bond	Doug	Board of Directors
3	Clayter	Todd	Board of Directors
4	Geeslin	Keith	Board of Directors
5	Ho	Heidi	Board of Directors
6	Jones	Martin	Board of Directors
7	Ktcham	Susan	Board of Directors
8	Martinez	Alejandro	Board of Directors
9	McTiernan	Megan	Board of Directors
10	Metoyer	Eric	Board of Directors
11	Rodriguez	Jonathan	Board of Directors
12	Shah	Tajel	Board of Directors
13	Silveira	Dara	Board of Directors
14	Singer	Susanna	Board of Directors
15	Solomon	Barbara	Board of Directors
16	Springwater	Richard	Board of Directors
17	Stokes	Beth	CEO
18	Tatsuno	Yvonne	Board of Directors
19	Zaidi	S. Hassan	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	Larra	Eric	CFO
21	Flores	Mauricio	COO
22	callandrillo	Chris	other Principal Officer
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

**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			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

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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**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

20-HK-00050

PURCHASING AUTHORITY NUMBER (If Applicable)

2240

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTOR NAME

City and County of San Francisco; Episcopal Community Services of San Francisco

2. The term of this Agreement is:

START DATE

Upon approval by HCD

THROUGH END DATE

5 years from the effective date

3. The maximum amount of this Agreement is:

\$26,000,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages	
Exhibit A	Authority, Purpose and Scope of Work	5	
Exhibit B	Budget Detail and Payment Provisions	3	
Exhibit C *	State of California General Terms and Conditions	GTC -04/2017	
+ -	Exhibit D	Homekey General Terms and Conditions	13
+ -	Exhibit E	Project-Specific Provisions and Special Terms and Conditions	5

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

See attached

CONTRACTOR BUSINESS ADDRESS

See attached

CITY

See attached

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

See attached

TITLE

See attached

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

See attached

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER <b>20-HK-00050</b>	PURCHASING AUTHORITY NUMBER (If Applicable) <b>2240</b>
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Housing and Community Development

CONTRACTING AGENCY ADDRESS

2020 W. El Camino Ave, Suite 130

CITY

Sacramento

STATE

CA

ZIP

95833

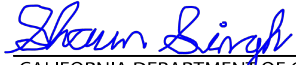
PRINTED NAME OF PERSON SIGNING

**Shaun Singh**

TITLE

Contracts Manager  
Business & Contracts Services Branch

CONTRACTING AGENCY AUTHORIZED SIGNATURE



DATE SIGNED

**11/23/2020**

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per: SCM Vol. 1 4.04.A.3 (DGS memo dated 6/12/1981)

CONTRACTOR

---

**City and County of San Francisco,**  
a municipal corporation

By:   
Abigail Stewart-Kahn, Interim Director  
Department of Homelessness and Supportive Housing

Date: 11/23/2020

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

*Virginia Dario Elizondo*

By: Deputy City Attorney

Address:  
440 Turk Street  
San Francisco, CA 94102

---

**Episcopal Community Services of San Francisco,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Mary Elizabeth Stokes  
Executive Director

Date: \_\_\_\_\_

Address:  
165 Eighth Street  
San Francisco, CA 94103



**CONTRACTOR**

---

**City and County of San Francisco,**  
a municipal corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Abigail Stewart-Kahn, Interim Director  
Department of Homelessness and Supportive Housing

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

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

Address:  
440 Turk Street  
San Francisco, CA 94102

---

**Episcopal Community Services of San Francisco,**  
a California nonprofit public benefit corporation

By: Mary Elizabeth Stokes  
Mary Elizabeth Stokes  
Executive Director

Date: 11/23/2020

Address:  
165 Eighth Street  
San Francisco, CA 94103

**EXHIBIT A**

**AUTHORITY, PURPOSE AND SCOPE OF WORK**

**1. Authority**

Assembly Bill No. 83 (2019-2020 Reg. Sess.) added section 50675.1.1 and 50675.1.2 to the Multifamily Housing Program (“MHP”) (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code). Health and Safety Code section 50675.1.1 is the statutory basis for the Homekey Program (“Homekey” or “Program”). Health and Safety Code section 50675.1, subdivision (d) authorizes the Department of Housing and Community Development (“Department” or “HCD”) to administer MHP.

The Department issued a Notice of Funding Availability (“NOFA”) for the Homekey Program on July 16, 2020. The NOFA incorporates by reference the MHP, as well as the MHP Final Guidelines (“MHP Guidelines”), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from Coronavirus Relief Fund (“CRF”) money received from the U.S. Department of the Treasury. The CRF was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136).

This STD 213, Standard Agreement (“Agreement”) is entered under the authority and in furtherance of the Program. This Agreement is the result of an Application by the Sponsor, as defined below, for funding under the Program (the “Grant”). As such, this Agreement shall be executed by the Sponsor. Where the Sponsor comprises a Local Public Entity (as defined below) and a private entity, both entities shall execute the Standard Agreement.

This Agreement hereby incorporates by reference the Application in its entirety. This Agreement is governed by the following (collectively, the “Program Requirements”) and each of the following is incorporated hereto as if set forth in full herein:

- A. The above-referenced MHP statutory scheme;
- B. The NOFA issued on July 16, 2020, and as may be subsequently amended;
- C. The MHP Guidelines;
- D. The CARES Act and related federal guidance;
- E. The award letter issued by the Department to the Sponsor; and
- F. Any and all other applicable law.

## EXHIBIT A

### 2. Purpose

The Homekey Program is intended to provide housing for individuals and families who are experiencing homelessness or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are impacted by the COVID-19 pandemic (“Target Population”).

Sponsor applied to the Department for the Grant in order to conduct one or more of the activities outlined in Paragraph 4 below. By entering into this Agreement and thereby accepting the award of Program Grant funds, the Sponsor agrees to comply with the Program Requirements and the terms and conditions of this Agreement.

### 3. Definitions

Any capitalized terms that are not defined below shall have the definitions set forth in the NOFA, the MHP statutes, and the MHP Guidelines. In the event of any conflict, the definitions in this Agreement and the NOFA are controlling.

- A. **“Application”** means the application for Grant funds that was submitted in response to the Department’s Homekey Program 2020 Notice of Funding Availability, issued on July 16, 2020.
- B. **“CRF Covered Period”** means the time period running from **March 1, 2020 through December 30, 2020**. All Grant expenses for CRF-funded Eligible Uses must be incurred during this time period, or they will not be reimbursed. CRF-funded Eligible Uses are those listed at Paragraph 4.A – F, below.
- C. **“CRF Expenditure Deadline”** means **December 30, 2020**. All Grant expenses for CRF-funded Eligible Uses must be incurred on or before this date, or they will not be reimbursed. CRF-funded Eligible Uses are those listed at Paragraph 4.A – F, below.
- D. **“Designated Payee”** means the Co-Sponsor that will serve as the payee of the Program Grant funds. If applicable, the Designated Payee is identified at Exhibit E of this Agreement.
- E. **“Development Sponsor”** has the same meaning as **“Sponsor”** below.
- F. **“Eligible Uses”** means the activities that may be funded by the Homekey Program Grant. Those activities are listed at Paragraph 4 of this Agreement, and at Health and Safety Code section 50675.1.1, subdivision (a).

**EXHIBIT A**

- G. “Interim Housing”** means any facility that is primarily intended to provide temporary shelter or lodging for the Target Population, and which does not require occupants to sign leases or occupancy agreements.
- H. “Local Public Entity”** is defined at Health and Safety Code section 50079, and means any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity as defined in Section 4103 of Title 25 of the United States Code and Section 50104.6.5, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24, and also includes any state agency, public district, or other political subdivision of the state, and any instrumentality thereof, that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income. In addition, and in accord with this Health and Safety Code definition, the term **“Local Public Entity”** also includes two or more local public entities acting jointly.
- I. “Performance Milestones”** means the indicators and metrics of progress and performance that are identified as such at Exhibit E of this Agreement. Sponsor’s failure to satisfy any one of the Performance Milestones will constitute a breach of this Agreement and will entitle the Department to exercise any and all available remedies, including the recapture of disbursed Grant funds and the cancellation of this Agreement.
- J. “Permanent Housing”** means housing, dwellings, or other living accommodations where the landlord does not limit the tenant’s length of stay or restrict the tenant’s movements and where the tenant has a lease and is subject to the rights and responsibilities of tenancy.
- K. “Program Requirements”** means the legal authority and Program materials listed at Paragraph 1.A – F, above.
- L. “Project”** means a structure or set of structures with common financing, ownership, and management and which provides Permanent Housing or Interim Housing for the Target Population.
- M. “Scope of Work”** or **“Work”** means the work to be performed by the Sponsor to accomplish the Program purpose.
- N. “Sponsor”** is defined by MHP at Health and Safety Code section 50675.2, subdivision (g). (See also Health and Safety Code, section 50669, subd. (c).) **“Sponsor”** refers, both individually and collectively, to the private entity and/or the Local Public Entity

## EXHIBIT A

that received a Homekey Grant after submitting an Application or a joint Application to the Department. When the Sponsor comprises two entities, each entity may be referred to as a “**Co-Sponsor**.” On the STD 213 portion of this Agreement, the Sponsor is identified as the Contractor.

- O. “**State General Fund Expenditure Deadline**” means **June 30, 2022**. Grant expenses for capitalized 24-month operating subsidies, which are funded by the State General Fund, must be incurred on or before this date, or they will not be reimbursed.
- P. “**Target Population**” means individuals and families who are experiencing homelessness or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are impacted by the COVID-19 pandemic.

### 4. **Eligible Uses**

Sponsor shall apply the Program Grant funds to one or more of the following uses. Sponsor’s use of the funds and scope of work (“Scope of Work” or “Work”) are specified at Exhibit E of this Agreement.

- A. Acquisition or rehabilitation of motels, hotels, or hostels.
- B. Master leasing of properties.
- C. Acquisition of other sites and assets, including purchase of apartments or homes, adult residential facilities, residential care facilities for the elderly, manufactured housing, and other buildings with existing residential uses that could be converted to permanent or interim housing.
- D. Conversion of units from nonresidential to residential in a structure with a certificate of occupancy as a motel, hotel, or hostel.
- E. The purchase of affordability covenants and restrictions for units.
- F. Relocation costs for individuals who are being displaced as a result of rehabilitation of existing units.
- G. Capitalized operating subsidies for units purchased, converted, or altered with funds provided under the Program.

**EXHIBIT A**

**5. Performance Milestones**

Sponsor shall complete each of the Performance Milestones set forth at Exhibit E of this Agreement by the date designated for such completion therein (each a "Milestone Completion Date"). Sponsor may apply to the Department for an extension of any such Milestone Completion Date. Approval of any such extension request shall be in the Department's sole and absolute discretion. In no event will the Department approve an extension request in the absence of Sponsor's demonstration of good cause for said extension, along with Sponsor's reasonable assurances that the extension will not result in Sponsor's failure to meet other Performance Milestones or any Expenditure Deadline under this Agreement.

**6. Reporting Requirements**

Sponsor shall comply with all reporting requirements set forth at Section 402 of the NOFA or in this Agreement, all in accordance with, without limitation, the deadline(s) set forth under Performance Milestones at Exhibit E of this Agreement.

**7. Department Contract Coordinator**

The Department's Contract Coordinator for this Agreement is the Deputy Director of the Division of Financial Assistance, or the Deputy Director's designee. Unless otherwise informed, Sponsor shall mail any notice, report, or other communication required under this Agreement by First-Class Mail to the Department Contract Coordinator at the following address:

California Department of Housing and Community Development  
Attention: Homekey Program (Homekey)  
Grant Management Section  
2020 West El Camino Avenue, Suite 400, 95833  
P. O. Box 952050  
Sacramento, CA 94252-2050

**8. Sponsor Contract Coordinator**

The Sponsor Contract Coordinator for this Agreement may coordinate with the State Grant Management Section Manager for the Homekey Program. Unless otherwise informed, the Department shall mail any notice, report, or other communication required under this Agreement by First-Class Mail, or through a commercial courier, to the Sponsor Contract Coordinator at the address specified at Exhibit E of this Agreement.

**EXHIBIT B**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Budget Detail**

Applicant has been awarded the Grant amount set forth in this Agreement.

**2. Conditions of Disbursement**

The Department will disburse the full amount of the Grant award to the Sponsor after this Agreement has been fully executed and after the Department receives the Sponsor's request for funds, with all required supporting documents appended thereto. The Sponsor shall append the following supporting documents to the request for funds, all in form and substance acceptable to the Department:

- A. Payee Data Record (STD 204) or Government Agency Taxpayer ID Form, as applicable;
- B. An authorizing resolution or set of authorizing resolutions that, in the Department's reasonable determination, materially comport with the Program's requirements (if the Sponsor has not already submitted same);
- C. Certification of compliance with California's prevailing wage law;
- D. Evidence of the insurance coverages required under the Program and/or a written acknowledgment of self-insured status;
- E. Documentary evidence of capacity to provide operating funds for the Project for at least five (5) years;
- F. A current title report (dated within 15 days of the request for funds);
- G. Any forms, certifications, or documentation required pursuant to Paragraph E- Additional Conditions Precedent to Disbursement of Exhibit E of this Agreement; and
- H. Any other forms, certifications, or documentation deemed necessary by the Department prior to disbursement of Grant funds.

**EXHIBIT B**

**3. Performance**

After disbursement of the funds, the Sponsor shall meet each Performance Milestone set forth at Exhibit E by the designated deadline. After satisfaction of each Performance Milestone, the Sponsor shall promptly report its progress, in writing, to the Department. Sponsor may apply to the Department for an extension of the Performance Milestone deadlines based on good cause shown and best efforts and assurances from the Recipient for timely completion of the remaining Milestones.

FAILURE TO SATISFY ANY ONE OF THE PERFORMANCE MILESTONES WILL CONSTITUTE A BREACH OF THIS AGREEMENT AND ENTITLES THE DEPARTMENT TO MANDATE THE SPONSOR TO RETURN TO THE DEPARTMENT ANY FUNDS DISBURSED; IN ANY SUCH INSTANCE, THE DEPARTMENT MAY ALSO CANCEL THIS AGREEMENT WITHOUT OWING ANY DAMAGES OR OTHER PAYMENT TO SPONSOR.

**4. Fiscal Administration**

- A. Sponsor shall either deposit the Grant funds with an escrow company licensed to do business in the State of California and in good standing, or deposit Grant funds in an interest-bearing checking or savings account insured by the federal or state government. All interest earned from the deposit of Grant funds shall be used for eligible Program activities.
- B. Any CRF Grant funds that have not been expended by the CRF Expenditure Deadline must be returned to the Department with accrued interest. Any State General Fund moneys that have not been expended by the State General Fund Expenditure Deadline must be returned to the Department with accrued interest. Checks shall be made payable to the Department of Housing and Community Development and shall be mailed to the Department at the address below, no later than thirty (30) calendar days after the applicable Expenditure Deadline.

Department of Housing and Community Development  
Accounting Division, Suite 300  
2020 W. El Camino Avenue  
Sacramento, California 95833



**EXHIBIT B**

**5. Duplication of Benefit**

Homekey funding is not required to be used as funding of last resort. However, Sponsor may not use Homekey funding to cover expenditures that have already been funded through other sources. Expenses that have been or will be reimbursed under any federal program are not eligible uses of Homekey funding.

**EXHIBIT D**

**HOMEKEY GENERAL TERMS AND CONDITIONS**

**1. Effective Date, Term of Agreement, Timing, and Deadlines**

- A. This Agreement is effective upon the date of the Department representative's signature on the STD 213, Standard Agreement (such date, the "Effective Date").
- B. This Agreement shall terminate five (5) years after the Effective Date, as stated in Paragraph 2 of the STD 213, Standard Agreement (such date, the "Expiration Date").
- C. Sponsor will receive the disbursement of Program funds after satisfying all conditions precedent to such disbursement, as set forth under Paragraph 2 of Exhibit B. All Program funds must be disbursed by **December 30, 2020**.
- D. Grant expenses for CRF-funded Eligible Uses must be incurred from **March 1, 2020 through December 30, 2020** (the "CRF Covered Period"). **December 30, 2020** is the deadline for all such expenditures (the "CRF Expenditure Deadline" or "Expenditure Deadline"). CRF-funded Eligible Uses are those listed at Paragraph 4.A – F of Exhibit A.
- E. Grant expenses for capitalized 24-month operating subsidies (which are funded by the State General Fund) must be incurred by **June 30, 2022** (the "State General Fund Expenditure Deadline" or "Expenditure Deadline").
- F. Any expenses incurred prior to the CRF Covered Period, after the CRF Expenditure Deadline, or after the State General Fund Expenditure Deadline, respectively and as applicable, are not eligible for payment under the Program. Grant funds that have not been expended by the applicable Expenditure Deadlines shall revert to the Department.

**2. Termination**

The Department may terminate this Agreement for cause at any time by giving at least 14 days' advance written notice to the Sponsor. Upon such termination, Sponsor shall return any unexpended funds to the Department within thirty (30) calendar days of the date on the Department's written notice of termination, unless

**EXHIBIT D**

the Department has approved an alternate arrangement in advance and in writing, as provided below. Such termination will not limit any other remedies that may be available to the Department under this Agreement, at law, or in equity.

Cause shall consist of Sponsor's breach of, or failure to satisfy, any of the terms or conditions of this Agreement. Cause includes but is not limited to the following:

- A. Sponsor's failure to satisfy the conditions precedent to disbursement or to expend Program Grant funds, as specified, by **December 30, 2020**.
- B. Sponsor's failure to timely satisfy each or any of the conditions set forth in these Homekey General Terms and Conditions, the Special Conditions set forth at Exhibit E of this Agreement (including any one of the Performance Milestones), or the award letter.
- C. Sponsor's violation of any of the Program Requirements.
- D. The Department's determination of the following:
  - 1) Any material fact or representation, made or furnished to the Department by the Sponsor in connection with the Application or the award letter, shall have been untrue or misleading at the time that such fact or representation was made known to the Department, or subsequently becomes untrue or misleading; or
  - 2) Sponsor has concealed any material fact from the Department related to the Application or the Project.
- E. The Department's determination that the objectives and requirements of the Homekey Program cannot be met in accordance with applicable timeframes, as memorialized by this Agreement.

Sponsor's failure to meet any applicable Expenditure Deadline shall result in the automatic termination of this Agreement, and Sponsor shall return all disbursed Grant funds to the Department within thirty (30) calendar days of the applicable Expenditure Deadline.

In the event of any other breach, violation, or default by the Sponsor, the Department may give written notice to the Sponsor to cure the breach, violation, or

**EXHIBIT D**

default. If the breach, violation, or default is not cured to the Department's satisfaction within a reasonable time, as determined by the Department at its sole and absolute discretion, then the Department may declare a default under this Agreement and seek any and all remedies that are available under this Agreement, at law, or in equity.

**3. Eligible Activities**

Grant funds awarded to the Sponsor shall be applied to the eligible uses set forth at Exhibit A and described in greater detail at Exhibit E. Payment for any cost which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the Department or its designee.

**4. Performance Milestones**

Sponsor shall timely satisfy and complete all Performance Milestones, as identified at Exhibit E of this Agreement.

**5. Article XXXIV**

Article XXXIV, section 1 of the California Constitution ("Article XXXIV") is not applicable to development involving the acquisition, rehabilitation, reconstruction, alterations work, or any combination thereof, of lodging facilities or dwelling units using moneys received from the CRF established by the federal CARES Act (Public Law 116-136), pursuant to Health and Safety Code section 37001, subdivision (h).

**6. Appraisals**

Sponsor shall, at the request of the Department, provide an appraisal of any real property or any interest in real property that is acquired with the Grant funds. Any such appraisal shall be prepared in a form, and by a qualified appraiser, acceptable to the Department.

**7. Compliance with California's Prevailing Wage Law**

Sponsor's Project may be subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). Sponsor is urged to seek professional legal advice about the law's requirements. Prior to disbursing the Grant funds, the Department will require a certification of compliance with California's prevailing wage law. The certification must verify that prevailing wages have been or will be paid if such payment is

**EXHIBIT D**

required by law, and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by Sponsor and its general contractor.

**8. Environmental Conditions**

Sponsor shall provide a Phase I Environmental Site Assessment (“ESA”) for the Project, in conformance with ASTM Standard Practice E 1527, evaluating whether the Project is affected by any recognized environmental conditions. If the Phase I ESA discloses evidence of recognized environmental conditions and Sponsor desires to proceed with the Project, the Sponsor shall provide the Department with a Phase II report and any additional reports as required by the Department and in a form acceptable to the Department. Any remediation work shall be subject to Department approval. Sponsor shall also provide an asbestos assessment and a lead-based paint report for the Department’s approval if the Project involves rehabilitation or demolition of existing improvements.

**9. Insurance**

Sponsor shall obtain the insurance coverages identified at Article VI of the NOFA; Sponsor shall maintain such insurance coverages for either the term of this Agreement or the term of any required use restriction or affordability covenant, whichever applicable term is longer. Sponsor shall name the State of California and the Department, as well as their respective appointees, officers, agents, and employees, as additional insureds on all such policies. Such policies shall provide for notice to the Department in the event of any lapse of coverage or insurance claim thereunder. Prior to disbursement of any Grant funds, Sponsor shall provide evidence satisfactory to the Department of its compliance with these insurance requirements.

If Sponsor is a Local Public Entity and is self-insured, in whole or in part, as to any of the required types and levels of coverage, the Local Public Entity shall provide the Department with a written acknowledgment of its self-insured status prior to disbursement of any Grant funds. If the Local Public Entity abandons its self-insured status at any time after execution of this Agreement, the Local Public Entity shall immediately notify the Department, and shall promptly comply with the insurance coverage requirements under the Program.

**EXHIBIT D**

**10. Operating Funds**

Sponsor shall demonstrate its capacity to provide five (5) years of operating funds for the Project. As set forth at Exhibit B of this Agreement, Sponsor shall provide documentary evidence of such capacity prior to disbursement of any Grant funds.

**11. Relocation**

If there is or will be any residential or commercial displacement directly or indirectly caused by the Project, the Sponsor shall provide a relocation plan to the Department for review. The relocation plan must comply with the requirements of state law (Gov. Code, § 7260 et seq.) and the regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.). The Project budget shall include enough funds to pay all costs of relocation benefits and assistance, as identified in the relocation plan accepted by the Department. If the Project will not cause any displacement, the Sponsor must provide corroborating documentation to the Department for approval. If there is separate federal funding of the Project, the Sponsor shall comply with federal Uniform Relocation Act requirements to the extent applicable.

**12. Site Control**

Unless and except as otherwise expressly approved in writing by the Department or provided at Exhibit E to this Agreement, the Sponsor shall at all times have control of the property and such control shall not be contingent on the approval of any other party. The status and nature of the Sponsor's title and interest in the property must be acceptable to the Department. Site control may be evidenced by one of the following:

- A. Fee title.
- B. A leasehold interest on the property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with, and satisfaction of, all program objectives and requirements, including, without limitation, those set forth in this Agreement. If the Sponsor's interest in the property is a leasehold, and the lessee and the lessor are affiliated or related parties, then the Department may require that both the lessee and the lessor must execute this Agreement.

**EXHIBIT D**

- C. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency.
- D. A sales contract, or other enforceable agreement for the acquisition of the property. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).
- E. A letter of intent, executed by a sufficiently authorized signatory of the Sponsor, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Sponsor shall purchase or otherwise acquire a sufficient legal interest in the property to accomplish the purpose of the award. The letter of intent must also be duly acknowledged by the party selling or otherwise conveying an interest in the subject property to the Sponsor. If this form of evidence was relied upon at the time of Application, the Department may impose additional Performance Milestones (e.g., presentation of additional or supplemental evidence of eventual site control closer to any projected close of escrow).
- F. Other forms of site control that give the Department assurance (equivalent to A-E above) that the Sponsor will be able to complete the Project in a timely manner and in accordance with the Program's objectives and requirements, including, without limitation, those set forth or referenced in this Agreement.

**13. Adaptability and Accessibility**

The Project shall comply with all applicable federal, state and local laws regarding adaptability and accessibility in the design, construction and rehabilitation of residential projects for persons with disabilities.

**14. Title Report**

Sponsor shall provide a current title report for the real property on which the Project is located. If Sponsor's interest in the property is leasehold, then Sponsor shall provide a current title report for the leasehold interest and the fee interest.

**EXHIBIT D**

**15. Title Insurance**

Sponsor shall provide evidence of title insurance and an ALTA As-Built Survey that are acceptable to the Department. The condition of title, the insurer, the liability amount, the form of policy, and the endorsements shall be subject to Department approval. The policy shall insure that Sponsor holds good and marketable title (fee simple or leasehold).

**16. Supportive Services Plan**

Where a project features on-site supportive services, Sponsor shall submit a supportive services plan to the Department for its review and approval. Such plan shall meet the Program Requirements.

**17. Non-Discrimination**

During Sponsor's performance under this Agreement, Sponsor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. Sponsor shall ensure that the evaluation and treatment of employees and applicants for employment are free from such discrimination and harassment. Sponsor shall comply with California's laws against discriminatory practices relating to specific groups: the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.); the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.); and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135 - 11139.5). Sponsor shall give written notice of its obligations under this provision to labor organizations with which it has a collective bargaining or other agreement.

**18. Affirmative Fair Housing Marketing Plan and Fair Housing Compliance**

Sponsor shall develop and implement an affirmative fair housing marketing plan that is satisfactory to the Department. Appropriate aspects of the initial plan shall be incorporated into the ongoing management plan to ensure positive outreach and



**EXHIBIT D**

informational efforts to those who are least likely to know about and apply for Interim Housing or Permanent Housing. Sponsor is encouraged to refer to the guidelines for Affirmative Fair Housing Marketing Plans issued by the U.S. Department of Housing and Urban Development (“HUD”). Sponsor shall comply with all state and federal fair housing laws.

**19. Sponsor Acknowledgment of the Pet Friendly Housing Act of 2017**

By executing this Agreement, Sponsor acknowledges that the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466) requires each housing development, if it is financed on or after January 1, 2018 pursuant to Division 31 of the Health and Safety Code, to authorize a resident of the housing development to own or otherwise maintain one or more common household pets within the resident’s dwelling unit, subject to applicable state laws and local governmental ordinances related to public health, animal control, and animal anticruelty.

**20. Final Certificate of Occupancy**

Sponsor shall provide a final certificate of occupancy (or an equivalent form of occupancy certification or approval) issued by the local agency having jurisdiction over such certificates.

**21. Occupancy**

The units shall be in decent, safe, and sanitary condition at the time of their occupancy. In addition, the Sponsor shall certify, upon occupancy, that it will employ the core components of Housing First (set forth at Welfare and Institutions Code section 8255) as part of its property management and tenant selection practices.

**22. Reporting Requirements**

Sponsor shall submit expenditure and program reporting to the Department by **February 1, 2021**. Such reporting shall include the data outlined at Section 402 of the NOFA.

If Sponsor has received State General Fund moneys to fund a 24-month operating subsidy, Sponsor shall submit relevant expenditure reporting to the Department on **January 31, 2021; July 31, 2021; January 31, 2022; and July 31, 2022**. Such reporting shall include the data set forth at Section 402.i – vi. of the NOFA.

**EXHIBIT D**

**23. Use Restrictions and Affordability Covenants**

Either a use restriction or an affordability covenant shall be recorded against the Project real property, depending on the Project type. For Interim Housing Projects that will not result in permanent housing, the Department shall cause a 10-year use restriction to be recorded against the Project real property. For Interim Housing Projects that will ultimately result in permanent housing, the Local Public Entity shall cause a 10-year use restriction to be recorded against the Project real property. For Permanent Housing Projects, the Local Public Entity shall cause a 55-year affordability covenant to be recorded against the Project real property.

All use restrictions and affordability covenants shall require integration of the Target Population within all entrances, common areas, and buildings that comprise the Project.

All use restrictions and affordability covenants are subject to the advance written approval of the Department, and shall be acceptable to the Department in form, substance, and priority. Project-specific requirements and deadlines are set forth at Exhibit E of this Agreement.

**24. Restrictions on Sales, Transfers, and Encumbrances**

Sponsor shall not, for the duration of this Agreement, sell, assign, transfer, or convey the Project, or any interest therein or portion thereof, without the express prior written approval of the Department.

**25. Retention, Inspection, and Audit of Records**

Sponsor is responsible for maintaining records which fully disclose the activities funded by the Grant. Sponsor shall retain all records for a period of five (5) years after the expiration of this Agreement, unless a longer retention period is stipulated. If any litigation, claim, negotiation, audit, monitoring, inspection or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

The Department, as well as its appointees, employees, agents, and delegates, shall have the right to review, obtain, and copy all records pertaining to performance under this Agreement. Sponsor shall provide any relevant information requested, and shall permit access to its premises, upon reasonable notice and during normal

**EXHIBIT D**

business hours, for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other relevant material.

At any time during the term of this Agreement, the Department may perform or cause to be performed a financial audit of any and all phases of the Project. At the Department's request, the Sponsor shall provide, at its own expense, a financial audit prepared by a certified public accountant. The audit shall be performed by a qualified state, local, independent, or Department auditor. Where an independent auditor is engaged, the audit services agreement shall include a clause which permits the Department to have access to the independent auditor's relevant papers, records, and work product.

If there are audit findings, the Sponsor shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the Sponsor in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the Sponsor, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

If so directed by the Department upon the termination or expiration of this Agreement, the Sponsor shall deliver all records, accounts, documentation, and other materials that are relevant to this Agreement to the Department as depository.

**26. Site Inspection**

The Department reserves the right, upon reasonable notice, to inspect the Project to determine whether it meets the Program Requirements. If the Department reasonably determines that the site is not acceptable for the Project in accordance with the Program Requirements, the Department reserves the right to rescind the award and the Grant. Nothing in this paragraph is intended to create or imply any obligation of the Department to inspect the Project.

**27. Compliance with State and Federal Laws, Rules, Guidelines, and Regulations**

Sponsor agrees to comply with all state and federal laws, rules, guidelines, and regulations that are applicable to the Project, including those that pertain to construction, health and safety, labor, fair employment practices, and equal opportunity.

**EXHIBIT D**

**28. Updated Information**

If there is any change in the information that has been provided to the Department, Sponsor shall promptly provide the Department with updated documentation (e.g., updated sources and uses). All changes shall be subject to Department approval.

**29. Survival of Obligations**

The obligations of the Sponsor, as set forth in this Agreement, shall survive the termination or expiration of this Agreement.

**30. Litigation**

Sponsor shall notify the Department immediately of any claim or action undertaken by or against it which affects or may affect this Agreement or the Department, and shall take such action with respect to the claim or action as is consistent with the terms of this Agreement, the Program Requirements, the interests of the Department, and the objectives of the Homekey Program.

**31. Severability**

This Agreement constitutes the entire agreement between the Sponsor and the Department. All prior representations, statements, negotiations and undertakings with regard to the subject matter hereof are superseded hereby. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**32. Waivers**

No waiver of any breach of this Agreement shall be held to be a waiver of any prior or subsequent breach. The Department's failure, at any time, to enforce the provisions of this Agreement or to require the Sponsor's performance under this Agreement shall in no way be construed as a waiver of such provisions or performance, and it shall not affect the validity of this Agreement or the Department's right to enforce this Agreement.

**EXHIBIT D**

**33. Disputes**

In the event of any conflict between this Agreement and any Sponsor documents or side agreements, this Agreement and the Program Requirements shall prevail, are applicable, and shall be enforceable by the Department even if the Department provided review or approval of such documents and side agreements.

**34. Consent**

The parties agree that wherever the consent or approval of the Department or Sponsor is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, unless the same is specified as being in that party's sole and absolute discretion, or other words of similar import.

**35. Sponsor Liability**

Sponsor shall remain liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest, or of any designation of a third party for the undertaking of all or any part of the Scope of Work. Likewise, each Co-Sponsor shall remain jointly and severally liable to the Department for performance under this Standard Agreement and compliance with all Program Requirements regardless of any Department-approved transfer or assignment of interest; any designation of a third party for the undertaking of all or any part of the Scope of Work; or the Co-Sponsors' identification of a Designated Payee.

**36. Defense and Indemnification**

Sponsor agrees to defend, indemnify, and hold harmless the Department, and its appointees, agents, employees, and officers, from any losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including attorneys' fees), which may arise in connection with Sponsor's use of the Grant funds and performance under this Agreement. If any attorney, including the California Attorney General, is engaged by the Department to enforce, construe, or defend any provision of this paragraph, with or without the filing of any legal action or proceeding, Sponsor shall, individually or jointly, pay to the Department, immediately upon demand, the amount of all attorneys' fees and costs incurred by the Department in connection therewith.

**EXHIBIT D**

**37. Time Is of the Essence**

Time is of the essence under this Agreement, and in the performance of every term, covenant, and obligation contained herein.

**EXHIBIT E**

**PROJECT-SPECIFIC PROVISIONS AND SPECIAL TERMS AND CONDITIONS**

**1. PROJECT-SPECIFIC PROVISIONS**

<b>Diva Hotel</b> 440 Geary Street San Francisco, CA 94102  <b>County of San Francisco</b>		<b>APN: LOT 007; BLOCK 0306</b>	
# of Bedrooms	# of Doors	HK Restricted	Income Limit (% of AMI)
1	130	130	30% AMI
	0	0	Manager
Total	130	130	

**A. Project Description**

1. **Grant Amount:** \$26,000,000.00
2. **Designated Payee:** Episcopal Community Services of San Francisco, a California nonprofit public benefit corporation ("**Corp**")
3. **Eligible Use:** Conversion of units from nonresidential to residential (Permanent Housing) in a structure with a certificate of occupancy as a motel, hotel, or hostel.
4. **Project Narrative:** The Diva Hotel, a 130-room tourist hotel, will be acquired and converted to Permanent Housing for the Target Population. Corp, which is currently operating the facility as a non-congregate shelter under Project Roomkey, will purchase the property. Corp's Co-Sponsor, the City and County of San Francisco, a municipal corporation ("**City**"), will require Corp to record a purchase option agreement ("**Option**") against the real property of the Project site. This Option will secure the City's right to purchase the property if a sale becomes

necessary during the life of the Project. The City, a proactive asset manager of its affordable housing portfolio, will also monitor and evaluate the Project's performance on an ongoing basis.

The Project will be occupied within 90 days of acquisition. The Project site is located within 1/3 of a mile of a public bus stop and a light rail transit station, and it is located within 1/2 of a mile of essential services, such as grocery stores, a pharmacy, and a health facility. Corp will provide extensive, on-site supportive services in line with Housing First principles and a harm reduction approach. Such services will include intensive case management; clinical assessments; individualized health and wellness plans; crisis intervention; and on-site medical services.

The City will ensure that a regulatory agreement, of at least 55 years in duration, is recorded against the real property of the Project site to ensure its long-term use and occupancy as Permanent Housing.

**5. Strategies to Promote Racial Equity and Accessibility:**

- a. The Sponsor shall, at the request of the Department, report back on any racial equity strategies described in the Homekey Application.
- b. The Sponsor shall ensure that the Project includes sensory accessible units and mobility accessible units in accordance with all relevant representations and descriptions in the Sponsor's Homekey Application (e.g., number of units, accessibility elements) and/or meets the minimum required accessible units as listed in the Homekey NOFA, to meet or exceed the greater of the two requirements.

**B. Scope of Work**

The Sponsor will acquire a 130-room tourist hotel and convert it to Permanent Housing for households that are experiencing homelessness or that are at risk of homelessness and, because of that and for other reasons, are or have been impacted by the COVID-19 pandemic.

Upon acquisition of the property, the Sponsor shall perform any necessary rehabilitation activities to make the facility safe and suitable as a Permanent Housing site under the Program (e.g., ADA retrofits, mechanical/electrical repairs). The Sponsor shall coordinate the move-in of the Target Population so



that the Project is occupied within 90 days of acquisition. The Sponsor shall ensure that the residents have free access to the supportive services that are represented and described in the Application and this Agreement.

The Sponsor shall submit documentation of its compliance with California's relocation assistance law, in form and substance satisfactory to the Department, as required by Exhibit D of this Agreement.

The City shall ensure that a regulatory agreement, of at least 55 years in duration, is recorded against the real property of the Project site in accordance with and as more fully specified and set forth in the Special Conditions below.

**C. Sponsor Contract Coordinator**

Authorized Representative Name:	Abigail Stewart-Kahn
Authorized Representative Title:	Interim Director, Department of Homelessness and Supportive Housing
Entity Name:	City and County of San Francisco
Address:	440 Turk Street, San Francisco, CA 94102
Phone No.:	628-652-7743
E-Mail Address:	<a href="mailto:abigail.stewart-kahn@sfgov.org">abigail.stewart-kahn@sfgov.org</a>

Authorized Representative Name:	Beth Stokes
Authorized Representative Title:	Executive Director
Entity Name:	Episcopal Community Services of San Francisco

Address:	165 Eighth Street, San Francisco, CA 94103
Phone No.:	415-786-1702
E-Mail Address:	<a href="mailto:bstokes@ecs-sf.org">bstokes@ecs-sf.org</a>

**D. Budget Detail**

To fund the acquisition of this property, the Sponsor will draw upon bridge financing (approximately \$29,775,800.00) provided by the San Francisco Housing Accelerator Fund (SFHAF). The City will ultimately repay SFHAF and assume the role of permanent Project lender. The City also commits to providing at least 20 years of operating and services subsidies.

**E. Additional Conditions Precedent to Disbursement**

Intentionally omitted.

**F. Performance Milestones**

<b>Performance Milestones</b>	<b>Date</b>
Satisfaction of all conditions of disbursement set forth at <u>Exhibit B</u> , including the City's submission of an authorizing resolution in accordance with and as more fully specified and set forth in the Special Conditions below.	12/02/2020
Site control of Project site.	12/02/2020
Obtain all discretionary public land use approvals that are required, notwithstanding Health and Safety Code section 50675.1.1, subdivision (g).	12/02/2020
Submit certification that the Sponsor will employ the core components of Housing First (set forth at Welfare and Institutions Code section 8255) as part of its property management and tenant selection practices.	12/02/2020
Submit documentation of compliance with California's relocation assistance law in accordance with and as more fully specified and set forth in the Special Conditions below.	12/15/2020
Recordation of a regulatory agreement, of at least 55 years in duration, by the City.	12/15/2020

<b>Performance Milestones</b>	<b>Date</b>
Submission of expenditure and program reporting.	<b>Feb. 1, 2021</b>
Satisfaction of occupancy timeline.	3/01/2021

2. **SPECIAL TERMS AND CONDITIONS**

The following Special Terms and Conditions are applicable to this Project and shall control notwithstanding anything to the contrary herein:

- A. The Co-Sponsors have identified Corp as the Designated Payee of the Grant funds.
- B. Prior to disbursement of any funds, the City shall submit an authorizing resolution that, in the Department's reasonable determination, materially comports with the Program's requirements.
- C. The Sponsor shall submit documentation of its compliance with California's relocation assistance law, in form and substance satisfactory to the Department, as required by Exhibit D of this Agreement. Such documentation shall be in finalized form and expressly approved by the Department in writing by the Performance Milestone date set forth herein.
- D. The City shall cause a regulatory agreement in accordance with the NOFA and Program Requirements ("**Regulatory Agreement**") to be recorded against the real property of the Project site by the Performance Milestone date set forth herein. The City shall obtain the Department's express written approval of the Regulatory Agreement prior to the recordation of the same. Unless otherwise authorized by the prior and express written approval of the Department, the Regulatory Agreement shall be recorded as a lien against the Project in first position, and shall remain in first position over all other Project agreements, covenants or other matters of record on the real property for the period of affordability required by the Program.

**LOAN AGREEMENT  
(CITY AND COUNTY OF SAN FRANCISCO  
OUR CITY, OUR HOME FUND)**

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

**440 GEARY LLC,**  
a California limited liability company,

for

**HOTEL DIVA**  
**440 Geary Street**  
**\$47,386,810**  
**OUR CITY, OUR HOME: \$47,386,810**

Dated as of \_\_\_\_\_

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\* \* \* \* \*

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- B-2 Annual Operating Budget
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- C Form of Tenant Income Certification
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**LOAN AGREEMENT**  
(City and County of San Francisco  
Our City, Our Home Fund)  
(440 GEARY STREET)

**THIS LOAN AGREEMENT** ("Agreement") is entered into as of \_\_\_\_\_, 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 **440 GEARY LLC**, a California limited liability company ("Borrower").

**RECITALS**

A. In November 2018, the voters of the City approved Proposition C, which created the Homelessness Gross Receipts Tax Ordinance under Business and Tax Regulations Code Article 28 with all collected monies to be deposited into the Our City, Our Home Fund under Administrative Code Section 10.100-64 ("OCOH Fund"). The City is authorized to use a portion of the OCOH Fund for the construction, acquisition, rehabilitation, lease, preservation, and operation of permanent supportive housing units, which include a rental subsidy and onsite supportive services for formerly homeless adults, families, and youth, or the acquisition, rehabilitation, master lease, and operation of SRO Buildings (as defined in Business & Tax Regulations Code Section 2810(h)(2)), or portions thereof, newly acquired or master leased on or after January 1, 2019. The funds provided from the OCOH Fund to the Borrower under this Agreement will be referred to herein as the "Funds."

B. Through an emergency declaration, the City's COVID Command Center master leased the real property located at 440 Geary Street, San Francisco, California, which consisted of a 130-unit tourism hotel with two ground-floor commercial spaces (the "Site") as a Shelter In Place ("SIP") Hotel. The San Francisco Department for Homeless and Supportive Housing ("HSH") issued Request for Qualifications #130 for COVID-19 services on June 4, 2020 (the "RFQ"), to solicit qualified service providers for the Site. In response to the RFQ, HSH selected Episcopal Community Services, a California nonprofit public benefit corporation ("ECS") to operate the Site. Operation of the Site as a SIP Hotel commenced on September 1, 2020. As the operator of the site, ECS then applied to the California Department of Housing and Community Development ("HCD") for Homekey funds in September 2020, with HSH as co-applicant. ECS formed the Borrower for the purpose of undertaking the activities required to acquire the Site in collaboration with HSH.

C. Borrower acquired the fee interest in the Site on \_\_\_\_\_, 2020. Borrower desires to use the Funds for permanent financing to refinance an existing bridge loan used to acquire the Site and rehabilitate the Site into a 122-unit multifamily residential building (single-room occupancy hotel) to provide permanent supportive housing for formerly homeless households, including to maintain the commercial spaces as a retail café and a commercial kitchen/restaurant (the "Commercial Space"), which will be known as Hotel Diva (the "Project").

D. Borrower secured prior loans or grants from other sources in connection with acquisition and rehabilitation of the Site as described below:

1. an acquisition grant from HCD under Standard Agreement No. 20-HK-00050 dated November 19, 2020, providing Homekey funding in the amount of Twenty-Six Million and No/100 Dollars (\$26,000,000.00);

2. a bridge loan from the San Francisco Housing Accelerator Fund (“SFHAF”) in the amount of Forty-Seven Million, Three Hundred Eighty-Six Thousand, Eight Hundred Ten and No/100 Dollars (\$47,386,810.00); and

3. a LOSP grant from the City under a LOSP Grant Agreement dated September 24, 2021, in the amount of Thirty Million Six Hundred Nineteen Thousand Nine Hundred Fourty-Three and No/100 Dollars (\$30,619,943.00).

E. The Citywide Affordable Housing Loan Committee has reviewed Borrower's application for Funds and, in reliance on the accuracy of the statements in that application, has recommended to the Mayor that the City make a loan of Funds to Borrower (the "Loan") in the amount of Forty-Seven Million, Three Hundred Eighty-Six Thousand, Eight Hundred Ten and No/100 Dollars (\$47,386,810.00) (the "Funding Amount") under this Agreement to fund certain costs related to the Project.

F. On \_\_\_\_\_, the City’s Board of Supervisors and the Mayor approved this Agreement by Resolution No. \_\_\_\_\_ for the purpose of developing the Project.

## 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 will be maintained in accordance with **Section 2.3**.

"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 440 Geary LLC a California limited liability company whose manager is Episcopal Community Services, a California nonprofit public benefit corporation ("Manager"), and its authorized successors and assigns.

“Cash Out Policy” means the MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, And Refinancing Policy dated June 19, 2020, as it may be amended from time to time.

"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.

"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 Note, 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 Space" has the meaning set forth in **Recital C** 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.

“Commercial 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. Any Commercial Surplus Cash must be used to supplement operating expenses at the Hotel Diva.

“Community-Serving Purposes” means a non-residential use, approved by MOHCD in writing, that provides a direct benefit to the residents of the Project and the community in which the Project is located, including, but not limited to, family resource center, early childhood education center, community bicycle workspace, or other community serving commercial use under MOHCD’s Commercial Space Underwriting Guidelines.

"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**.

“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 Note, in form and substance acceptable to the City.

"Developer" means Episcopal Community Services, a California nonprofit public benefit corporation, and its authorized successors and assigns.

“Developer Fee Policy” means the MOHCD Policy on Development Fees for Tax Credit Projects dated October 16, 2020, as amended from time to time, attached hereto as **Exhibit J**.

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

"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**.

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

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

"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.

"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 rehabilitation, 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.

"HCD" means the California Department of Housing and Community Development.

"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.

"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 E**.

“Local Operating Subsidy” means an operating subsidy provided by the City to Borrower for the operation of the Project, 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.



"Manager" means Episcopal Community Services, a California nonprofit public benefit corporation.

"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, adjusted solely for household size, and derived in part from the income limits and area median income determined by HUD for the San Francisco area, but not adjusted for a 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**.

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

"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 liability company 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 30th following the Agreement Date and each succeeding June 30th 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.

"Preferences and Lottery Manual" means MOHCD's Marketing, Housing Preferences and Lottery Procedures Manual dated October 19, 2020, 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 C**. 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);

"Project Income" means all income and receipts in any form received by Borrower from the operation of the Project, including, but not limited to, the following: (a) rents, fees, charges, and deposits (other than tenant's refundable security deposits); (b) Section 8 or other rental subsidy payments received for the Project, supportive services funding (if applicable); (c) price index adjustments and any other rental adjustments to leases or rental agreements; (d) proceeds from vending and laundry room machines; (e) the proceeds of business interruption or similar insurance; (f) 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; (g) reimbursements and other charges paid to Borrower in connection with the Project; and (h) other consideration actually received from the operation of the Project, including non-residential uses of the Site. Project Income does not include interest accruing on any portion of the Funding Amount or tenant's refundable security deposits 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 Partnership Fees. The amount of Residual Receipts will 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**.

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

"SFHA" means the San Francisco Housing Authority.

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

"Supportive Services" means on-site supportive services, intensive case management including case managers that meet the linguistic needs of the population, clinical services including referrals to clinical services specific to Permanent Housing. The goals of supportive services are to: achieve housing stability to increase quality of life, foster self-sufficiency, and maintain housing, see also **Section 3.9**.

"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.

"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.

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 will 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 will be construed as a whole according to its fair meaning.

## 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 refinance an existing bridge loan from SFHAF. 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 will 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, Borrower will use any interest earned on funds in any Account for the benefit of the Project.

2.4 Records. Borrower will 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 will 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.

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

3.1 Maturity Date. Borrower will repay all amounts owing under the City Documents on the date that is the Fifty-Fifth (55th) anniversary of the date the Deed of Trust is recorded in the Recorder's Office of San Francisco County.

3.2 Compliance Term; Declaration of Restrictions. Borrower will 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 continuing for the Life of the Project, but no less than Fifty-Five (55) years (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. Except as provided in **Section 3.4**, no interest will be charged on the Loan.  
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 Note, 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. 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 Note. Except as set forth in the Note, no prepayment of the Loan will be permitted without the prior written consent of the City in its sole and absolute discretion.

3.6 Changes in Funding Streams. The City's agreement to make the Loan on the terms set forth in this Agreement and the Note 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 Continuum of Care, Section 8 or similar programs.

3.7 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 will 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 will 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.

3.8 Reserved.

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 will provide notice to the City within ten (10) business days of the date the Supportive Services were terminated, which notice will 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 will 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.

#### 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.

4.3 Conditions Precedent to Closing. The City will authorize the close of the Loan only upon satisfaction of all conditions precedent in this Section as follows:

(a) Borrower will 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 Note; (ii) this Agreement (in duplicate); (iii) the Deed of Trust; (iv) the Declaration of Restrictions; (v) the Opinion; (vi) the Authorizing Resolutions; (vii) subordination, nondisturbance and attornment agreements from each commercial tenant in possession, or holding any right of possession, of any portion of the Site; and (viii) any other City Documents reasonably requested by the City.

(b) Borrower will have delivered to the City: (i) Borrower's Charter Documents; and (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. The Charter Documents will 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.

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

(d) Borrower will 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 will have delivered to the City 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 Escrow Agent will have received and is prepared to record the Declaration of Restrictions and Deed of Trust as valid liens in the Official Records, subject only to the Permitted Exceptions.

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

(h) Borrower will have leased 100% of Units through HSH direct-referrals.

(i) Borrower will have obtained MOHCD's approval of a Commercial Space Plan. The Commercial Space Plan will include (i) summary of outcomes achieved related to racial equity goals; and (ii) market study with analysis of other potential retail or commercial uses.

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 conditions precedent under this Section as follows:

(a) Borrower will 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, Borrower will obtain the City's prior written approval for 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.

4.6 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 RESERVED



## ARTICLE 6 MARKETING.

During the period the Project receives a LOSP grant from the City or another operating subsidy for Homeless Households, Borrower will use access points and accept referrals from HSH, or its successor agencies, through the Coordinated Entry System for all Units (except the manager's unit). If applicable, Borrower will comply with the requirements below in the event the LOSP grant agreement is terminated or modified and no other operating subsidy is available.

6.1 Marketing and Tenant Selection Plan. No later than sixty (60) days after written request from the City, Borrower will deliver to the City for the City's review and approval an affirmative plan for ongoing marketing of the Units and a written Tenant selection procedure for ongoing renting of the Units based on MOHCD's then-current form (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 will obtain the City's approval of reasonable alterations to the Marketing and Tenant Selection Plan. Borrower will 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 will 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 will 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 will 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 will 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 will only be implemented if there are no qualified applicants interested or available from the Waiting List.

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

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

6.4 Marketing Records. Borrower will 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 will 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 will limit the number of refusals without cause as approved by the City. Borrower will at all times maintain the Waiting List. Upon the vacancy of any Unit, Borrower will first attempt to select the new Tenant for such Unit from the Waiting List, and will only market the Unit to the general public after determining that no applicants from the Waiting List qualify for such Unit. The Waiting List will be kept on file at the Project at all times.

ARTICLE 7 AFFORDABILITY AND OTHER LEASING RESTRICTIONS.

7.1 Term of Leasing Restrictions. Borrower acknowledges and agrees that the covenants and other leasing restrictions set forth in this Article 7 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; and (b) following the expiration of the Compliance Term with respect to any Unit then occupied by a Qualified Tenant, until the Qualified Tenant voluntarily vacates their Unit or is evicted lawfully for just cause.

## 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, all Units (except the manager's unit) will be rented to chronically Homeless Households 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 the Local Operating Subsidy to the Project, or the Project receives another operating subsidy for Homeless Households.

(b) A Tenant who is a Qualified Tenant at initial occupancy will 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 will 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 will 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 will 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 they or their household qualifies as a Qualified Tenant. In addition, each person will 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) Borrower will require each Qualified Tenant in the Project to recertify to Borrower on an annual basis the Qualified Tenant's 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 will be maintained on file at Borrower's principal office, and Borrower will 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 will provide for termination of the lease and consent to immediate eviction for failure to: (i) qualify as a Qualified Tenant if the Tenant has made any material misrepresentation in the initial income certification, or (ii) submit to Borrower an annual recertification of income. The initial term of the lease will be for a period of not less than one (1) year. Borrower will 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 will 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. Borrower will segregate any security

deposits collected 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 will 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, Borrower will obtain MOHCD's review and approval of proposed leases and development plans for the Commercial Space. Borrower will provide quarterly updates commencing on January 1, 2024 to MOHCD on the Commercial Space Plan until vacant commercial space is leased, in addition to complying with the requirements of this Section 7.8. All leases of Commercial Space will be to bona fide third-party tenants capable of performing their financial obligations under their leases, which will 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 will be consistent with all applicable local planning and building codes and be reasonably compatible with the design and purpose of the Project. Each lease of Commercial Space will restrict its use to Public Benefit Purposes or Community Serving Purposes, except as otherwise approved by the City in advance. All Commercial Surplus Cash generated as a result of any lease of the Commercial Space will be used to pay Project Expenses during the period the Project receives a LOSP grant, and if the Project no longer receives a LOSP grant or other operating subsidy, Borrower will direct all Commercial Surplus Cash toward repayment of the Loan. All Commercial Surplus Cash will be subject to the MOHCD Policy on the Use of Residual Receipts. Each lease of Commercial Space will 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 will 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.

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 will contain a provision allowing Borrower to terminate the contract without penalty upon no more than thirty (30) days' notice. As of the Agreement Date, the City has approved Caritas Property Management Corporation as Borrower's management agent, subject to approval of the management contract.

(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 will 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 will 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 will 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 will 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 will maintain records of all income, expenditures, assets, liabilities, contracts, operations, tenant eligibility and condition of the Project. All financial reports will be prepared and maintained in accordance with GAAP as in effect at the time of performance.

(c) Borrower will 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 Reserved.

10.3 Annual Reporting. From and after the Completion Date, Borrower will 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, Partnership 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 will be in substantially the form attached as **Exhibit G** or as later modified during the Compliance Term.

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

10.5 Reserved.

10.6 Response to Inquiries. At the request of the City, its agents, employees or attorneys, Borrower will 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 will 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 will 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, 10.3, 10.4, 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 will 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 will 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 Partnership 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 will 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 will 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 will 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 will 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) Borrower will make an initial deposit into the Replacement Reserve Account in an amount equal to \$1,000 per Unit. Thereafter, monthly deposits will equal the higher of (i) the amount needed under Borrower's approved CNA, or (ii) 1/12<sup>th</sup> of the following amount: \$91,500.

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, Borrower will 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 will 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 will 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 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 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 Note.

#### 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 will 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 will 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. No development fees will be paid to the Developer from the Loan. Borrower has paid development fees to the Developer in an amount not to exceed One Million

and No/100 Dollars (\$1,000,000.00) for developing the Project (“Developer Fees”) as approved by HCD.

#### ARTICLE 16 TRANSFERS.

16.1 Permitted Transfers/Consent. Borrower will 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. 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 will procure and keep in effect, and cause its contractors and subcontractors to obtain and maintain at all times during any work or construction activities on the Property, the insurance and bonds as set forth in **Exhibit L** from the until the expiration of the Compliance Term at no expense to the City.

17.2 Borrower's Indemnity Obligations. Borrower will 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 will 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 will 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 will 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 Environmental Site Assessment conducted by ACC Environmental Consultants dated November 20, 2020, 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 will: (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 will 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) 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

(o) 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 Note, together with default interest as provided in the Note and any other charges due under the Note 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 Note, together with default interest as provided in the Note and any other charges due under the Note 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 Note, even if it causes the principal balance to exceed the face amount of the Note, 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, including, but not limited to, government health orders related to a pandemic or epidemic; 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.

## 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 City, 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 the City or any Governmental Agency. Further, Borrower certifies that neither it nor any of its principals is listed by the General Services Administration as debarred, suspended, ineligible or voluntarily excluded from receiving the Funds on the Agreement Date. In addition, Borrower 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 in addition to obtaining the certification of each contractor or subcontractor whose bid is accepted.

(f) The Loan is in balance, and the Funding Amount, together with all other committed sources of financing for the Project, are sufficient to complete the Project in accordance with this Agreement.

(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 will 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 will be addressed as follows:

To the City: City and County of San Francisco  
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: 440 GEARY LLC,  
c/o Episcopal Community Services (Manager)  
165 8<sup>th</sup> Street  
San Francisco, CA 94103  
Attn: President

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) 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 their successor or designee will be authorized to execute any approved subordination agreement without the necessity of any further action or approval. The Declaration of Restrictions will not be subordinated to any financing secured by and used for the Project.

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 will 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; Venue. This Agreement is governed by California law and the City's Charter and Municipal Code without regard to its choice of law rules. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.

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 Reserved.

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 will 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 will 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, will at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors will 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 will adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Such board of directors will 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.

22.21 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

**[SIGNATURES ON THE NEXT PAGE]**

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:**

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Keith Nagayama  
Deputy City Attorney

**BORROWER:**

440 GEARY LLC,  
a California limited liability company

By: ECS HOUSING CORPORATION,  
a California nonprofit public benefit corporation  
Its Sole Member/Manager

By: \_\_\_\_\_  
Mary Elizabeth Stokes  
Its President

**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:

<b>Unit Size</b>	<b>No. of Units</b>	<b>Maximum Income Level</b>
SRO	109	50% of Median Income
1 BR	12	50% of Median Income
SRO	1	Manager (unrestricted)

In addition, all Units (except the manager's unit) will be made available to chronically Homeless Households 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.

2. **Rent and Utilities.** 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 the greater of:

(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.

Rents may be increased as permitted pursuant to Section 7.3 of the Agreement.

3. Under the Standard Agreement with HCD for Homekey funds, the City is required to provide an operating subsidy for the first five (5) years of the Project. If after 5 years, the LOSP subsidy 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 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. In such event, the City will use good faith efforts to meet with Borrower within fifteen (15) days after Borrower's request to meet. 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. The relief provided by the paragraph will not be construed as authorizing Borrower to exceed any income or rent restriction imposed on the Project by any other agreement. Borrower



covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

**EXHIBIT B-1**  
**Table of Sources and Uses of Funds**

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

**EXHIBIT B-3**  
**20-Year Cash Flow Proforma**

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

## 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). If applicable, 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 attorney's 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 will 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 comply with Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) and contain a provision requiring: (1) the payment of not less than the Prevailing Rate of Wage 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 state law and 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 will 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 they have family or business ties, during their tenure and for one year thereafter. In order to carry out the purpose of this Section, Borrower will 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 will 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 will 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 will 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 will 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 will 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 will comply with 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 Will 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 will 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 will 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 will 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 will 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" will 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" will 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 will 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, will 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 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.

(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 will 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 will 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 12.M.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 will 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 will 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 will 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" will 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 will 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 will 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 will have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T will only apply to a Borrower’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, will apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, will 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 will 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 will incorporate by reference in all subcontracts the provisions of Chapter 12T, and will require all subcontractors to comply with such provisions. Borrower’s failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(d) Borrower or Subcontractor will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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. Local Business Enterprise and Non-Discrimination in Contracting Ordinance.  
Borrower will comply with the applicable requirements of the Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance under Administrative Code Chapter 14B (“LBE Ordinance”) and will incorporate such requirements in contracts with any Contractors and Subcontractors.

**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 will 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 will 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.

440 GEARY LLC

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will:
  - 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 will 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 will 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 will 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 will 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 will 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 will 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**

Reserved

**EXHIBIT K**

Hold Harmless Policy

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

Subject to approval by the City's Risk Manager of the insurers and policy forms Borrower will 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 will 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 will 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 will 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 will be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Borrower's contractor, provided that the policy will be "claims made" coverage and Borrower will 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 will 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 will 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 will 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 will 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 will 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) Required Endorsements. Borrower's insurance policies will include the following endorsements:

(i) Commercial General Liability and Commercial Automobile Liability Insurance policies will be endorsed to name as "Additional Insured" the City and County of San Francisco, its officers, agents, and employees.

(ii) The Workers' Compensation policy(ies) will be endorsed with a waiver of subrogation in favor of the City for all work performed by the Borrower, its employees, agents, contractor(s), and subcontractors.

(iii) Commercial General Liability and Commercial Automobile Liability Insurance policies will provide that such policies are primary insurance to any other insurance available to the "Additional Insureds," with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(iv) All policies will be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices will be sent to the City address set forth in **Section 21.1** of the Agreement.

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

(b) Certificates of Insurance. By no later than Loan closing and annually thereafter, Borrower will furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Borrower's liability under this Agreement.

(c) Waiver of Subrogation – Property Insurance. 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) Claims Based Policies. 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 form, Borrower will maintain coverage as follows:

(i) for builder's risk, continuously for a period ending no less than three (3) years after recordation of a notice of completion without lapse, to the effect that, if any

occurrences give rise to claims made after completion of the Project, then those claims will be covered by the claims-made policies; or

(ii) for all other insurance under this Exhibit L, continuously through the Compliance Term and, without lapse, for a period of no less than three (3) years beyond the expiration of the Compliance Term, to the effect that, if any occurrences during the Compliance Term give rise to claims made after expiration of the Agreement, then those claims will be covered by the claims-made policies.

(e) Additional Requirements.

(i) If any of the required insurance is provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit will be double the occurrence or claims limits specified above.

(ii) Any and all insurance policies required under this Exhibit L will contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(iii) On City's request, Borrower and City will periodically review the limits and types of insurance carried under this Exhibit L. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Borrower for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Borrower to conform to the general commercial practice, unless Borrower demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Borrower.

(iv) Borrower's compliance with the insurance requirements under this Exhibit L will in no way relieve or decrease Borrower's indemnification obligations under this Agreement or any of Borrower's other obligations under this Agreement.

**Exhibit M**  
**Reserved**

**EXHIBIT N**  
**Reserved**

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

[To be attached]



**EXHIBIT P**  
Residual Receipts Policy

[To be attached]

Free Recording Requested Pursuant to  
Government Code Section 27383 and 27388.1

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: Housing Loan Administrator  
Block/Lot: 0306/007

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

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(Property Address: 440 Geary Street)

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** ("Deed of Trust") is made as of \_\_\_\_\_, 2023, by **440 GEARY LLC**, a California Limited Partnership ("Trustor"), whose address is 165 8<sup>th</sup> Street, San Francisco, California 94103, to **OLD REPUBLIC TITLE COMPANY**, a \_\_\_\_\_ ("Trustee"), whose address is 275 Battery Street, Suite 1500, 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 of the date of this Deed of Trust, 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 owns a 122-unit multifamily residential building restricted for permanent supportive housing for Homeless Households or those at risk of chronic homelessness (except one manager's unit), commercial ground-floor space (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, and the 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 "Note") 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 Note in the original principal amount of Forty-Seven Million Three Hundred Eighty-Six Thousand Eight Hundred Ten and No/100 Dollars (\$47,386,810.00), according to the terms of the Agreement and the Note; and

(c) 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 s 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 \_\_\_\_\_. 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 Note 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 Note 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 Note 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 Note, 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 Note 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"**

440 GEARY LLC, a California limited liability company

By: ECS HOUSING CORPORATION,  
a California nonprofit public benefit  
corporation  
its sole member and manager

By: \_\_\_\_\_  
Mary Elizabeth Stokes, President

ALL SIGNATURES MUST BE NOTARIZED



EXHIBIT A  
Legal Description of the Land

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

PARCEL ONE:

Beginning at a point on the Northerly line of Geary Street, distant thereon 137 feet and 6 inches Westerly from the Westerly line of Mason Street; running thence Westerly and along said line of Geary Street 68 feet and 9 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Easterly 68 feet and 9 inches; thence at a right angle Southerly 137 feet and 6 inches to the point of beginning.

Being a part of 50 Vara Block No. 195.

PARCEL TWO:

TOGETHER WITH an easement of right to maintain overlapping improvements as they existed March 31, 1917, upon a parcel of land 5 inches wide adjoining said property on the West as reserved in Deed from E D Connolley and wife to Sylvain Schnaittacher, dated March 31, 1917, and recorded in the office of the Recorder of the City and County of San Francisco, in Book 983 of Deeds at Page 257.

Assessor's Lot 007; Block 0306

Street Address: 400 Geary Street, San Francisco, 94102

EXHIBIT A

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: Agnes Defiesta  
APN#: Block 0306/Lot 007  
Address: 440 Geary Street, San Francisco, CA 94103

No fee document pursuant to  
Government Code Section 27383

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING  
COVENANTS**

**THIS DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING  
COVENANTS** (this "Declaration") is dated as of \_\_\_\_\_, 2023, and is between the  
**CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting through the  
Mayor's Office of Housing and Community Development (the "City") and **440 GEARY, LLC**, a  
California limited liability company ("DECLARANT").

**RECITALS**

A. Unless otherwise defined herein, capitalized terms used herein are defined in Article 1 of this Declaration.

A. The of Housing and Community Development (the "Department") issued a Notice of Funding Availability ("NOFA") for the Homekey Program on July 16, 2020. The NOFA incorporates by reference the MHP, as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from Coronavirus Relief Fund ("CRF") money received from the U.S. Department of the Treasury. The CRF was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136).

B. The Homekey Program is intended to provide housing for individuals and families who are homeless or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.

C. The City and Episcopal Community Services of San Francisco ("ECS") received Homekey Program award in the amount of \$26,000,000.00 (the "Homekey Grant"). The City and ECS intend to use the Homekey Grant to provide Permanent Housing for the Target Population.

D. HCD, the City and ECS entered into a Standard Agreement No. 20-HK-00050 dated as of November 19, 2020, and amended as of \_\_\_\_\_, 2023 (the "Standard Agreement"), which sets out the obligations of the City, ECS, and DECLARANT in the use of the Homekey Grant.

E. ECS formed DECLARANT, of which ECS is the sole manager/member, to perform the obligations of the County and ECS under the Standard Agreement.

F. DECLARANT owns that certain real property located as 440 Geary Street, San Francisco, California, as more particularly described in Exhibit A (the "Property"), consisting of a 122-unit multifamily residential building (single resident occupancy hotel) for permanent supportive housing of the Target Population (excluding a manager's unit), including two ground floor commercial spaces.

G. The City has made a loan in the amount of \$47,386,810 to DECLARANT to assist DECLARANT refinance a bridge loan and provide permanent financing for the Project (the "Loan"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and DECLARANT dated as of \_\_\_\_\_, 2023, 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.

H. The Parties intend that the Department is an intended third party beneficiary of the this Revised Declaration.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Restated Declaration, the receipt and sufficiency of which are hereby acknowledged, the City and DECLARANT agrees as follows:

#### Article I. DEFINITIONS

Section 1.01 Definitions. When used in this Restated Declaration, the following terms have the following meanings:

(a) "Assisted Units" shall mean the 121-unit of permanent supportive housing made available to the Target Population.

(b) "ECS" means Episcopal Community Services of San Francisco, a California nonprofit public benefit corporation.

(c) "Effective Date" means the date that this Declaration is recorded in the Official Records of the City and County of San Francisco.

(d) "HCD" means the State of California Department of Housing and Community Development.

(e) "Project" means the Property and the 122-unit total units composed of 121-unit Assisted Units and one (1) managers' unit, two ground floor commercial units, and attendant site improvements thereon.

(f) "Target Population" means individuals and families who are "homeless" or "at risk of homelessness," as those terms are defined in Part 578.3 of Title 24 of the Code of Federal



Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.

(g) "Term" means the term of this Restated Declaration which shall commence on the Effective Date and shall continue for the Life of the Project, but no less than fifty-five (55) years from the Effective Date.

## Article II. OPERATION OF THE PROJECT

Section 2.01 Residential Use. During the Term of this Restated Declaration, 121-units shall be used as permanent supportive housing available for occupancy to the Target Population, and such units shall be in decent, safe, and sanitary condition at the time of their occupancy. In addition, DECLARANT shall certify, upon occupancy, that it will employ the core components of Housing First (as set forth at Welfare and Institutions Code section 8255) as part of its property management plan and Supportive Services plan.

Section 2.02 Covenants to Run with the Land. The provisions this Declaration shall run with the land and shall bind all successors in title to the Project and bind successors and assigns of DECLARANT and any non-borrower owner of the Property to provide 121-unit units for Permanent Supportive Housing; provided, however, that on the expiration of the Term, said covenants and restrictions shall expire.

Section 2.03 Term. The term of this Declaration which shall commence on the Effective Date and shall continue for Life of the Project, but no less than fifty-five (55) years from the Effective Date for any obligation related to the Assisted Units under the Homekey Grant.

Section 2.04 Accessibility. The Project will be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of the Standard Agreement.

Section 2.05 Tenant Selection. Referrals to units shall be made through the local Coordinated Entry System ("CES"), or another comparable prioritization system based on greatest need shall be used. All referral protocols for Assisted Units shall be developed in collaboration with the local Continuum of Care and implemented consistent with the Homekey program requirements.

Section 2.06 Compliance with State and Federal Laws, Rules, Guidelines, and Regulation. DECLARANT agrees to comply with all state and federal laws, rules, guidelines, and regulations that are applicable to the Project, including those that pertain to construction, health and safety, labor, fair employment practices, and equal opportunity.

Section 2.07 Affordability of the Project. DECLARANT agrees as follows, subject to additional terms as set forth in the Agreement:

(a) Following a vacancy of a Non-Qualified Tenant after acquisition of the Project, 121 Units in the Project, or the habitable amount approved by the City, will at all times be rented only to tenants who qualify as Qualified Tenants, specifically:

<b>Unit Size</b>	<b>No. of Units</b>	<b>Maximum Income Level</b>
SRO	109	50% of Median Income with LOSP
1 BR	12	50% of Median Income with LOSP

In addition, all vacant Units must be made available to the chronically homeless or those at risk of homelessness during the period in which the City’s LOSP program is in operation and the City provides such subsidy to the Project, as prioritized through the City’s Coordinated Entry System.

(b) 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.

(c) Under the Standard Agreement with HCD for Homekey funds, the City is required to provide an operating subsidy for the first five (5) years of the Project. If after 5 years, the LOSP subsidy is terminated, discontinued or reduced at no fault of DECLARANT 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 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. In such event, the City will use good faith efforts to meet with DECLARANT within fifteen (15) days after DECLARANT’s request to meet. 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. The relief provided by the paragraph will not be construed as authorizing DECLARANT to exceed any income or rent restriction imposed on the Project by any other agreement. DECLARANT covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

Section 2.08. Incorporation of Loan Agreement. 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).

Section 2.09 Enforcement. If DECLARANT fails to (i) comply with 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. DECLARANT will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees and costs.

### Article III. MISCELLANEOUS

Section 3.01 Governing Law. This Declaration is governed by the laws of the State of California.

Section 3.02 Waiver of Requirements. Any of the requirements of this Declaration may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Declaration shall, or shall be deemed to, extend to or affect any other provision of this Declaration.

Section 3.03 Recording and Filing. The City shall cause this Declaration, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the City and County of San Francisco.

Section 3.04 Amendments. This Declaration may be amended only by a written instrument executed by DECLARANT and the City with the prior written consent of HCD and duly recorded in the Official Records of the City and County of San Francisco.

Section 3.05 Subordination. This Declaration shall be recorded in first lien position. This Declaration may only be subordinated with the approval of HCD.

Section 3.06 Third Party Beneficiaries. The parties acknowledge and agree that the Department of Housing and Community Development is an express third-party beneficiary of this Agreement, that the Department has made the Grant in reliance on this Declaration, and that the Department has a direct right of enforcement against the DECLARANT in the event of the DECLARANT breach, default, or other non-compliance under this Restated Declaration, which right is exercisable in the Department's sole and absolute discretion.

***[SIGNATURES ON FOLLOWING PAGE]***

**DECLARANT**

440 Geary LLC,  
a California limited liability company

By: ECS HOUSING CORPORATION,  
a California nonprofit public benefit corporation  
Its Sole Member/Manager

By: \_\_\_\_\_  
Mary Elizabeth Stokes  
Its President

*[SIGNATURES TO BE NOTARIZED]*

**EXHIBIT A**  
(Legal Description of the Property)

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

PARCEL ONE:

Beginning at a point on the Northerly line of Geary Street, distant thereon 137 feet and 6 inches Westerly from the Westerly line of Mason Street; running thence Westerly and along said line of Geary Street 68 feet and 9 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Easterly 68 feet and 9 inches; thence at a right angle Southerly 137 feet and 6 inches to the point of beginning.

Being a part of 50 Vara Block No. 195.

PARCEL TWO:

TOGETHER WITH an easement of right to maintain overlapping improvements as they existed March 31, 1917, upon a parcel of land 5 inches wide adjoining said property on the West as reserved in Deed from E D Connolley and wife to Sylvain Schnaittacher, dated March 31, 1917, and recorded in the office of the Recorder of the City and County of San Francisco, in Book 983 of Deeds at Page 257.

Assessor's Lot 007; Block 0306

Street Address:

440 Geary Street, San Francisco, CA 94103

**SECURED PROMISSORY NOTE**  
(Our City Our Home Fund)  
(440 Geary)

Principal Amount: \$47,386,810

San Francisco, CA

Date:

FOR VALUE RECEIVED, the undersigned, **440 GEARY LLC**, a California nonprofit public benefit corporation a California limited liability company ("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 Forty-Seven Million Three Hundred Eighty-Six Thousand Eight Hundred Ten and No/100 Dollars (\$47,386,810.00) (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, 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. Except as provided in **Section 3**, no interest will accrue on the Funding Amount.

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 of the Event of Default 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 will 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 Agreement 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 fifty-fifth (55<sup>th</sup>) anniversary of the date the Deed of Trust is recorded in the Official Records of the City and County of San Francisco County (the "Maturity Date"). Any Payment Date, including [any

Excess Proceeds Payment Date, AHP Payment Date, and] the Maturity Date, that falls on a weekend or holiday will be deemed to fall on the next succeeding business day.

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.

6.5 Except as otherwise set forth herein or in the Agreement, no prepayment of this Note will 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.

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.

**[SIGNATURES ON THE NEXT PAGE]**



**"MAKER"**

440 GEARY LLC, a California limited liability company

By: ECS HOUSING CORPORATION,  
a California nonprofit public benefit  
corporation  
its sole member and manager

By: \_\_\_\_\_  
Mary Elizabeth Stokes, President

# Hotel Diva:

## Resolution to Authorize Loan Agreement



Board of Supervisors  
**Homelessness and Behavioral Health Committee**

September 22, 2023

**The Mayor's Office of Housing and  
Community Development**

*MOHCD supports residents with affordable housing opportunities and essential services to build strong communities.*

# File No. 230927



MOHCD Loan Agreement  
for Our City Our Home funds  
up to **\$47,390,000**  
for permanent financing  
of the completed building

# PROJECT HISTORY - Hotel Diva - 440 Geary Street

Early 2020

Hotel Diva operating as tourist hotel

April 2020

City enters emergency booking agreement with Hotel Diva for a Shelter in Place (SIP) site for COVID-vulnerable people experiencing homelessness

August 2020

Episcopal Community Services (ECS) selected as SIP operator; HSH applies to the State for Homekey funds to purchase the site and convert to Permanent Supportive Housing

October 2020

Homekey funds awarded

November 2020

City authorizes property purchase with matching local funds

December 2020

Hotel Diva acquired by ECS using Homekey grant + San Francisco Housing Accelerator Fund (SFHAF) loan

# PROJECT HISTORY - Hotel Diva - 440 Geary Street

Continued

- December 2021 HSH and MOHCD commit to a loan upside of \$15.4M to complete the scope of rehabilitation necessary to complete seismic safety and code updates
- January 2022 Building rehabilitation starts
- August 2023 Building rehabilitation complete
- August 2023 Citywide Affordable Housing Loan Committee approves MOHCD Permanent Loan financing of \$47.4 million
- September 2023 SFHAF acquisition/rehabilitation loan expires

# PROJECT DETAILS

**Hotel Diva**  
**440 Geary Street**

- Located in Downtown/Civic Center
- 122 units @ 50% MOHCD AMI
  - 121 permanent supportive housing (LOSP) units
    - 109 SROs
    - 12 1-bedrooms
    - Referred through Coordinated Entry
  - 1 manager's unit
- Commercial Spaces at Ground Floor
  - Starbucks
  - Vacant restaurant – exploring use as expansion of workforce development program

# Hotel Diva - 440 Geary Street

PERMANENT FINANCING (SOURCES)	Total	Per unit
Homekey Grant (State funds)	\$26M	\$213k
MOHCD Loan (City funds)	\$47.4M	\$388k
TOTAL	\$73.4M	\$602k

PROJECT COSTS (USES)	Total	Per unit
Existing building	\$50M	\$410k
Rehabilitation	\$23.4M	\$192k
TOTAL	\$73.4M	\$602k



# Thank You

## Homelessness and Behavioral Health Select Committee

**September 22, 2023**

### **Episcopal Community Services Project Staff:**

*Macy Leung, Rebecca Gigi, Julia Davtyan, Chris Callandrillo, Charles Deffarges*

### **MOHCD Project Staff:**

*Anne Romero, Sophie Rubin, Sheila Nickolopoulos, Lydia Ely*

### **HSH Staff:**

*Emily Cohen, Dylan Schneider*








## GENERAL PLAN REFERRAL

August 30, 2023

**Case No.:** 2023-008064GPR  
**Block/Lot No.:** 0306/007  
**Project Sponsor:** Mayor's Office of Housing and Community Development  
**Applicant:** Sophie Rubin, Mayor's Office of Housing and Community Development  
sophie.rubin@sfgov.org  
1 South Van Ness Avenue  
San Francisco, CA 94103  
**Staff Contact:** Amnon Ben-Pazi – (628) 652-7428  
[Amnon.Ben-Pazi@sfgov.org](mailto:Amnon.Ben-Pazi@sfgov.org)

**Recommended By:**   
Joshua Switzky, Acting Director of Citywide Policy for  
Rich Hillis, Director of Planning

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

### Project Description

The Project is a \$47M permanent loan for the Hotel Diva at 440 Geary Street, which was acquired and rehabilitated from 2021-2023 using short-term financing from SHFAF that is now expiring. The San Francisco Board of Supervisors approved funds of \$27M in 2021 for this project early in the process. These funds were used to acquire the property and rehabilitate it into 121 units of permanent supportive housing for homeless households and those at risk of homelessness (and 1 manager's unit). The Project is the upsizing of the City's loan and the payoff of the short term acquisition/rehabilitation loan.

Hotel Diva is one of the City's first Homekey projects, acquired in an effort led by the Department of Homelessness and Supportive Housing (HSH) with co-applicant Episcopal Community Services (ECS) as owner and service provider. Since the Hotel Diva was privately acquired by ECS, and HSH only manages assets it owns, the Project is being underwritten by--and will be monitored as an asset by--the Mayor's Office of Housing and Community Development (MOHCD).

Located in the Downtown/Civic Center neighborhood, Hotel Diva comprises 110 Single Room Occupancy (SRO) units and 12 one-bedroom units for homeless and formerly homeless single adults with incomes at or below 50% MOHCD Area Median Income (MOHCD AMI) for all units except one staff unit. The affordable units are supported by the Local Operating Subsidy Program (LOSP). Hotel Diva contains two ground floor commercial spaces, including a long-term Starbucks and vacant commercial space, which has been used as the construction office. ECS hopes to expand its workforce development program in the vacant space.

Total development costs are \$73.5M. The purchase of the Hotel Diva was made possible by a \$26M Homekey grant from California Department of Housing and Community Development (HCD). Robust services are funded through a separate services contract by HSH. This requested permanent loan of \$47.38M would be used to pay off a construction loan from the San Francisco Housing Accelerator Fund (HAF). In addition, the LOSP grant will be resized and updated to reflect the final unit count and include commercial income from Starbucks, which was not part of the initial analysis completed at LOSP contract underwriting. Payoff of the HAF construction loan is estimated to occur by October 19, 2023, requiring an extension as the HAF loan will expire on September 30, 2023.

Section 2A.53 of the San Francisco Administrative Code requires a written report from the Planning Department to the Board of Supervisors on the consistency of the proposed Project with the General Plan.

## Environmental Review

The project was determined to be categorically exempt under CEQA Guidelines Section 15301 on 11/03/2020 (Planning Case No. 2020-009596PRJ).

## General Plan Compliance and Basis for Recommendation

As described below, the proposed Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

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.A

**ENSURE HOUSING STABILITY AND HEALTHY HOMES.**

#### OBJECTIVE 1.B

**ADVANCE EQUITABLE HOUSING ACCESS.**

#### OBJECTIVE 1.C

**ELIMINATE HOMELESSNESS.**

**OBJECTIVE 4.A****SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.**

## Policy 3

Acquire and rehabilitate privately-owned housing as permanently affordable to better serve residents and areas vulnerable to displacement with unmet affordable housing needs.

## Policy 8

Expand permanently supportive housing and services for individuals and families experiencing homelessness as a primary part of a comprehensive strategy to eliminate homelessness.

## Policy 39

Support the repair and rehabilitation of housing to ensure life safety, health, and well-being of residents, especially in Environmental Justice Communities, and to support sustainable building practices.

*The Project is a loan to refinance the completed acquisition and rehabilitation of a building with 121 units of supportive housing for homeless households and those at risk of homelessness. It would support the expansion of the City's supply of rehabilitated, permanently affordable supportive housing. 440 Geary Street is located in the Tenderloin, an Environmental Justice Community.*

**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 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 would not negatively impact existing or future neighborhood-serving retail uses. 440 Geary Street includes ground-floor retail space which would be retained.*

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 would conserve and protect existing housing. It would protect neighborhood character by allowing San Francisco households that have experienced homelessness to continue living in the City, thus preserving the neighborhood's cultural and economic diversity.*

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

*The Project would enhance the City's supply of affordable housing. The Project is a loan to refinance the acquisition and rehabilitation of a building with 121 units of supportive housing for formerly homeless*

*households.*

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

*The Project is a loan to refinance the acquisition and rehabilitation of an existing building. It would not result in commuter traffic impeding MUNI transit service or overburdening 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 would not cause displacement of businesses in the industrial or service sectors and will have no impact on future opportunities for resident employment or ownership in these sectors. 440 Geary Street includes ground-floor retail space which would be retained.*

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

*The Project is a loan to refinance the acquisition and rehabilitation of an existing building which was rehabilitated according to all applicable safety regulations. It would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The Project would have no impact on the City's Landmarks and historic buildings. 440 Geary Street is a historic resource situated in a Conservation District. The building has been rehabilitated in accordance with all applicable regulations. The Project is a loan to refinance the acquisition and completed rehabilitation of the building.*

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

*The Project would have no impact on the City's parks and open space and their access to sunlight and vistas.*

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