

File No. 220344

Committee Item No. 9

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

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date April 20, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
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#### OTHER (Use back side if additional space is needed)

- Planning Department - General Plan Referral- 3/28/2022
- Homekey Grant Program Notice of Funding Availability
- \_\_\_\_\_
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Completed by: Brent Jalipa Date April 14, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Purchase of Real Property - City Gardens Bridge, LLC - 333-12th Street - Apply for Grant -  
2 California Department of Housing and Community Development - Homekey Grant Program  
3 - \$147,540,000]

4 **Resolution 1) approving and authorizing the Director of Property, on behalf of the**  
5 **Department of Homelessness and Supportive Housing (“HSH”), to acquire certain**  
6 **property located at 333-12th Street (“Property”) for \$145,000,000 plus up to**  
7 **\$2,250,000 in interest, payable in two installments, plus an estimated \$290,000 for**  
8 **typical closing costs, for a total anticipated amount not to exceed \$147,540,000; 2)**  
9 **approving and authorizing HSH, on behalf of the City, to apply to the California**  
10 **Department of Housing and Community Development for a Homekey Grant; 3)**  
11 **approving and authorizing an Agreement of Purchase and Sale for Real Estate for**  
12 **the acquisition of the Property from City Gardens Bridge, LLC (“Purchase**  
13 **Agreement”), which includes a liquidated damages clause of up to \$5,000,000 as well**  
14 **as certain other remedies, in case of default by the City; 4) authorizing the Director**  
15 **of Property to execute the Purchase Agreement, make certain modifications, and**  
16 **take certain actions in furtherance of this Resolution and the Purchase Agreement,**  
17 **as defined herein; 5) affirming the Planning Department’s determination under the**  
18 **California Environmental Quality Act; and 6) adopting the Planning Department’s**  
19 **findings that the Purchase Agreement, and the transaction contemplated therein, is**  
20 **consistent with the General Plan, and the eight priority policies of Planning Code,**  
21 **Section 101.1.**

22  
23 WHEREAS, The Department of Homelessness and Supportive Housing’s (HSH)  
24 mission is to prevent homelessness when possible and to make homelessness a rare,  
25

1 brief, and one-time experience in San Francisco through the provision of coordinated,  
2 compassionate, and high-quality services; and

3 WHEREAS, With the enactment of Resolution No. 319-18 in October 2018, the  
4 Board of Supervisors and Mayor London N. Breed declared a shelter crisis and affirmed  
5 San Francisco’s commitment to combatting homelessness and creating or augmenting a  
6 continuum of shelter and service options for those experiencing homelessness; and

7 WHEREAS, Proposition C (2018) (Gross Receipts Tax for Homelessness  
8 Services) (“Prop C”), passed by San Francisco voters in November 2018, created the  
9 Homelessness Gross Receipts Tax to fund the Our City, Our Home (“OCOH”) Fund, in  
10 order to expand and complement existing funding and strategic efforts to prevent and end  
11 homelessness for San Francisco residents; and

12 WHEREAS, Permanent Supportive Housing is the most effective, evidence-based  
13 solution to ending chronic homelessness and also prevents new incidents of homelessness  
14 among highly vulnerable people with long experiences of homelessness; and

15 WHEREAS, In July 2020, Mayor Breed announced her Homelessness Recovery  
16 Plan, including the goal of acquiring and operating 1,500 new units of Permanent  
17 Supportive Housing over the next two years; and

18 WHEREAS, The OCOH Oversight Committee recommended in its most recent  
19 Investment Plan that the City use Prop C funds to acquire and develop new Permanent  
20 Supportive Housing units for adults, families, and Transitional Age Youth; and

21 WHEREAS, Since July 2020, the City has opened, or is under contract for, over  
22 1,500 new units of site-based Permanent Supportive Housing that will add to the existing  
23 portfolio of supportive housing units that provide permanent homes and services to over  
24 10,000 San Francisco households; and

1           WHEREAS, Since June 30, 2021, the Board of Supervisors has approved the  
2 City to move forward with the acquisition of four properties that will provide more than 350  
3 units of Permanent Supportive Housing in Supervisorial Districts 11, 9, 5, and 6; and

4           WHEREAS, In accordance with California Health and Safety Code, Section  
5 50675.1.1, California Department of Housing and Community Development (“HCD”) has  
6 issued a 2021 Notice of Funding Availability (“NOFA”), a copy of which is on file with the  
7 Clerk of the Board of Supervisors in File No. 220344, for the Homekey Grant Program  
8 (“Project Homekey”), to provide housing for individuals and families who are experiencing  
9 homelessness or who are at risk of homelessness and who are impacted by the COVID-19  
10 pandemic; and

11           WHEREAS, In 2020, the City received two Project Homekey grant awards for the  
12 acquisition of two hotels that have added approximately 362 Permanent Supportive  
13 Housing units to the City’s existing inventory, and a copy of the corresponding authorizing  
14 Resolutions are on file with the Clerk of the Board of Supervisors in File No. 201193 and  
15 File No. 201268; and

16           WHEREAS, In 2021 the City received a Project Homekey grant award to support  
17 the acquisition of the 160-unit building located at 1321 Mission, and a copy of the  
18 corresponding authorizing Resolution is on file with the Clerk of the Board of Supervisors in  
19 File No. 220133; and

20           WHEREAS, The Property includes the real property and a 200 multi-family unit  
21 residential building (consisting of a central lobby, community lounges, office space, laundry  
22 rooms, elevator and shared outdoor space) located at 333-12th Street, as well as certain  
23 improvements, appurtenances, personal property, and intangible property described in the  
24 Purchase Agreement, a copy of which is on file with the Board of Supervisors in File  
25 No. 220344; and

1           WHEREAS, Upon acquisition of the Property, the City intends to use the Property  
2 for Permanent Supportive Housing for families exiting homelessness; and

3           WHEREAS, A third round of Homekey Grant Funding is anticipated to be  
4 released in October 2022; and

5           WHEREAS, HSH, on behalf of the City, may choose to submit an application  
6 (“Application”) for Project Homekey funds for the Property, under the 2021 NOFA or a future  
7 NOFA for Project Homekey funds, in an amount not to exceed a total anticipated amount of  
8 \$147,540,000 (collectively referred to as “Acquisition Cost”), or the maximum award amount  
9 allowable under Project Homekey; and

10           WHEREAS, HCD will require an authorizing Resolution approved by the Board of  
11 Supervisors to accompany the Application that must be submitted to HCD by May 2, 2022, to  
12 be considered for a 2021 Homekey Grant program award; and

13           WHEREAS, HSH anticipates using Prop C funding to supplement and match any  
14 Project Homekey funding award, if applicable; and

15           WHEREAS, The City, through HSH and the Real Estate Division and in consultation  
16 with the Office of the City Attorney, has negotiated the Purchase Agreement to acquire the  
17 Property from City Gardens Bridge, LLC for \$145,000,000 plus up to \$2,250,000 in interest  
18 (“Purchase Price”), to be paid in two installments, plus an estimated \$290,000 for typical  
19 closing costs, and including a liquidated damages clause of up to \$5,000,000 as well as  
20 certain other remedies, in case of default by the City, substantially in the form approved by the  
21 Director of Property and the HSH Executive Director and on file with the Clerk of the Board of  
22 Supervisors in File No. 220344, incorporated herein by reference; and

23           WHEREAS, The Purchase Agreement contemplates that i) the City would pay the  
24 Purchase Price in two installments to Seller, the first installment of which would be  
25 \$100,000,000 (“First Installment”) and the second installment of which would be \$45,000,000

1 plus a maximum of \$2,250,000 interest accruing at a rate of 5% per annum for a total of  
2 \$47,250,000 (“Second Installment”), both of which are required to be paid by City in the same  
3 City fiscal year; ii) the City would take title and possession of the Property after payment of the  
4 First Installment; and iii) the City Controller would provide a certification to Seller prior to City  
5 acquisition of the Property certifying the availability of funds for payment of the Second  
6 Installment; and

7 WHEREAS, HSH will use Prop C funding to pay the First Installment, and in the  
8 event that the City does not receive Project Homekey funds or identify other financing options  
9 to pay for the Second Installment, HSH will use proceeds from the 2020 Health and Recovery  
10 General Obligation Bond to pay the Second Installment; and

11 WHEREAS, The Director of Property has determined the Purchase Price to be at or  
12 below fair market value; and

13 WHEREAS, The Purchase Agreement will not become effective until the Board of  
14 Supervisors and the Mayor approve this Resolution, in their sole and absolute discretion; and

15 WHEREAS, The Planning Department, by letter dated March 28, 2022 (“Planning  
16 Letter”), has determined that the City’s proposed acquisition of the Property is not defined as  
17 a project under the California Environmental Quality Act (“CEQA”) Guidelines, Sections 15378  
18 and 15060(c)(2) (“CEQA Determination”) and is consistent, on balance, with the General Plan,  
19 and the eight priority policies of Planning Code, Section 101.1 (“General Plan Findings”), and  
20 a copy of said Planning Letter is on file with the Clerk of the Board of Supervisors in File  
21 No. 220344 and is incorporated herein by reference; now, therefore, be it

22 RESOLVED, That in accordance with the recommendations of the Executive  
23 Director of HSH and the Director of Property, the Board of Supervisors approves the  
24 Purchase Agreement presented to the Board and authorizes the Director of Property to  
25 acquire the Property; and, be it

1           FURTHER RESOLVED, That the Board of Supervisors hereby authorizes HSH,  
2 on behalf of the City, to submit the Application to HCD; and, be it

3           FURTHER RESOLVED, That the Board of Supervisors acknowledges that if the  
4 Application is successful, HSH will seek Board of Supervisors approval to accept and  
5 expend the Project Homekey funds and to authorize execution of a Standard Agreement,  
6 and any other documents required or deemed necessary to secure the Project Homekey  
7 funds under the terms of the Project Homekey program guidelines; and, be it

8           FURTHER RESOLVED, That, in accordance with the recommendations of the  
9 HSH Executive Director and the Director of Property, the Board of Supervisors approves  
10 the Purchase Agreement, including two-installment payment structure and the liquidated  
11 damages clause in case of default by City, and approves and authorizes the HSH  
12 Executive Director and the Director of Property to take all actions necessary or appropriate  
13 to acquire the Property and effectuate the Purchase Agreement and this Resolution; and,  
14 be it

15           FURTHER RESOLVED, That the Board of Supervisors approves the Director of  
16 Property (or the Director's designees), in consultation with the HSH Executive Director and  
17 the Office of the City Attorney, to enter into any additions, amendments, or other  
18 modifications to the Purchase Agreement and any other documents or instruments  
19 necessary in connection therewith (including but not limited to the exhibits and ancillary  
20 agreements attached to the Purchase Agreement) that the Director of Property determines  
21 are in the best interests of the City, do not materially decrease the benefits to the City with  
22 respect to the Property, do not materially increase the obligations or liabilities of the City,  
23 are necessary or advisable to complete the transaction contemplated in the Purchase  
24 Agreement, and that effectuate the purpose and intent of this Resolution, such  
25

1 determination to be conclusively evidenced by the execution and delivery by the Director of  
2 Property of any such additions, amendments, or other modifications; and, be it

3 FURTHER RESOLVED, The Board of Supervisors affirms the Planning  
4 Department's CEQA Determination and General Plan Findings, for the same reasons as  
5 set forth in the Planning Letter, and hereby incorporates such findings by reference as  
6 though fully set forth in this Resolution; and, be it

7 FURTHER RESOLVED, That approval of the Purchase Agreement shall not be  
8 construed as approval of any change in use or new project on the Property; the City will  
9 conduct environmental review of any new uses and/or project, following further design  
10 development and study under CEQA, and retains absolute discretion to: (1) modify  
11 potential future projects to mitigate significant adverse environmental impacts, (2) select  
12 feasible alternatives which avoid significant adverse impacts, (3) require the  
13 implementation of specific measures to mitigate the significant adverse environmental  
14 impacts, (4) reject proposed projects if the economic and social benefits of said project do  
15 not outweigh otherwise unavoidable significant adverse impacts of the project, or (5)  
16 approve future projects upon a finding that the economic and social benefits of said project  
17 outweigh otherwise unavoidable significant adverse impacts; and, be it

18 FURTHER RESOLVED, That within thirty (30) days after the Closing (as defined  
19 in the Purchase Agreement), HSH shall provide any applicable final contracts to the Clerk  
20 of the Board for inclusion into the official file.





<b>Item 9</b> <b>File 22-0344</b>	<b>Departments:</b> Homelessness & Supportive Housing
<b>EXECUTIVE SUMMARY</b>	
<p><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the acquisition of 333 12<sup>th</sup> Street, which includes 200 family-sized units to be converted to permanent supportive housing. The resolution would also authorize the Department of Homelessness and Supportive Housing to apply for a Homekey grant.</li> </ul> <p><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The property for purchase at 333 12<sup>th</sup> Street was selected following a Request for Information and evaluation by an interdepartmental review panel. The property was built in 2021 and contains 200 units, for a total of 618 bedrooms. According to HSH, the property is primarily being used for private, market rate housing. Approximately half the existing tenants are students, for a total current occupancy level of 56 percent. All current leases are for less than 12 months. There are no commercial leases.</li> <li>• The purchase price was confirmed by a third-party appraisal and appraisal review.</li> </ul> <p><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The total acquisition cost not to exceed amount is \$147,540,000. This includes the \$145,000,000 purchase price, as well as an estimated \$290,000 for closing costs, and up to \$2,250,000 in interest.</li> <li>• The cost per bedroom is \$238,738, which is less than the average cost per bedroom of \$352,442 of recent HSH acquisitions.</li> <li>• The City will pay the purchase price in two installments. The first payment of \$100,000,000 is due upon closing and would be paid using Proposition C funding. The second installment, due by June 30, 2023, would be for \$45,000,000 plus a maximum of \$2,250,000 in interest accruing at a rate of five percent per year for a total of \$47,250,000. Funding for the second payment would either be from a successful Homekey award or proceeds from a future 2020 Health and Recovery general obligation bond issuance.</li> </ul> <p><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**MANDATE STATEMENT**

Administrative Code Section 23.3 states that the Board of Supervisors must approve acquisitions and conveyances of real property by resolution. An appraisal of the property is required if the Real Estate Division determines that the fair market value is greater than \$10,000 and an appraisal review is required if the fair market value is greater than \$200,000.

**BACKGROUND**

**City Acquisition of Permanent Supportive Housing**

The City’s July 2020 Homelessness Recovery Plan established a goal of purchasing or leasing 1,500 new units of Permanent Supportive Housing between by June 30, 2022. That goal has been met and exceeded: as of April 12, 2022, the City has purchased or leased over 2,500 units of new supportive housing.<sup>1</sup>

These properties have been acquired by using local Proposition C funds, federal CARES Act funds, and offset by state Project Homekey funds. Proposition C, approved by San Francisco voters in November 2018, instituted a gross receipts tax for the purposes of funding homeless services and housing.

In July 2020, the California Department of Housing and Community Development announced, through a Notice of Funding Availability (NOFA), the Homekey Program along with the availability of approximately \$600 million in grant funding to local governments to sustain and expand housing for folks experiencing homelessness and impacted by COVID-19. The City has applied for, and received, nearly \$126 million in Homekey grant funding since July 2020, as shown in Exhibit 1 below.

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<sup>1</sup> Progress towards Permanent Supportive Housing goals, including “Goal B,” can be monitored through the City’s online dashboard at <https://sf.gov/data/homelessness-recovery-plan#progress-towards-permanent-supportive-housing-goals>. Goal B (new purchases, new leases, and new development sites) includes both site-based and scattered site permanent supportive housing units.

**Exhibit 1. City Property Acquisitions for Permanent Supportive Housing,  
July 1, 2020-April 20, 2022**

Address	Total Est. Cost	Units	Bedrooms	Cost per Bedroom	Homekey Award	City Cost per Bedroom
440 Geary Street	\$53,473,340	130	130	\$411,333	\$26,000,000	\$211,333
1000 Sutter Street	\$74,022,061	232	232	\$319,061	\$47,912,020	\$112,543
1321 Mission Street	\$86,673,000	160	240	\$361,138	\$46,290,000	\$168,263
3061 16th Street	\$7,215,000	25	25	\$288,600	\$5,763,280	\$58,069
5630-5638 Mission Street	\$23,340,000	52	52	\$448,846	Request Pending	\$448,846
835 Turk Street	\$34,763,450	114	114	\$304,943	Not yet requested	\$304,943
<b>Total Approved Acquisitions</b>	<b>\$279,486,851</b>	<b>713</b>	<b>793</b>	<b>\$352,442</b>	<b>\$125,965,300</b>	<b>\$193,596</b>

Source: HSH

Note: Total costs include acquisition and estimated rehabilitation costs. Differences in acquisition prices depend on variables such as property condition, unit sizes, and building age. Costs for planned or in-progress rehabilitation, including seismic upgrades for older properties, are estimated at time of acquisition.

In addition to the properties noted in Exhibit 1, two acquisitions are pending Board of Supervisors review: 681-687 Ellis Street (File 22-0345) will be presented to the Budget and Finance Committee on April 27, 2022 and 333 12<sup>th</sup> Street is being considered at the April 20, 2022 Budget & Finance Committee meeting (this File 22-0344).

According to HSH, new property acquisition activities will begin to slow next fiscal year as the majority of available one-time funding sources (prior year local Proposition C collections) are fully spent following the purchases of 333 12<sup>th</sup> Street and 681-687 Ellis Street.

### Existing Property

In January 2021, the Department of Homelessness and Supportive Housing (HSH) issued a Request for Information (RFI) to identify properties for possible acquisition as permanent supportive housing sites and received 100 eligible submissions, including the property located at 333 12<sup>th</sup> Street.

The multi-family mid-rise property under consideration is located at 333 12<sup>th</sup> Street in San Francisco's South of Market neighborhood. The property was built in 2021, and contains 200 units, for a total of 618 bedrooms.<sup>2</sup> All units have a private bath, kitchen, and will be provided to

<sup>2</sup> According to the site inspection report, the 200-unit property contains 98 two-bedroom units, 88 four-bedroom units, and 14 five-bedroom units.

the City fully furnished. The building amenities include an elevator, lobby, community lounges, office space, laundry rooms and shared outdoor space. The property is situated on a 29,406 square foot site with no onsite parking. There are no commercial leases in the building.

The property is currently primarily being used for private, market rate housing. HSH reports that approximately half the existing tenants are students, for a total current occupancy level of 56 percent. The majority of existing tenants are on short-term leases (less than 12 months) and following the pending acquisition would still have the option to stay and access the support services that will be offered under HSH. In addition, the property contains below market rate inclusionary units.

### DETAILS OF PROPOSED LEGISLATION

The proposed resolution would make the following actions:

1. Authorize the Director of Property, on behalf of HSH, to acquire the property located at 333 12<sup>th</sup> Street;
2. Approve an Agreement of Purchase and Sale for Real Estate for acquisition of the property for \$145,000,000 plus an estimated \$290,000 for typical closing costs, and up to \$2,250,000 in interest payable in two installments, for a total acquisition cost amount not to exceed \$147,540,000 from City Gardens Bridge, LLC;
3. Authorize HSH, to apply for the California Department of Housing and Community Development's Homekey Grant Program to purchase the property;
4. Authorize the Director of Property, HSH Director, and City Attorney's Office to execute the purchase and sale agreement, make certain modifications, and take certain actions in furtherance of the resolution and the purchase and sale agreement that do not increase the liabilities of the City;
5. Affirm the Planning Department's determination that the purchase is not considered a project under the California Environmental Quality Act (CEQA); and
6. Adopt the Planning Department's findings that the purchase and sale agreement is consistent with the General Plan and Planning Code Section 101.1.

An appraisal conducted by Colliers International Valuation and Advisory Services ("Colliers") confirmed that as of January 14, 2022, the proposed sale price of \$145,000,000 is fair market value. R. Blum and Associates conducted an appraisal review of the property and recommended approval of the Colliers appraisal.

#### **Intended Use**

The City intends to use the property for Permanent Supportive Housing for families exiting homelessness. The property is already a multifamily residential property and so it will not require use conversion under the Planning Code in order to be used as permanent supportive housing.

The property will be operated by a third-party non-profit provider selected through a competitive process. HSH anticipates that a Solicitation of Information will be released in Summer 2022 to select the permanent non-profit operator of the property. Following provider onboarding, leases will become available to prospective tenants ("lease up"), a process that is expected to be

completed by late 2022. This is a similar process HSH has followed for the four other permanent supportive housing property acquisitions approved by the Board of Supervisors in fiscal year 2021-22.

### **Site Condition**

A visual inspection of the exterior property condition and six rooms of the building was completed by a licensed consultant who also reviewed building drawings on behalf of the Housing Accelerator Fund<sup>3</sup> on March 3, 2021. The inspection found that the building was in very good condition. Because the building was constructed in 2021 and based on the inspection of the building, HSH does not expect that any significant rehabilitation will be necessary to convert the property to supportive housing.

### **Project Homekey Grant Application**

According to the proposed resolution, the City intends to submit a new application for Homekey Grant funds by HCD's May 2, 2022 second round deadline, in an amount not to exceed the 333 12<sup>th</sup> Street property acquisition cost of \$147,540,000, or the maximum award amount allowable. If this application is not successful, the City plans to resubmit its application during the third round of Project Homekey funding, which is expected to be released in October 2022. If the grant application is successful, HSH would seek Board of Supervisors approval for a Standard Agreement with HCD and to accept and expend the Homekey grant to offset the purchase cost of the 333 12<sup>th</sup> Street property.

According to HCD's Notice of Funding Availability, Round 2 projects are eligible for up to \$200,000 in funding per unit, or \$300,000 per unit if the applicant provides at least \$100,000 per unit in matching funds. Operating subsidies are available for up to \$1,400 per unit per month for two years, or for three years if a match is provided. Per unit subsidies vary based on unit size and population served.

## **FISCAL IMPACT**

The total cost to purchase the property, including closing costs, is \$147,540,000 for 200 units, or approximately \$737,700 per unit or \$238,738 per bedroom as shown in Exhibit 2 below.

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<sup>3</sup> The San Francisco Housing Accelerator Fund is a non-profit organization that invests private and philanthropic funds in affordable housing.

**Exhibit 2: Estimated Acquisition and Improvement Costs**

<b>Item</b>	<b>Amount</b>
Purchase Price	\$145,000,000
Closing Costs	\$290,000
Improvement Cost	\$0
Interest	\$2,250,000
<b>Total Cost</b>	<b>\$147,540,000</b>
Units	200
Bedrooms	618
<b>Cost Per Unit</b>	<b>\$737,700</b>
<b>Cost Per Bedroom</b>	<b>\$238,738</b>

Source: Property Purchase and Sale Agreement

**Deposit**

Section 2.2 of the proposed purchase and sale agreement states that the City is required to put a deposit of \$5 million within ten days of the effective date of the purchase and sale agreement. The purchase and sale agreement are effective after it is approved by the Board and Mayor. Lease up may begin after the deposit is paid.

**Operating Costs**

HSH estimates that operating and services costs for 333 12<sup>th</sup> Street would be similar to other properties in its permanent supportive housing portfolio. Annual operating costs are approximately \$19,800 per unit, or \$3,960,000 for the 200-unit building, once it is fully occupied. Future services contracts for the property are unlikely to meet the \$10 million expenditure threshold that would bring them to the Board of Supervisors for review. Operating costs for the first three years of the project would be partially offset by a Homekey award, which would fund \$2.4 million to \$3.36 million of operating costs per year.

**Two-Installment Payment Structure**

Under the proposed purchase and sale agreement, the City will pay the purchase price in two installments. The first payment of \$100,000,000 is due upon closing and would be paid using Proposition C funding. The second installment, due by June 30, 2023, would be for \$45,000,000 plus a maximum of \$2,250,000 in interest accruing at a rate of five percent per year for a total of \$47,250,000.

Funding for the second payment would either be from a successful Homekey award<sup>4</sup> or proceeds from the 2020 Health and Recovery general obligation bond.<sup>5</sup>

### **Funding Source Availability**

The ordinance approved by the voters establishing Proposition C requires that spending be allocated in the following manner: at least 50 percent on permanent housing, at least 25 percent on mental health services for homeless individuals, up to 15 percent homeless prevention, and up to 10 percent on homeless shelters and hygiene. Of the permanent housing portion, at least 20 percent must be spent on transition aged youth (TAY) and at least 25 percent must be spent on families. According to the February 2022 Six-Month Our City, Our Home Fund Report, the FY 2021-22 Proposition C spending plan for permanent housing acquisition is \$304.3 million and includes \$108.7 million for any population, \$106.5 million for families, and \$89.1 million for TAY. According to Gigi Whitley, HSH Deputy Director for Administration and Finance, the general population acquisition budget has been allocated to previously approved acquisitions. The TAY acquisition budget has \$58.4 million in unallocated spending, however, because the proposed property is composed of two- and five-bedroom units, the Department plans to use the property to house families rather than transition aged youth. The family acquisition budget is sufficient to fund the first installment payment of the proposed acquisition but not the entire purchase. The July 2021 Proposition C spending plan for FY 2022-23 does not include funding for family housing acquisitions.

The general obligation bonds have not yet been issued. In order to meet the closing timeline requested by the seller and to preserve the bond funds for future projects, which do not have the same population restrictions as the Proposition C funds, HSH devised the payment plan for the proposed purchase. If the City is awarded Homekey funds, it would avoid bond debt service for this project.

### **RECOMMENDATION**

Approve the proposed resolution.

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<sup>4</sup> If funding is not available under the current Project Homekey funding round which closes on May 2, 2022, the City plans to re-submit its application under Round 3 which is scheduled to open in October.

<sup>5</sup> In November 2020, voters approved the 2020 Health and Recovery General Obligation Bond which provides \$487.5 million for investment in health and homelessness, parks and open spaces, and right-of-way repair. Of that, \$116.6 million was allocated to purchase permanent supportive housing units (File 21-0388).

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

CITY GARDENS BRIDGE, LLC, a Delaware limited liability company,  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

333 12th Street,  
San Francisco, California

\_\_\_\_\_, 2022

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**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(333 12th Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this “**Agreement**”), dated for reference purposes only as of \_\_\_\_\_, 2022, is by and between CITY GARDENS BRIDGE, LLC, a Delaware limited liability company (“**Seller**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**” or “**City**”).

IN CONSIDERATION of the payment of the non-refundable sum of Ten Dollars and No/100 (\$10.00) by City, the receipt of which is hereby acknowledged by Seller, and the respective agreements contained hereinbelow, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately 25,533 square feet of land, located in the City and County of San Francisco, commonly known as 333 12th Street, Block 3521 Lots 095 and 097 through 296 and more particularly described in the attached Exhibit A (the “**Land**”);

(b) all improvements and fixtures located on the Land, including, without limitation, that certain apartment building consisting of 200 apartments, a central lobby, community lounges, common areas, plus a rooftop garden and basement, as well as all other buildings and structures located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land and its improvements such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal or other services, but excluding an existing rooftop grill (to be removed by Seller prior to Closing), and together with all on-site parking, if any (collectively, the “**Improvements**”);

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the “**Appurtenances**”);

(d) the Leases (as defined below);

(e) the tangible personal property owned by Seller, and accepted by City, located on or in or used in connection with the Land, Appurtenances, or Improvements as described in Exhibit B attached hereto (the “**Personal Property**”). Seller shall not remove any Personal Property subsequent to the Effective Date, except for (i) Personal Property which is replaced with Personal Property of comparable utility, or (ii) as otherwise requested by City no later than thirty (30) days prior to Closing; and

(f) any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Land, Improvements, Appurtenances, or Personal Property, including the name “City Gardens” or any derivation thereof but excluding the name “CitySpaces” or any derivation thereof. Buyer may otherwise use any other trade name now used in connection with the Land or Improvements, and, to the extent expressly approved by City pursuant to this Agreement, any contract rights or other agreements or rights relating to the ownership, use and operation of the Land, Improvements or Personal Property or any of the foregoing (collectively, the “**Intangible Property**”).

All of the items referred to in Subsections (a), (b), (c), (d), (e) and (f) above are collectively referred to as the “**Property**.”

## **2. PURCHASE PRICE**

### **2.1 Purchase Price**

The total purchase price for the Property is One Hundred Forty-Five Million and No/100 Dollars (\$145,000,000.00) (the “**Purchase Price**”) payable in cash in two installments. One Hundred Million and no/100 Dollars (\$100,000,000) (“**First Installment**”) will be payable in cash on the Closing Date (as defined below). Forty-Five Million and no/100 Dollars (\$45,000,000) plus any accrued interest thereon at the rate below (“**Second Installment**”) will be paid on a date no later than June 30, 2023 (the “**Second Installment Deadline**”). Interest on the Second Installment will start accruing on the Closing Date at a rate of five percent (5%) per annum (“**Second Installment Interest Rate**”), and will continue accruing on any unpaid portion of the Second Installment until paid in full, provided that if the Second Installment is not paid in full by the Second Installment Deadline, the interest rate will be increased to the rate set forth in Section 6.9 below.

### **2.2 Deposit**

Within ten (10) business days following the Effective Date (as defined in Section 11.17 (Effective Date) below), City will deliver to the Title Company (as defined in Section 3.2 (Title Insurance) below), as escrow agent, Five Million and 00/100 Dollars (\$5,000,000.00) as an earnest money deposit applicable to the Purchase Price (the “**Deposit**”). If City elects, the Title Company will deposit the Deposit into an interest-bearing account at a bank or financial institution approved by City in writing, and the term “Deposit” will include any interest earned thereon. Unless this Agreement is terminated and the Deposit disbursed as provided in this Agreement, the Deposit will be applied to the First Installment at Closing. If City terminates this Agreement for failure of any condition precedent under this Agreement, then City and Seller will equally share all title fees and escrow cancellation fees and Seller and City will instruct the Title Company to immediately return the Deposit to City. If the sale of the Property is not consummated because of a City default, then City will pay all title fees and escrow cancellation fees and Seller and City will instruct the Title Company to immediately release the Deposit to Seller in accordance with Section 6.8 (City Default and Liquidated Damages Regarding First Installment and Closing) below. If City terminates this Agreement due to a Seller default, then Seller will pay all title fees and escrow cancellation fees and Seller and Buyer will instruct the Title Company to immediately return the Deposit to City.

## 2.3 Payment

(a) On the Closing Date (as defined in Section 6.2 (Closing Date)), City will pay the First Installment to Seller, adjusted pursuant to the provisions of Article 7 (Expenses and Taxes), and reduced by any credits due City hereunder.

(b) On or before the Second Installment Deadline, City will pay the Second Installment to Seller, with interest in accordance with the Second Installment Interest Rate.

(c) Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) (Seller's Delivery of Documents), City may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "**Federal Tax Code**"), or Section 18662 of the California Revenue and Taxation Code (the "**State Tax Code**"). Any amount properly so withheld by City and paid to the Internal Revenue Service or the California Franchise Tax Board will be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein and its obligations under this Agreement will not be excused or otherwise affected by such withholding.

## 2.4 Funds

All payments made by any party hereto will be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2 (Title Insurance) below), as escrow agent.

## 2.5 Project Homekey

Seller acknowledges that City intends to apply for funding from the State of California through the State of California's Project Homekey program ("**Project Homekey**") to fund all or a portion of the Second Installment. City agrees to keep Seller informed to the extent possible on the Project Homekey process, including the date City submits any application associated with the Project and any meaningful feedback received during the application process. Seller agrees to use commercially reasonable efforts to cooperate with City during Project Homekey application process.

For the avoidance of doubt, payment of the Second Installment is not contingent upon the City receiving funding under Project Homekey or any other specific source of funding.

## 3. TITLE TO THE PROPERTY

### 3.1 Conveyance of Title to the Property

At the Closing, Seller will convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "**Deed**"), subject to the Accepted Conditions of Title (as defined in the Due Diligence Agreement and Permit to Enter Property by and between Seller and City dated as of February 23, 2022 (the "**Due Diligence Agreement**")).

### 3.2 Title Insurance

Delivery of title in accordance with the preceding Section will be evidenced by the commitment of Chicago Title NCS California (the “**Title Company**”) to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006 – updated 6/17/2006) (the “**Title Policy**”) in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants (except for the tenants under the Leases, provided such exception is limited to the interest of such tenants as tenants only without any rights or options to purchase any of the Property), subject only to the Accepted Conditions of Title, as defined in the Due Diligence Agreement, or otherwise accepted by City under the Due Diligence Agreement. If Seller gives notice under Section 1.3(c) of the Due Diligence Agreement that Seller will remove or cure the exceptions objected to by City on or before the Closing and fails to remove the objectionable exceptions from title before the Closing Date, and City is unwilling to take title subject to the objectionable exceptions, Seller will be in default under this Agreement and City will have the rights and remedies provided in this Agreement. The Title Policy must provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, and contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property and such other special endorsements as City may reasonably request. The Title Policy will also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

### 3.3 Bill of Sale

At the Closing, Seller will transfer title to the Personal Property, to the extent expressly approved by City pursuant to this Agreement, by bill of sale in the form attached hereto as Exhibit D (the “**Bill of Sale**”), such title to be free of any liens, encumbrances or interests. To the extent possible, any maintenance contract or warranty in connection with the purchase of the Personal Property will be optional (namely, City may, but is not required to, purchase any maintenance contract or warranty as provided in Section 5.2(h) below), and included in the Assignment of Intangible Property (defined below).

### 3.4 Assignment of Intangible Property

At the Closing, Seller will transfer title to the Intangible Property, to the extent expressly approved by City pursuant to this Agreement, by such instruments as City may reasonably determine necessary, including, without limitation, an Assignment of Contracts, Warranties and Guaranties, and other Intangible Property in the form attached hereto as Exhibit E (the “**Assignment of Intangible Property**”).

### 3.5 Assignment of Leases

At the Closing, Seller shall transfer its title to the Leases, to the extent expressly approved by City pursuant to this Agreement, by an assignment of leases in the form attached hereto as Exhibit F (the “**Assignment of Leases**”), such title to be free of any liens, encumbrances or interests, except for the Accepted Conditions of Title (as defined in the Due Diligence Agreement).

### 3.6 Property Management

No later than twenty-one (21) days prior to Closing, unless extended by Seller and City, City will i) elect to enter into a contract with a selected provider to manage the Property on City's behalf as of Closing, or ii) review and approve an existing property management contract

to be assigned by Seller and assumed by City as of Closing for interim property management services at the Property after Closing.

#### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS; AS-IS SALE**

##### **4.1 City's Due Diligence**

As of the date hereof, Seller has given City and/or its Agents a full opportunity to investigate the Property as provided in the Due Diligence Agreement, and Seller has provided the Documents (as defined in the Due Diligence Agreement) to City and its Agents.

#### **5. ENTRY; CONDITIONS TO CLOSING**

##### **5.1 Entry**

During the Due Diligence Period and at all times prior to the Closing Date, subject to the terms and conditions of the Due Diligence Agreement Seller shall afford City and its Agents reasonable access to the Property and the Documents (as defined in the Due Diligence Agreement) for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the City Conditions Precedent. As used herein, the "**Due Diligence Period**" means the period commencing upon the execution of the Due Diligence Agreement by the City (February 23, 2022) and ending on March 25, 2022.

##### **5.2 City's Conditions to Closing**

The following are conditions precedent to City's obligation to purchase the Property (collectively, "**City Conditions Precedent**"):

- (a) City has reviewed and approved title to the Property, as set forth in Article 3 herein and the Due Diligence Agreement.
- (b) City has reviewed and approved the physical and environmental conditions of the Property prior to the end of the Due Diligence Period, as provided in the Due Diligence Agreement. City shall be responsible for performing or arranging any such reviews at City's expense, provided that if City's consultants reasonably determine that, based upon their Phase I examination, a Phase II examination is necessary with respect to all or a part of the Real Property, or if City otherwise desires to drill any test wells or take any soil borings, City shall notify Seller of the scope of any proposed Phase II examination, test wells or soil borings and may request Seller's consent to perform the same. City may not perform a Phase II examination, drill any test wells or take any soils borings without Seller's prior written consent, which may withheld or granted in Seller's sole and absolute discretion. If Seller consents to a Phase II examination, any test wells or soils borings, City shall pay the cost of any such Phase II examination or the drilling of such test wells or soils borings performed by City or City's consultants.

If any of City's investigations reveal any contamination of the Property with any Hazardous Material, as defined in Section 8.1 (Representations and Warranties of Seller) below, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period: (i) request that Seller, at Seller's sole cost, complete before the Closing through duly licensed contractors approved by City such activities as are necessary to cleanup, remove,

contain, treat, stabilize, monitor or otherwise control Hazardous Material located on or under the Property in compliance with all governmental laws, rules, regulations and requirements and in accordance with a written remediation plan approved by City in its sole discretion and by all regulatory agencies with jurisdiction; or (ii) terminate this Agreement. If City notifies Seller of its election to request that Seller remediate the contamination, Seller shall have fifteen (15) days after receipt of City's notice, to elect, at Seller's sole option, to provide City with: Seller's election to remediate the contamination before the Closing; or Seller's election to terminate this Agreement. Seller's failure to provide notice to Buyer within such fifteen (15)-day period shall be deemed notice of termination. If Seller chooses to remediate the contamination, the Closing may be extended for a reasonable time to enable Seller to complete such remediation, provided any such extension shall be subject to City's prior written approval, which City may give or withhold in its sole discretion. Seller shall indemnify City for any claims relating to the remediation of such Hazardous Material pursuant to a separate written agreement in form and substance satisfactory to City and Seller. If Seller and City are not able to agree to the form of such indemnification agreement, either party may terminate this Agreement.

(c) City has reviewed and confirmed the compliance of the Property with all applicable laws, regulations, permits, and approvals as of the Closing Date.

(d) City has reviewed and approved the Documents (as defined in the Due Diligence Agreement) prior to the end of the Due Diligence Period, except as provided in Section 5.2(h), Section 5.2(i), and Section 5.5 hereof.

(e) Seller is not in default in the performance of any covenant or agreement to be performed by Seller under this Agreement or the Due Diligence Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement are true and correct both when made and as of the Closing Date. At the Closing, Seller will deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 (Representations and Warranties of Seller) below are true and correct as of the Closing Date or stating any exceptions thereto. If any exceptions are not satisfactory to the City in its sole discretion, this condition shall not be satisfied.

(f) The physical condition of the Property is substantially the same on the Closing Date as on the last day of the Due Diligence Period, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 (Risk of Loss)), and, as of the Closing Date, there is no litigation or administrative agency or other governmental proceeding, pending or threatened, that after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceeding is pending or threatened that could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(g) Title Company is committed at the Closing to issue to City, or its nominee, the Title Policy as provided in Section 3.2 (Title Insurance).

(h) Except as described in Section 5.2(i), and unless extended by Seller and City, City has reviewed and approved no later than twenty-one (21) days prior to Closing a schedule (the "**Schedule of Agreements**") setting forth a list of all of the contracts or agreements that City has elected that Seller will assign to City, and City will assume at Closing (the "**Assumed Contracts**"), together with true and accurate copies of all such documents. At or

before the Closing, Seller has terminated any contracts or agreements other than the Assumed Contracts and the Leases, without liability to City.

(i) No later than the Effective Date, unless extended by Seller and City, Seller has provided a copy of the existing property management contract for the Property to City for review.

(j) Seller has delivered the items described in Section 6.3 below (Seller's Delivery of Documents) in form and substance satisfactory to City.

(k) Title Company has agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

(l) City has reviewed and approved prior to the end of the Due Diligence Period of all income and expense statements, year-end financial and monthly operating statements for the Property the period since November 2020 (when the first tenants occupied the Property) and to the extent available, the current year, all of which shall be prepared on the accrual tax-basis accounting method.

(m) At or before the Closing, Seller has terminated any existing and pending leases and other occupancy agreements other than the Leases, without liability to City.

(n) Prior to the Effective Date, the City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution or an ordinance, as applicable, approving, adopting and authorizing this Agreement and the transaction contemplated herein. As of the Closing Date, no lawsuit challenging the validity of such enactment shall be pending before a court of law. City agrees to notify Seller within three (3) business days after the enactment of such resolution or ordinance or the filing of any lawsuit challenging such enactment.

(o) On or prior to the Effective Date, Seller has provided to City a binding commitment, in a form acceptable to City, from a lender indicating that the lender will loan to Seller at least Fifteen Million Dollars (\$15,000,000) as of Closing, or such other evidence reasonably satisfactory to City that Seller is making sufficient progress to obtain such loan. The City's signature to this Agreement shall constitute such satisfaction.

(p) Seller has complied with all applicable requirements of Chapter 41B of the San Francisco Administrative Code (Community Opportunity to Purchase Act) ("COPA"), and if Section 41B.7 of COPA is applicable, no Qualified Nonprofit (as defined under COPA) shall have exercised the right of first refusal to purchase the Property conferred upon Qualified Nonprofits by Section 41B.7 of COPA.

The City Conditions Precedent are solely for the benefit of City. If any City Condition Precedent is not satisfied, City will have the right in its sole discretion either to waive in writing the City Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement. The waiver of any City Condition Precedent will not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Seller, except to the extent of the specific City Condition Precedent so waived. If one or more City Condition Precedents has not been satisfied, but may be satisfied with additional time, then

City may extend Closing Date, at City's option, for a reasonable period of time specified by City, to allow such City Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all City Conditions Precedent have not been satisfied, and provided that no such extension shall exceed ninety (90) days, in the aggregate, unless agreed to by Seller in its sole and absolute discretion.

With respect to those City Conditions Precedent which expressly state that the same are to be satisfied prior to the end of the Due Diligence Period, the City's signature to this Agreement shall constitute such satisfaction.

### **5.3 Cooperation with City**

Seller will cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any City Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City will not be affected or released by City's waiver or fulfillment of any City Condition Precedent, except to the extent of the specific Condition Precedent so waived. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

### **5.4 Map Act Compliance**

The parties acknowledge that the conveyance of the Property is exempt from the California Subdivision Map Act under Government Code section 66428; therefore, compliance with the Subdivision Map Act is not a condition precedent to Closing.

### **5.5 Leases**

(a) During the Due Diligence Period, City shall have the right to review: (i) all existing leases and other occupancy agreements, and (ii) tenant correspondence files, and (iii) a current rent roll for the Property, prepared by Seller and listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than thirty (30) days in advance (if any), lease commencement date, lease termination date, lease expansion or extension options, option rent, and cost of living or other rent escalation clauses, any unexpired free rent, operating expense abatements or other unexpired concessions, and a description of any uncured defaults, if any.

(b) No later than the Effective Date, unless extended by Seller and City, City shall notify Seller whether or not City approves all leases and occupancy agreements it has been provided in accordance with Section 5.5(a). If City notifies Seller that it does not approve any leases, then this Agreement shall automatically terminate. If City has not given the notice required under this Section 5.5(b) to Seller by the Effective Date, the City's signature to this Agreement shall constitute such approval.

(c) As of the Effective Date, Seller will not enter into any new leases at the Property without City's approval or deemed approval as provided in this Section 5.5(c), except for Leases of individual apartment units at the Property with households referred to Seller by City or organizations that work with homeless households and/or households who are at risk of

homelessness (“**Target Households**”). Within ten (10) days after entering into any new lease with any Target Household, but in no event later than five (5) days prior to the Closing Date, Seller shall notify City of such new lease and provide a copy of the lease to the City. Seller shall notify City at least ten (10) business days prior to entering into any new lease with any tenant other than a Target Household, which notice shall include the identity of the tenant, the unit to be leased, the amount of rent and amount of the security deposit. City shall approve or disapprove any proposed new leases other than with Target Households within ten (10) business days after receipt of a request for approval from Seller. City’s failure to disapprove any lease within ten (10) business days after receipt of Seller’s request for approval shall be deemed to constitute approval of such lease by City. Seller acknowledges that Target Households are preferred by the City as tenants, as the City intends to lease units to Target Households after acquiring the Property, and Seller intends to focus its leasing efforts on Target Households.

(d) At the Closing, Seller will assign to City, and City will assume (1) all leases and other occupancy agreements that City has approved pursuant to Section 5.5(b), and (2) all new leases entered into by Seller with Target Households or otherwise approved (or deemed approved) by City in accordance with Section 5.5(c).

#### **5.6 Seller’s Conditions to Closing**

The following are conditions precedent to Seller’s obligation to sell the Property (collectively, “**Seller Conditions Precedent**”):

(a) City shall have deposited into escrow the First Installment, subject to adjustment for any prorations and credits provided hereunder, in cash or by federal wire transfer of immediately available funds and all other monies required to be deposited by Buyer hereunder. For the avoidance of doubt, payment of the Second Installment is expressly not a Seller Condition Precedent and will occur after Closing, pursuant to Section 2.3(b).

(b) City shall have deposited into escrow all instruments and documents to be delivered by City to Seller at the Closing under the provisions of this Agreement.

(c) City shall have performed and satisfied all material covenants and material obligations of City under this Agreement to the extent such covenants and obligations are to be performed or satisfied as of the Closing Date.

(d) All representations and warranties of City contained in this Agreement shall be true and correct in all material respects as of the Effective Date and shall remain true and correct in all material respects as of the Closing Date and are deemed remade as of the Closing Date.

(e) If Section 41B.7 of COPA is applicable, no Qualified Nonprofit (as defined under COPA) shall have exercised the right of first refusal to purchase the Property conferred upon Qualified Nonprofits by Section 41B.7 of COPA.

(f) Prior to the Effective Date, the City’s Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution or an ordinance, as applicable, approving, adopting and authorizing this Agreement and the transaction

contemplated herein. As of the Closing Date, no lawsuit challenging the validity of such enactment shall be pending before a court of law. City agrees to notify Seller within three (3) business days after the enactment of such resolution or ordinance or the filing of any lawsuit challenging such enactment.

(g) As of the Effective Date, City has duly authorized funds available to pay the First Installment and the Second Installment when due.

(h) Concurrently with the Closing hereunder, Seller shall receive proceeds of a loan to Seller, which may be secured by a pledge of Seller's right to receive payment of the Second Installment pursuant hereto (in accordance with Section 11.3 below), in an amount not less than Fifteen Million Dollars (\$15,000,000).

The Seller Conditions Precedent are solely for the benefit of Seller. If any Seller Condition Precedent is not satisfied, Seller will have the right in its sole discretion either to waive in writing the Seller Condition Precedent in question and proceed with the sale or, in the alternative, terminate this Agreement, provided that if the failure of such Seller Condition Precedent is due to a default by City, any termination by Seller as a result thereof shall not waive Seller's right to recover liquidated damages under Section 6.8. The waiver of any Seller Condition Precedent will not relieve City of any liability or obligation with respect to any representation, warranty, covenant, or agreement of City, except to the extent of the specific Seller Condition Precedent so waived. If one or more Seller Condition Precedents has not been satisfied, but may be satisfied with additional time, then Seller may extend Closing Date, at Seller's option, for a reasonable period of time specified by Seller, to allow such Seller Conditions Precedent to be satisfied, subject to Seller's further right to terminate this Agreement upon the expiration of the period of any such extension if all Seller Conditions Precedent have not been satisfied and provided that no such extension shall exceed ninety (90) days, in the aggregate, unless agreed to by City in its sole and absolute discretion.

## **5.7 COPA**

Seller and City each acknowledge that if Section 41B.7 of COPA is applicable, City's purchase of the Property will not occur if a Qualified Nonprofit exercises the right of first refusal conferred by Section 41B.7 of COPA, and in the event of such exercise this Agreement shall terminate.

## **6. ESCROW AND CLOSING**

### **6.1 Opening of Escrow**

On or before the Closing Date (as defined in Section 6.2), the parties will open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement will serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated under this Agreement. Seller and City will execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement will control.

## 6.2 Closing Date

The consummation of the purchase and sale contemplated under this Agreement (the “Closing”) will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of Title Company located at One Embarcadero Center, Suite 250, San Francisco, CA 94111 approximately sixty (60) days after the Effective Date (the “Anticipated Closing Date”), or on such other date as City and Seller may mutually agree (the actual date of Closing, the “Closing Date”); provided, however, that City will have the right to unilaterally extend the Closing Date up to thirty (30) days after the Anticipated Closing Date (the “Extended Closing Date”) upon payment of the Deposit and as provided under Section 5.2 (City’s Conditions to Closing).

The Closing Date may not otherwise be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before July 8, 2022, or the Extended Closing Date, if applicable, Title Company will, unless it is notified by both parties to the contrary, within five (5) days after July 8, 2022, or the Extended Closing Date, if applicable, return to the depositor any items that may have been deposited into escrow, provided that the Deposit will not be released without the written consent of both parties or an order of a court of competent jurisdiction. Any such return will not, however, limit the provisions of this Agreement or otherwise relieve either party of any liability it may have for its wrongful failure to close. In no circumstances shall the Closing Date occur prior to the later of the Effective Date or July 1, 2022.

## 6.3 Seller's Delivery of Documents

At or before the Closing, Seller will deliver to City, or City’s nominee, through escrow, the following, in form and substance satisfactory to City:

- (a) a duly executed and acknowledged Deed;
- (b) a duly executed Bill of Sale;
- (c) a Certificate from the Secretary of State or other appropriate government official of the State of California indicating that, as of the Closing Date, there are no filings against Seller in the office of the Secretary of State or other government official under the Uniform Commercial Code of such State which would be a lien on any of the items specified in the Bill of Sale (other than such filings, if any, as are being released at the time of the Closing);
- (d) four (4) duly executed and acknowledged counterparts of the Assignment of Leases;
- (e) four (4) duly executed counterparts of the Assignment of Intangible Property;
- (f) to the extent in the possession of Seller or its property manager, originals of the Documents, Leases, and Assumed Contracts and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (g) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller’s indirect owner is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code;

(h) a properly executed California Franchise Tax Board Form 593 certifying that Seller's indirect owner is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or is a partnership for tax purposes or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;

(i) such resolutions, authorizations, or other limited liability company documents or agreements relating to Seller and its members as the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated by this Agreement, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller, or a legal opinion from Seller counsel opining to such authority;

(j) a closing statement in form and content satisfactory to City and Seller;

(k) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above; and

(l) A statement executed by Seller certifying to City (i) all defaults, if any, which then exist on the part of any party to any Lease or Assumed Contract in any obligations for the payment of money under the applicable Lease or Assumed Contract; and (ii) all defaults, if any, which then exist on the part of any party to any Lease or Assumed Contract in any obligations under the applicable Lease or Assumed Contract other than obligations for the payment of money and for which a written notice of default has been given or received.

#### **6.4 City's Delivery of Documents and Funds**

At or before the Closing, City, or its nominee, will deliver to Seller through escrow the following:

(a) an executed certificate of acceptance of the Deed executed by City's Director of Property;

(b) four (4) duly executed and acknowledged counterparts of the Assignment of Leases;

(c) four (4) duly executed counterparts of the Assignment of Intangible Property;

(d) a closing statement in form and content satisfactory to City and Seller;

(e) a letter from the City Controller certifying the availability of funds for the payment of the Second Installment in the City's fiscal year that commences on July 1, 2022;

(f) an Agreement Regarding Condominium Conversion in form and content satisfactory to City, if applicable; and

(g) the First Installment, as provided in Article 2 hereof, subject to adjustment as provided in Section 7.

**6.5 Other Documents**

Seller and City will each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

**6.6 Title Company as Real Estate Reporting Person**

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company will perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City will each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

**6.7 Seller Default**

If the sale of the Property is not consummated solely because of a Seller default under this Agreement or the Due Diligence Agreement, or if a City Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or failure to act where Seller has an affirmative duty to act, City may, at its sole election, and as its sole and exclusive remedy, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller will pay to City any title, escrow, legal and inspection fees incurred by City and any other expenses reasonably incurred by City in connection with the Due Diligence Agreement and performance of its due diligence review of the Property, and neither party will have any further rights or obligations under this Agreement or the Due Diligence Agreement; or (2) continue this Agreement pending City's action for specific performance.

**6.8 City Default and Liquidated Damages Regarding First Installment and Closing**

If the sale of the Property contemplated under this Agreement is not consummated solely because of a default under this Agreement by City, then City will pay the amount of the Deposit to Seller as liquidated damages. The parties have agreed that Seller's actual damages, in the event of a default by City resulting in a failure to close the purchase of the Property, would be extremely difficult or impracticable to determine. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST CITY, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF CITY RESULTING IN A FAILURE TO CLOSE THE PURCHASE OF THE PROPERTY.

INITIALS: Seller PK City \_\_\_\_\_

**FOR THE AVOIDANCE OF DOUBT, THIS SECTION 6.8 DOES NOT APPLY TO ANY FAILURE ON THE PART OF THE CITY TO PAY THE SECOND INSTALLMENT.**

**6.9 City Default Regarding Second Installment**

On or before the Second Installment Deadline, City will pay the Second Installment to Seller, without deduction or offset. If City has any claim against Seller relating to the Property after Closing, whether pursuant to this Agreement or otherwise, City will still pay the Second Installment on or before the Second Installment Deadline without any deduction or offset, and the City shall only be permitted to pursue any such claim in a separate action. If City is successful in its claim, it shall only be permitted to seek reimbursement separately and shall not be entitled to withhold all or a portion of the Second Installment from Seller.

If City does not pay the Second Installment to Seller on or before the Second Installment Deadline, Seller will have the following remedies, exclusive of any other remedies:

i) Seller will be entitled to collect from City all costs of collection, including reasonable attorneys' fees and costs, and all remedies available at law or in equity, including but not limited to, the right all rights and remedies under Government Code Sections 970 through 978.8, but expressly excluding a forfeiture or return of the Property.

ii) Commencing on the Second Installment Deadline and continuing until the Second Installment is paid in full to Seller, default interest on the unpaid portion of the Second Installment will accrue at an annual rate equal to the lesser of: (a) ten percent (10%) per annum, or (b) the maximum lawful rate of interest; and

iii) City will indemnify Seller against and hold Seller harmless from any and all additional reasonable costs actually incurred as a result of City's default.

Seller acknowledges and agrees that, if City does not pay the Second Installment on or before the Second Installment Deadline, Seller's remedies will be limited to those listed above, and in no event will the Seller seek or obtain a forfeiture or return of the Property.

City acknowledges and agrees that, if City does not pay the Second Installment on or before the Second Installment Deadline, Seller may pursue any or all of the remedies listed above, and that such remedies are not mutually exclusive.

**7. EXPENSES AND TAXES**

**7.1 Rent and Other Apportionments**

The following are to be apportioned through escrow as of the Closing Date:

**(a) Rent**

Rent under the Leases shall be apportioned as of the Closing Date, (i) in the case of Leases with Target Families, only to the extent such rent has been collected, and (ii) in the case of Leases other than with Target Families, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage existing under the Leases as of the Closing Date, City shall pay to Seller (1) any rent actually collected which is applicable to the period

preceding the Closing Date and, (2) any rent actually collected which is applicable to any period after the Closing Date for which Seller has provided a credit to the City at Closing pursuant to clause (ii) above; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing for the month during which the Closing Date occurs, second to all unpaid rent accruing from and after the first month after the month during which the Closing Date occurs through the month during which such rent is collected, and then to unpaid rent accruing prior to the month during which the Closing Date occurs. City shall not be obligated to take any steps to recover any rent arrearage, and Seller shall not be permitted to do so. Notwithstanding the foregoing, nothing herein shall preclude Seller from collecting any arrearages owed under any leases terminated effective as of, or prior to, the Closing Date, including.

**(b) Leasing Costs**

Seller shall pay all leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing (including, without limitation, any leasing commissions attributable to expansion or extension options which are not exercised until after the Closing), if applicable. City shall be entitled to a credit against the First Installment for the total sum of all security deposits paid to Seller by tenants under any Leases (except to the extent properly applied to any obligations of such tenants prior to the Closing), and any interest earned thereon, and to the extent applicable, as well as for any free rent, operating expense abatements, or other unexpired concessions under any Leases to the extent they apply to any period after the Closing.

**(c) Other Tenant Charges**

Where the Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City. With respect to any Leases to Target Households, if any utility charges payable by the tenants thereunder for any period prior to the Closing Date remain unpaid as of the Closing, Seller shall receive a credit from City in the amount of such unpaid charges and the City shall retain all rights to receive such payments from such tenants.

**(d) Utility Charges**

Seller will cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by Seller will remain the property of Seller and City will reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

**(e) Other Apportionments**

Amounts payable under any Assumed Contracts, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs will be apportioned as of the Closing Date.

## **7.2 Closing Costs**

City will pay the cost of the any survey ordered by City, the premium for the Title Policy, recording fees and one-half of any escrow fees. City will pay the cost of any transfer taxes applicable to the sale of the Property. Seller will pay one-half of any escrow fees, and for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement will be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

## **7.3 Real Estate Taxes and Special Assessments**

At or before the Closing, Seller will pay for all tax years prior to the tax year in which the Closing occurs, (i) all general real estate taxes payable with respect to the Property (ii) any special assessments against the Property, including, without limitation, interest payable thereon, and (iii) any other taxes applicable to the Property (collectively, "Property Taxes"). Property Taxes for the tax year in which the Closing occurs shall be prorated between Seller and the City as of the Closing Date.

## **7.4 Preliminary Closing Adjustment**

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

## **7.5 Sales and Use Taxes for Transferred Taxable Personal Property**

Based on Seller's representations and warranties in Section 8.1(r) and Section 8.1(s) below, the parties anticipate that the sale of the Personal Property included in the sale of the Property will be considered an "occasional sale" under the California Sales and Use Tax Law (California Revenue and Taxation Code 6001, *et seq.*), and as a result thereof, will be exempt from sales and use taxes. If the State of California deems the sale of the Personal Property included in the sale of the Property not to be an "occasional sale" under the California Sales and Use Tax Law, City will pay to Seller, and Seller will promptly remit to the State of California, the entire amount of any applicable sales and use taxes triggered by the transfer of the Personal Property included in the sale of the Property, in accordance with the California law. The parties agree that the value of the Personal Property included in the sale of the Property is [Forty Thousand Dollars and 00/100 (\$40,000.00)]. Upon such payment of any applicable sales and use taxes, Seller will promptly provide City with confirmation of such payment to the State of California. Seller, on behalf of itself and its successors and assigns, will indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses (including, without limitation, reasonable attorneys' fees) relating to the sales and use taxes arising out of the transfer of the Personal Property included in the sale of the Property, but only

to the extent the City has paid such sales and use tax to Seller as provided in this Section 7.5. The foregoing indemnity includes any applicable sales and use taxes that City pays to Seller and Seller fails to remit to the State of California. The indemnification provisions of this Section will survive beyond the Closing. Each party agrees to cooperate with the other in the event of any audit by, or communication with, the State of California as it relates to any applicable sales and use taxes triggered by the transfer of the Personal Property included in the sale of the Property.

#### **7.6 Post-Closing Reconciliation**

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they will be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations will promptly pay such sum to the other party.

#### **7.7 Survival**

The provisions of this Section will survive the Closing.

### **8. REPRESENTATIONS AND WARRANTIES; AS-IS SALE**

#### **8.1 Representations and Warranties of Seller**

Seller represents and warrants to City as follows:

(a) To Seller's knowledge, and without any independent investigation or inquiry by Seller, there are no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) To Seller's knowledge, and without any independent investigation or inquiry by Seller, Seller has not received any written information indicating that any document or instrument furnished by Seller to City in connection with this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement was made.

(c) The Leases and Assumed Contracts furnished to City and are true, correct, and complete copies of such documents. The Documents and other information furnished to City (other than the Leases and Assumed Contracts) include all of the relevant documents and information in the possession of Seller or its property manager pertaining to the physical condition and operation of the Property and are true and complete (to the extent in the possession of Seller or its property manager) copies of such documents.

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) There are no easements or rights of way on the Property that have been acquired by prescription or are otherwise not of record, and to Seller's knowledge, there are no easements, rights of way, permits, licenses or other forms of agreement that afford third parties the right to traverse any portion of the Property to gain access to other real property that are not of record. There are no disputes with regard to the location of any fence or other monument of

the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(f) To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property and to Seller's knowledge and without any independent investigation or inquiry by Seller, are adequate to service the Property.

(g) There is no litigation pending or, after due and diligent inquiry, to Seller's knowledge, threatened, against Seller or any basis for litigation that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(h) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property, except as required under COPA.

(i) Seller is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of Delaware, and in good standing as a registered foreign limited liability company in California; this Agreement and all documents executed by Seller that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(j) Seller has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify the City of and the reasons therefor together with any relevant facts or information requested by City. Any such suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

(k) Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using and operating the Property after Closing as residential housing.

(l) Except as described in the reports listed on Schedule 1 ("**Seller's Environmental Disclosure**") (i) the Property is not currently in violation of any Environmental Laws; (ii) the Property is not now, nor to Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (iii) during Seller's ownership of the Property, and to Seller's knowledge, prior to Seller's ownership of the Property, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property; (iv) during Seller's ownership of the Property, and to Seller's knowledge, prior to Seller's ownership of the Property, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under

the Property, or if there are currently any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they are properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) to Seller's knowledge, the Property does not consist of any landfill; (vii) to Seller's knowledge, and without any independent investigation or inquiry by Seller, no building materials that constitute Hazardous Materials were incorporated into the Improvements in violation of Environmental Laws in effect at the time the Improvements were constructed; and (viii) the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

**“Environmental Laws”** means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

**“Hazardous Material”** means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

**“Release”** or **“threatened release”** when used with respect to Hazardous Material includes any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release also includes, without limitation, “release” as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(m) At the time of Closing, there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller will cause to be discharged all mechanics' or materialmen's liens arising from any labor or

materials furnished to the Property at the request of Seller before Closing. There are no obligations in connection with the Property that will be binding upon City after Closing except for the Accepted Conditions of Title, the Assumed Contracts, and the Leases.

(n) Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(o) There are no free rent, operating expense abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions (collectively referred to as “Offsets”) or any termination, extension, cancellation or expansion rights under any existing or pending Leases except as set forth in the Leases. Seller has paid in full any of landlord's leasing costs incurred by Seller in connection with any tenant improvements.

(p) No brokerage or similar fee is due or unpaid by Seller with respect to any Lease. No brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Leases.

(q) The copies of the Leases delivered by Seller to City contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any unexpired rent concessions, over-standard tenant improvement allowances or other inducements to lease.

(r) Seller is not engaged in the business of “retail sales” as defined under the California Sales and Use Tax Law. Seller does not hold, and the nature of Seller’s business does not require Seller to hold, a seller’s permit under the California Sales and Use Tax Law.

(s) Within twelve (12) months prior to the Closing Date Seller has not engaged in two (2) or more sales sufficient in number, scope, and character to constitute an activity for which it is required to hold a seller’s permit under the California Sales and Use Tax Law.

## **8.2 Survival and Limitation on Seller’s Representations and Warranties**

All representations and warranties contained in Section 8.1, are qualified by any information contained in the Documents and other materials made available to City pursuant to the Due Diligence Agreement, including any title report or survey made available to City. In addition, in the event City is actually aware prior to the Closing that any of the representations or warranties set forth in Section 8.1 are not true, correct or complete, and City nonetheless proceeds with the purchase of the Property, such representations and warranties shall be deemed to be qualified by all matters of which City is actually aware, and City shall have no claim for breach of any such representation or warranty to the extent it is actually aware prior to the Closing of any inaccuracies therein. The representations and warranties of Seller set forth in Section 8.1, as qualified by all matters of which City is actually aware as of the Closing and by any exceptions and qualifications set forth on the certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above, Seller’s indemnification obligations under the Assignment of Intangible Property and Seller’s indemnification obligations under the Assignment of Leases (collectively, “**Seller’s Surviving Obligations**”), shall survive the Closing for a period of nine (9) months from and after the

Closing Date (the “**Survival Period**”). City must give Seller written notice of any claim City may have against Seller with respect to any of Seller’s Surviving Obligations prior to the expiration of the Survival Period. Any such claim which City may have which is not so asserted prior to the expiration of the Survival Period shall not be valid or effective, and Seller shall have no liability with respect thereto. Notwithstanding any provision of this Agreement or any closing document executed by Seller and delivered to Buyer at Closing to the contrary, Seller’s liability with respect to Seller’s Surviving Obligations shall not exceed, in the aggregate, one percent (1%) of the Purchase Price; provided that Seller’s liability with respect to Seller’s Surviving Obligations may exceed, in the aggregate, one percent (1%) of the Purchase Price for any claims caused by Seller’s intentional misrepresentation or fraud.

### **8.3 As-Is Sale.**

(a) As provided in this Agreement and the Due Diligence Agreement, it is the intent of Seller and City that, by the Closing Date, City will have had the opportunity to perform a diligent and thorough inspection and investigation of the Property, either independently or through its Agents. CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS CONVEYING AND CITY IS ACQUIRING SELLER’S INTEREST IN THE PROPERTY ON AN “AS IS WITH ALL FAULTS” BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY FOR CITY’S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 (REPRESENTATIONS AND WARRANTIES OF SELLER), SELLER DOES NOT WARRANT THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY’S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

(b) As part of its agreement to accept the Property and in its “as is and with all faults” condition, City as of the Closing Date, on behalf of itself and its successors and assigns, waives any right to recover from Seller, and forever releases and discharges, Seller and its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with (a) the use of the Property by City and its successors and assigns or (b) the physical, geological, or environmental condition of the Property, including but not limited to the presence of any Hazardous Materials on, in, under or about the Property. “Losses” means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including attorneys’ fees and costs. In connection with the foregoing release, City, as of the Closing Date, expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT

KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING PROVISIONS OF THIS SECTION 8.3 WILL NOT SERVE TO RELEASE SELLER OR ITS AGENTS FROM, AND NO RELEASE IN THIS SECTION 8.3 APPLIES TO, AND CITY EXPRESSLY DOES NOT WAIVE ANY LOSSES TO THE EXTENT ARISING FROM (A) ANY INTENTIONAL MISREPRESENTATION, INTENTIONAL OMISSION OR FRAUD ON THE PART OF SELLER OR ITS AGENTS, (B) ANY MATERIAL BREACH OF ANY COVENANT OR REPRESENTATION OR WARRANTY MADE BY SELLER UNDER THIS AGREEMENT, OR (C) ANY CLAIM MADE BY ANY THIRD PARTY AGAINST CITY WITH RESPECT TO THE PROPERTY ARISING DURING SELLER'S OWNERSHIP, EXCEPT AS AND TO THE EXTENT CAUSED BY CITY.

## 9. RISK OF LOSS; POSSESSION

### 9.1 Risk of Loss

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any portion of the Property, then the rights and obligations of Seller and City under this Agreement are as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount of up to Ten Thousand Dollars (\$10,000), and the insurer agrees to timely pay for the entire cost of such repair (except the deductible), and the entire cost of the damage or destruction would cost less than Six Million Dollars (\$6,000,000) (the "**Threshold Damage Amount**") to repair or restore, then this Agreement will remain in full force and effect and City shall proceed to acquire the Property upon the terms and conditions set forth in this Agreement. In such event, City will receive a credit against the First Installment equal to the deductible amount, and Seller will assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City for the deductible under any insurance policy, and if the amount expended by Seller exceeds the total amount of such deductible(s), Seller shall reserve from the assignment of insurance proceeds to City, the amount of such excess.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the above deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement will be consummated with City receiving a credit against the First Installment at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City. Notwithstanding the foregoing, Seller shall have no obligation to provide any credit under this Section 9.1(b) in excess of Two Hundred Fifty

Thousand Dollars (\$250,000), and if the cost of repairing such damage or destruction that is not covered by Seller's insurance exceeds Two Hundred Fifty Thousand Dollars (\$250,000), then City shall have the right, at its election, to terminate this agreement within thirty (30) days after Seller notifies City of the damage or destruction unless Seller notifies City within twenty (20) days after the occurrence of the damage and destruction that Seller will provide a credit for the full amount of the cost of repairing such damage and destruction to the extent the same is not covered by Seller's insurance.

(c) If the cost of the repairs of damage or destruction would equal or exceed the Threshold Damage Amount, then City will have the right, at its election, to terminate this Agreement in its entirety, or to not terminate this Agreement and purchase the Property. City will have thirty (30) days after Seller notifies City that an event described in this subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within the thirty (30)-day period will be deemed City's election to terminate this Agreement. If this Agreement is terminated by City's delivery of notice of termination to Seller, then City and Seller will each be released from all obligations under this Agreement, except those expressly stated to survive, the parties will share equally any title fees and escrow cancellation costs. If City elects not to terminate this Agreement, this Agreement will remain in full force and effect, and Seller will notify City of either (i) Seller's intention to repair such damage or destruction, or (ii) Seller's intention to assign insurance proceeds to City. Any repairs elected to be made by Seller under clause (i) of this subsection must be made within one hundred eighty (180) days following such damage or destruction and the Closing will be extended until the repairs are substantially completed. If Seller elects to assign insurance proceeds under clause (ii) of this subsection, City will receive a credit against the First Installment equal to the deductible amount, and Seller will assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City for the deductible under any insurance policy, and if the amount expended by Seller exceeds the total amount of such deductible(s), Seller shall reserve from the assignment of insurance proceeds to City, the amount of such excess.

(d) If condemnation proceedings are commenced against any of the Property (other than by the City or any division or instrumentality thereof), then, City will have the right, at its election, either to terminate this Agreement in its entirety, or only as to that portion of the Property subject to condemnation proceedings (in which case there will be an equitable adjustment to the Purchase Price, which shall be applicable to the First Installment and the Second Installment on a pro rata basis), or to not terminate this Agreement and purchase the Property (or the portion not affected by condemnation, as the case may be). City will have thirty (30) days after Seller notifies City of receipt of the condemnation notice to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period will be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (d) by City's delivery of notice of termination to Seller, then City and Seller will each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination except those expressly stated to survive, the parties will share equally any title fees and escrow cancellation costs. If City elects not to terminate this Agreement, then this Agreement will remain otherwise in full force and effect and City will pay Seller at the Closing the full First Installment less the amount of any condemnation award previously paid to Seller, Seller will transfer and assign to City at Closing the right to receive any condemnation award not paid as of the Closing Date, and City will remain obligated to pay the full amount of the Second Installment on or before the Second Installment Deadline.

## **9.2 Insurance**

Through the Closing Date, Seller will maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements and the Personal Property, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, water, and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller does not maintain, and shall not be obligated to maintain, earthquake insurance. Seller will furnish City with evidence of such insurance upon request by City.

## **9.3 Possession**

Seller will deliver possession of the Property to City on the Closing Date, vacant, except for the Assumed Contracts and Leases.

## **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

### **10.1 Maintenance of the Property by Seller**

Between the Effective Date and the Closing, Seller will maintain the Property in good order, condition and repair, reasonable wear and tear and casualty excepted, and will make all repairs, maintenance and replacements of the Improvements and any Personal Property and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property, provided that Seller shall have no obligation to make any capital improvements to the Property.

### **10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts**

Except for leases permitted to be entered into in accordance with Section 5.5 above, after the Effective Date, Seller may not enter into any lease or contract with respect to the Property that will survive the Closing, or any amendment thereof, or waive any rights of Seller under any Assumed Contract, without in each instance obtaining City's prior written consent. City agrees that it will not unreasonably withhold or delay any such consent. Seller will terminate prior to the Closing, at no cost or expense to City, any and all agreements, including any management agreements affecting the Property that are not Assumed Contracts or Leases.

## **11. GENERAL PROVISIONS**

### **11.1 Notices**

Any notice, consent or approval required or permitted to be given under this Agreement must be in writing and will be deemed to have been given upon receipt, as demonstrated by courier confirmation of delivery or US mail return receipt or other verified tracking. Notices will be addressed as follows:

City:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: **333 12<sup>th</sup> Street**  
andrico.penick@sfgov.org

with copy to:

Jessie Alfaro-Cassella  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
**Re: 333 12<sup>th</sup> Street**  
Email Address: jessie.cassella@sfcityatty.org

Seller:

CITY GARDENS BRIDGE, LLC  
2539 Telegraph Avenue, Suite 101  
Berkeley, CA 94704  
Attn: Patrick Kennedy and JP Walsh  
Email Addresses:  
pck@panoramic.com; jp@panoramic.com

With a copy to:

Shartsis Friese LLP  
One Maritime Plaza, 18th Floor  
San Francisco, CA 94111  
Attn: Craig B. Etlin  
Email Address: cetlin@sflaw.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by email to the email address listed above, or such other address as may be provided from time to time. However, except for any notices given pursuant to Section 5.5(c), neither party may give official or binding notice by email. Except for any notices given pursuant to Section 5.5(c), the effective time of a notice will not be affected by the receipt, before receipt of the original, of an email copy of the notice. With respect to any notices given pursuant to Section 5.5(c), such notices shall be effective upon transmission by e-mail if transmitted before 5:00 p.m. Pacific Time on a business day (otherwise such notice shall be deemed given the next business day), provided that no error or non-delivery message is received by the sender and provided that a copy is also sent on the same business day by one of the other methods set forth in this Section 11.1 unless the recipient affirmatively replies to such email and acknowledges receipt (*i.e.*, not an automated return receipt), in which case no copy need be sent. Notices may be given on behalf of Seller by its attorneys, Shartsis Friese LLP.

## **11.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, then the party through whom the broker or finder makes his or her claim will be responsible for such commission or fee and will indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section will survive the Closing.

### **11.3 Successors and Assigns**

This Agreement is binding on, and will inure to the benefit of, the parties and their respective successors, heirs, administrators and assigns. City has the right, upon notice to Seller given at least ten (10) days prior to the Closing Date, to assign its right, title and interest in and to this Agreement to a non-profit organization directly affiliated with City's intended use of the Property at any time before the Closing Date, provided that the City shall remain jointly and severally liable with the assignee for the performance of its obligations hereunder, including, but not limited to, payment of the Second Installment. Seller has the right, at the Closing or upon at least fifteen (15) days' written notice to City at any time after the Closing, to pledge to a lender or preferred equity provider Seller's contractual rights under this Agreement to receive payment of the Second Installment, subject to the terms of this Agreement; provided that, because City may be restricted in issuing checks to certain parties that are not City vendors, City shall have the right to make payment of the Second Installment to Seller notwithstanding such pledge unless the pledgee qualifies as a City vendor. In no event will Seller have the right to any pledge or lien against City or any of City's assets or property, or to compel City to levy any taxes or lend its credit; provided the foregoing does not limit Seller's rights or City's obligations under Government Code Section 970-978.8. For the avoidance of doubt, a pledge of Seller's contractual right to receive payment of the Second Installment under this Agreement shall not be deemed to be a "pledge or lien against City or any of City's assets or property" for purposes of the preceding sentence. Seller, or any assignee of Seller, shall have no right to place a lien against the Property after Closing. City agrees to deliver an estoppel certificate to any pledgee of Seller's right to receive payment of the Second Installment confirming the amount of the Second Installment that remains unpaid and the terms of this Agreement related to the payment thereof; that there has been no amendment to the provisions of this Agreement regarding the payment of the Second Installment (or if there have been any such amendments, stating the same); that the City has no right to any counterclaim or offset against the payment of the Second Installment; that the City will not amend the terms regarding the payment of the Second Installment without consent of such pledgee; and such other matters as may be reasonably requested by the pledgee, provided that such additional terms shall not increase the obligations or liability of City.

### **11.4 Amendments**

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties in this Agreement or made in writing under this Agreement will be deemed to be material, and, together with all conditions, covenants, and indemnities made by the respective parties under this Agreement or made in writing in accordance with this Agreement will survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement, except as otherwise expressly limited by the terms of this Agreement, including but not limited to, Section 8.2 above. All statements contained in the certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above will constitute representations and warranties hereunder.

### **11.6 Governing Law**

This Agreement is governed by and construed in accordance with the laws of the State of California and the City's Charter and Municipal Code.

### **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) and the Due Diligence Agreement are the final expressions of their agreement with respect to Seller's sale of the Property and City's purchase of the Property and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings, including, without limitation, any letter of intent or term sheet. The parties further intend that this Agreement and the Due Diligence Agreement will constitute the complete and exclusive statement of their terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

### **11.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein includes the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller will be joint and several. As used herein, the term "Agents" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of such party. All approvals, consents, or other determinations permitted or required by City will be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

### **11.9 Interpretation of Agreement**

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision of this Agreement. Whenever the context requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will be deemed to include any gender. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **11.10 Seller Tax Obligations**

Seller acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code ("**Delinquent Payment**"). If, under that authority, any payment City is required to make to Seller under this Agreement is withheld because Seller owes the City a Delinquent Payment, then City will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Seller, without interest, late fees, penalties, or other charges, upon Seller coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

### **11.11 Sunshine Ordinance**

Seller understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250

et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

#### **11.12 Conflicts of Interest**

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

#### **11.13 Notification of Prohibition on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Seller acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Seller further acknowledges that the **(i)** prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller; and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department with whom Seller is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Seller certifies that Seller has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

#### **11.14 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

**11.15 Intentionally Omitted**

**11.16 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

**11.17 Effective Date**

As used herein, the term “**Effective Date**” means the date on which City, or its nominee, and Seller have executed this Agreement, as authorized by a resolution or ordinance, as applicable, enacted by the City's Board of Supervisors and Mayor approving and authorizing this Agreement and the transaction contemplated hereunder.

**11.18 Severability**

If any provision of this Agreement or the application thereof to any person, entity or circumstance is determined to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each other provision of this Agreement will be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

**11.19 Agreement Not to Market**

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller will not negotiate with any other parties pertaining to the sale of the Property and will not market the Property to third parties.

**11.20 Intentionally Omitted.**

**11.21 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party will be considered the drafter of this Agreement, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS WILL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE

DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGES]*

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

CITY GARDENS BRIDGE, LLC,  
a Delaware limited liability company

By: City Gardens 333 LLC,  
a Delaware limited liability company,  
its sole member

By: CitySpaces 333 LLC,  
a Delaware limited liability company,  
its Manager

By: Panoramic CitySpaces 333 LLC,  
a California limited liability company,  
its Manager

By: Panoramic Interests, LLC,  
a California limited liability company,  
its Manager

By:   
Patrick C. Kennedy, Manager

Dated: 4.4.22

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Jessica Alfaro-Cassella  
Deputy City Attorney

## SCHEDULE 1

### SELLER'S ENVIRONMENTAL DISCLOSURE

Phase I Environmental Site Assessment prepared by Partner dated January 14, 2021

Phase I Environmental Site Assessment prepared by Ramboll US Corporation dated March 10, 2018

Phase I Environmental Site Assessment prepared by Environ dated April 3, 2015

Geotechnical Report prepared by Rockridge Geotechnical dated April 14, 2016

Final Report Geotechnical Services prepared by Rockridge Geotechnical dated May 4, 2021

Final Archaeological Testing Report prepared by FAR Western Anthropological Research Group dated September, 2018

Bird and bat survey prepared by Garcia and Associates dated April 17, 2018

Maher Completion Report prepared by Ramboll US Corporation dated July 9, 2019

Site Mitigation Plan prepared by Ramboll US Corporation dated March 22, 2017

Dust Control Plan prepared by Ramboll US Corporation dated March 16, 2017

Hazardous Materials Survey prepared by Terracon dated February 7, 2017

Soil Characterization Report prepared by ACC Environmental Consultants dated June 7, 2018

Analytical Report prepared by McCampbell Analytical dated March 26, 2015

Underground Storage Tank Closure Report prepared by Golden Gate Tank Removal dated July 9, 2018

Soil Sampling Results prepared by Environ dated April 16, 2015

**SCHEDULE 2**

**WARRANTIES**

<b>Description</b>	<b>Warranty Grantor (Manufacturer or Contractor)</b>	<b>Warranty End Date</b>
Preprufe Membrane Waterproofing System	Blue's Roofing	11/1/2035
SBS Roof Membrane System	Blue's Roofing	3/20/2040
Roller Shades	Builders Drapery Service	limited lifetime warranty
Sliding Aluminum-Framed Glass Door	CEO	11/2/2022
Aluminum-Framed Entrances and Storefronts	CEO	11/2/2029
Interior All-Glass Storefronts	CEO	11/2/2022
Aluminum Windows	CEO	11/2/2029
Fireplace	Custom Fireplace	2029
Mannington LVT	Golden State Contract Flooring	3/26/2030
Tarkett LVT	Golden State Contract Flooring	3/26/2025
Falcon Door Hardware	ISEC	6/8/2030
Expansion Control	Mauck	10/21/2025
Joint Sealants	Mauck	10/21/2030
Mailboxes	Service Metal Products	1/11/2026
Turf	TotTurf	12/8/2028

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

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

Lot 1, "Final Map 9295" a 200 Residential Unit Condominium Project, recorded November 10, 2020, in Book 001 of Final Maps, at Pages 107 – 110, Official Records, being a merger and two lot subdivision of Parcels One through Seven as described in that certain Grant Deed Recorded January 6, 2017, as Document No. 2017-K392462, San Francisco County Records.

Also being a portion of Mission Block No. 9.

Assessor's Lot 095 and Lots 097 through 296; Block 3521

## **EXHIBIT B**

### **DESCRIPTION OF ACCEPTED PERSONAL PROPERTY**

Bed frame and mattresses (538)  
Underbed drawer chests (1076)  
Folding desk (5)  
Chairs (50)  
Coat hooks (1000)  
Blackout curtains and curtain rods (400)  
Nightstand and baskets (538)  
Wardrobes (618)  
Mesh baskets in wardrobes (2500)  
Desk lamps (538)  
Coffee tables (173)  
Loveseats (159)  
Side tables (173)  
Shelves in 5 bedroom units (28)  
Benches (113)  
Long couches in 5 bedroom units (14)  
Pantry cabinets (98)  
Entrance stools (168)  
Counter stools and pads (356)  
Dining chairs (308)  
Dining tables (103)  
Paper towel holders (173)  
Dish drying rack (173)  
Trash cans and recycling bins (173)  
Waste bins (538)  
Pegboards (173)  
Bathroom cabinets (200)  
Medicine cabinets (505)  
Eco basin (101)  
Towel warmers (200)  
Cooktop, dish washers, refrigerator, microwaves (200)  
Rooftop chairs (10)  
Rooftop tables (3)

\*Quantities in parentheses

**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned declares this instrument to be  
exempt from Recording Fees (CA Govt. Code  
§ 27383) and Documentary Transfer Tax (S.F.  
Bus. & Tax Reg. Code § 1105)

333 12th Street, San Francisco, CA 94103

(Space above this line reserved for Recorder's use only)

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CITY GARDENS BRIDGE, LLC, a Delaware limited liability company, hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on the attached Exhibit A which is made a part hereof (the "**Property**").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the land and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property.

THE FOREGOING GRANT is made subject to all matters of record and rights of parties in possession.

*[SIGNATURES ON FOLLOWING PAGE]*

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation ("Grantee"), is hereby accepted pursuant to No. 18110 Series of 1939, approved August 7, 1957, and Board of Supervisors' Resolution No. \_\_\_\_\_, approved \_\_\_\_\_, and Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

## **EXHIBIT A**

### **REAL PROPERTY DESCRIPTION**

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

Lot 1, "Final Map 9295" a 200 Residential Unit Condominium Project, recorded November 10, 2020, in Book 001 of Final Maps, at Pages 107 – 110, Official Records, being a merger and two lot subdivision of Parcels One through Seven as described in that certain Grant Deed Recorded January 6, 2017, as Document No. 2017-K392462, San Francisco County Records.

Also being a portion of Mission Block No. 9.

Assessor's Lot 095 and Lots 097 through 296; Block 3521

**EXHIBIT D**

**BILL OF SALE**

For good and valuable consideration the receipt of which is acknowledged, CITY GARDENS BRIDGE, LLC, a Delaware limited liability company (“**Seller**”), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**”), all personal property owned by Seller and located on or in or used in connection with the Land and Improvements (as such terms are defined in that certain Agreement of Purchase and Sale of Real Estate dated as of \_\_\_\_\_, 20\_\_\_\_, between Seller and Buyer (or Buyer's predecessor in interest) (the “**Purchase Agreement**”), including, without limitation, those items described in the attached Schedule 1 (the “**Personal Property**”).

Seller hereby represents to Buyer that Seller is the lawful owner of the Personal Property, that the Personal Property is free and clear of all encumbrances, and that Seller has good right to sell the Personal Property and will warrant and defend the title thereto unto Buyer, its successors and assigns, against the claims and demands of all persons whomsoever.

The Personal Property is in a used condition, and Seller is neither a manufacturer, nor distributor of, nor dealer nor merchant in, the Personal Property. Seller makes no representations, express or implied, as to the condition or state of repair of the Personal Property, including warranties of fitness or merchantability, it being expressly understood that the Personal Property is being sold to Buyer in its present “AS IS, WHERE IS” condition and with all faults, as provided in the Purchase Agreement.

DATED \_\_\_\_\_, 20\_\_\_\_.

[Signature follows]

SELLER:

CITY GARDENS BRIDGE, LLC  
a Delaware limited liability company

By: City Gardens 333 LLC,  
a Delaware limited liability company,  
its sole member

By: CitySpaces 333 LLC,  
a Delaware limited liability company,  
its Manager

By: Panoramic CitySpaces 333 LLC,  
a California limited liability company,  
its Manager

By: Panoramic Interests, LLC,  
a California limited liability company,  
its Manager

By: \_\_\_\_\_  
Patrick C. Kennedy, Manager

## EXHIBIT E

### ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES, AND OTHER INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between CITY GARDENS BRIDGE, LLC, a Delaware limited liability company (“**Assignor**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Assignee**”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is acknowledged, effective as of the Closing Date (as defined in the Purchase Agreement), Assignor assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under:

- A. the contracts listed in the attached Schedule 1 (the “**Contracts**”)
- B. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in the attached Exhibit A including, without limitation, those warranties and guaranties listed in the attached Schedule 2 (collectively, “**Warranties**”);
- C. any other Intangible Property (as defined in that certain Agreement of Purchase and Sale of Real Estate dated as of \_\_\_\_\_, 20\_\_\_\_, between Assignor and Assignee (or Assignee's predecessor in interest) (the “**Purchase Agreement**”).

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

- 1. Assignor will indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of Assignor's obligations under the Contracts prior to the Closing Date.
- 2. Effective as of the Closing Date, Assignee hereby assumes all of the Assignor's obligations under the Contracts required to be performed on or subsequent to the Closing Date. Assignee will indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of Assignor's obligations under the Contracts on or after the Closing Date.
- 3. This Assignment will be binding on and inure to the benefit of the parties to this Assignment, their heirs, executors, administrators, successors in interest and assigns.
- 4. This Assignment is governed by and construed in accordance with the laws of the State of California and the City's Charter and Municipal Code.
- 5. This Assignment may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

CITY GARDENS BRIDGE, LLC  
a Delaware limited liability company

By: City Gardens 333 LLC,  
a Delaware limited liability company,  
its sole member

By: CitySpaces 333 LLC,  
a Delaware limited liability company,  
its Manager

By: Panoramic CitySpaces 333 LLC,  
a California limited liability company,  
its Manager

By: Panoramic Interests, LLC,  
a California limited liability company,  
its Manager

By: \_\_\_\_\_  
Patrick C. Kennedy, Manager

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

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

## **EXHIBIT A**

### **REAL PROPERTY DESCRIPTION**

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

Lot 1, "Final Map 9295" a 200 Residential Unit Condominium Project, recorded November 10, 2020, in Book 001 of Final Maps, at Pages 107 – 110, Official Records, being a merger and two lot subdivision of Parcels One through Seven as described in that certain Grant Deed Recorded January 6, 2017, as Document No. 2017-K392462, San Francisco County Records.

Also being a portion of Mission Block No. 9.

Assessor's Lot 095 and Lots 097 through 296; Block 3521

**SCHEDULE 1**  
**CONTRACTS**

**SCHEDULE 2**

**WARRANTIES**

## EXHIBIT F

### ASSIGNMENT OF LEASES

THIS ASSIGNMENT is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between CITY GARDENS BRIDGE, LLC, a Delaware limited liability company (“**Assignor**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Assignee**”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Closing Date (as defined in the Agreement for the Purchase and Sale of Real Property between Assignor, as Seller, and Assignee, as City, dated as of \_\_\_\_\_ (the “**Purchase Agreement**”)), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain leases executed with respect to that certain real property commonly known as 333 12th Street, San Francisco, and more fully described in Exhibit A to the Purchase Agreement (the “**Property**”) as more fully described in Schedule 1 attached hereto (collectively, the “**Leases**”). Initially capitalized terms used but not defined in this Assignment have the meanings given to them in the Purchase Agreement.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that, as of the date of this Assignment, the attached Schedule 1 includes all of the Leases and occupancy agreements to which Seller is a party affecting any of the Property. As of the date hereof, there are no assignments of or agreements to assign the Leases by Seller to any other party.
2. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of landlord's obligations under the Leases prior to the Closing Date; provided that nothing in this Section 2 shall obligate Assignor to indemnify Assignee with respect to the physical condition of the Property, which Assignee has agreed to accept in its “as-is, where-is” condition as of the Closing Date, or any matter for which Assignee has agreed to release Assignor as set forth in Section 8.3 of the Purchase Agreement.
3. Effective as of the Closing Date, Assignee hereby assumes all of the landlord's obligations under the Leases required to be performed on or subsequent to the Closing Date. Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of landlord's obligations under the Leases on or after the Closing Date.
4. Any rental and other payments under the Leases will be prorated between the parties as provided in the Purchase Agreement.
5. This Assignment will be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
6. This Assignment is governed by and will be construed in accordance with the laws of the State of California.

7. This Assignment may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

*[SIGNATURES ON FOLLOWING PAGE]*

Assignor and Assignee have executed this Assignment as of the day and year first written above.

ASSIGNOR:

CITY GARDENS BRIDGE, LLC  
a Delaware limited liability company

By: City Gardens 333 LLC,  
a Delaware limited liability company,  
its sole member

By: CitySpaces 333 LLC,  
a Delaware limited liability company,  
its Manager

By: Panoramic CitySpaces 333 LLC,  
a California limited liability company,  
its Manager

By: Panoramic Interests, LLC,  
a California limited liability company,  
its Manager

By: \_\_\_\_\_  
Patrick C. Kennedy, Manager

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Jessie Alfaro-Cassella  
Deputy City Attorney

**SCHEDULE 1**

**LEASES**

**EXHIBIT G**

**INTENTIONALLY OMITTED**

**EXHIBIT H**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by CITY GARDENS BRIDGE LLC, a Delaware limited liability company ("Seller"), CITYSPACES 333LLC, a Delaware limited liability company ("Transferor"), which is the indirect owner of 100% of the membership interests in Seller, hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor is not a disregarded entity as defined in Income Tax Regulations §1.1445-2(b)(2)(iii);

3. Transferor's U.S. employer identification number is \_\_\_\_\_; and

4. Transferor's office address is \_\_\_\_\_

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

[signature follows]

Dated: \_\_\_\_\_, 20\_\_\_\_.

CITYSPACES 333 LLC,  
a Delaware limited liability company

By: Panoramic CitySpaces 333 LLC,  
a California limited liability company,  
its Manager

By: Panoramic Interests, LLC,  
a California limited liability company,  
its Manager

By: \_\_\_\_\_  
Patrick C. Kennedy, Manager



## GENERAL PLAN REFERRAL

March 28, 2022

**Case No.:** 2022-002532GPR  
**Block/Lot No.:** 333 12<sup>th</sup> Street, 3521/095 and 3521/097 – 3521/296  
**Project Sponsor:** City and County of San Francisco  
**Applicant:** Dan Adams, Department of Homelessness and Supportive Housing  
Dan.adams@sfgov.org  
1650 Mission Street  
San Francisco, CA, 94102

**Staff Contact:** Dylan Hamilton – (628) 652-7478  
[dylan.hamilton@sfgov.org](mailto:dylan.hamilton@sfgov.org)

**Recommended By:**   
AnMarie Rodgers, 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 City of San Francisco Department of Homelessness and Supportive Housing proposes to purchase the property at 333 12th Street. The property includes 200-unit multifamily residential building. The transaction does not entail any physical changes to the buildings themselves, or adjacent streets and public infrastructure.

A General Plan Referral is generally required for any purchase of real property by the City.

### Environmental Review

Real estate transaction only. Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in a direct or indirect physical change in the environment. The City anticipates the subsequent use of the building as affordable and or supportive housing could be ministerially approved under SB-35.

## General Plan Compliance and Basis for Recommendation

As described below, the proposed purchase of 333 12<sup>th</sup> Street 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

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

##### POLICY 1.3

Work proactively to identify and secure opportunity sites for permanently affordable housing.

##### POLICY 7.5

Encourage the production of affordable housing through process and zoning accommodations, and prioritize affordable housing in the review and approval processes.

#### OBJECTIVE 6

**REDUCE HOMELESSNESS AND THE RISK OF HOMELESSNESS**

**POLICY 6.1** Prioritize permanent housing and service enriched solutions while pursuing both short- and long-term strategies to eliminate homelessness.

*The City anticipates the subsequent use of the building as affordable and or supportive housing. This real estate transaction helps facilitate the production of permanently affordable housing, adding to the City's affordable housing stock. The City anticipates that this change of use could be ministerially approved under SB-35.*

#### OBJECTIVE 11

**SUPPORT AND RESPECT THE DISTINCT CHARACTER OF SAN FRANCISCO'S NEIGHBORHOODS**

##### POLICY 11.7

Respect San Francisco's historic fabric, by preserving landmark buildings and ensuring consistency with historic districts

*The building to be purchased by the City will not undergo any alterations as part of the transaction, and its design and character will thus be preserved.*

**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 proposed project will not have an impact on neighborhood serving retail uses.*

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

*The proposed project will help preserve existing neighborhood character, as the proposal involves no physical changes to the building. While no change of use at this time, the anticipated future use will expand and enhance housing options.*

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

*The Project will not diminish the City's affordable housing supply; on the contrary the anticipated future use will enhance the City's supply of affordable housing.*

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

*The proposed project will not result in commuter traffic impeding MUNI transit service or overburdening the 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 proposed project does not include any changes to industrial and service space in San Francisco.*

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

*This project does not include any construction, and will not impact emergency preparedness.*

7. That the landmarks and historic buildings be preserved;

*The property included in this project will be utilized in its current state; the project does not include any*

*structural or design changes.*

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

*The proposed project will not impact the access to sunlight or vistas for the parks and open space.*

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

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## DIVISION OF STATE FINANCIAL ASSISTANCE

2020 W. El Camino Avenue, Suite 670, 95833

P.O. Box 952054

Sacramento, CA 94252-2054

(916) 263-2771

[www.hcd.ca.gov](http://www.hcd.ca.gov)

September 9, 2021

**MEMORANDUM FOR:** All Potential Applicants

**FROM:** Jennifer Seeger, Deputy Director  
Division of State Financial Assistance

**SUBJECT:** **Homekey Program**  
**Notice of Funding Availability, Round 2**

A handwritten signature in blue ink that reads "Jennifer Seeger".

The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately \$1.45 billion of Homekey Program (Homekey) grant funding through this Round 2 Notice of Funding Availability (NOFA). Building on the success of both [Project Roomkey](#) and the first round of Homekey, this significant investment continues a statewide effort to sustain and rapidly expand housing for persons experiencing homelessness or At Risk of Homelessness, and who are, thereby, inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic.

Of the \$1.45 billion in Homekey funding, \$1.2 billion is derived from the Coronavirus State Fiscal Recovery Fund (CSFRF) established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2) and \$250 million is State General Fund. The \$250 million in State General Fund money is intended to supplement the acquisition of, and to provide initial operating subsidies for, Homekey sites to promote project feasibility. Five percent of the \$1.45 billion in Homekey funds is for Department administrative costs. Projects receiving an award from the state's direct allocation of the federal ARPA must expend the funds within eight months of the date of award. The portion of a project's award associated with State General Fund must be expended by June 30, 2026.

Due to the potential for program oversubscription, eligible applicants are encouraged to submit their completed application as soon as possible. The Department will be accepting the applications on a continuous, Over-the-Counter basis from the release of the Homekey application in late September until May 2, 2022, or until the available funds are exhausted, whichever occurs first. Applicants must submit a complete application available at <https://homekey.hcd.ca.gov/content/apply>.

On September 30, 2021, the Department will hold a webinar to review the Homekey NOFA and application process. To register, please go to the Department's [Homekey webpage](#). To receive information on the workshop and other updates, please subscribe to the Department's Homelessness Prevention Programs listserv at [http://www.hcd.ca.gov/HCD\\_SSI/subscribe-form.html](http://www.hcd.ca.gov/HCD_SSI/subscribe-form.html).

If you have any questions, please submit them to [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).

# Homekey Program

## Notice of Funding Availability, Round 2



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director  
California Department of Housing and Community Development**

2020 West El Camino Avenue, Sacramento, CA 95833 Telephone: (916) 263-2771  
Website: <https://homekey.hcd.ca.gov/>

Homekey Program Email: [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov)

September 9, 2021

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# **HOMEKEY PROGRAM**

## **NOTICE OF FUNDING AVAILABILITY**

### **Article I – Program Overview**

#### Section 100. Notice of Funding Availability (NOFA)

The California Department of Housing and Community Development (Department) is pleased to announce the availability of approximately \$1.45 billion in Homekey funding to sustain and rapidly expand the inventory of housing for people experiencing homelessness or At Risk of Homelessness and who are, thereby, inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases. Before the COVID-19 pandemic, homelessness data showed Black, Indigenous, and People of Color (BIPOC) were overrepresented in the homelessness system. The pandemic made racial disparities more apparent, and communities are dealing with the additional disproportionate impact of illness and death among people experiencing homelessness. Homekey recognizes these impacts and encourages Eligible Applicants to examine disproportionate impacts in their own communities and to develop strategies to address these impacts.

Homekey is an opportunity for state, regional, and local public entities to develop a broad range of housing types, including but not limited to hotels, motels, hostels, single-family homes and multifamily apartments, adult residential facilities, and manufactured housing, and to convert commercial properties and other existing buildings to Permanent or Interim Housing for the Target Population.

Of the \$1.45 billion in Homekey grant funds, \$1.2 billion is derived from the state's direct allocation of the federal Coronavirus State Fiscal Recovery Fund (CSFRF), which was established by the American Rescue Plan Act of 2021 (ARPA) (Pub.L. No. 117-2). In addition, \$250 million is derived from the state's General Fund to supplement the acquisition of, and to provide initial operating subsidies for, Homekey sites.

#### Section 101. Authorizing Legislation and Applicable Law

Assembly Bill No. 140 (2021-2022 Reg. Sess.) provided the statutory basis for Round 2 of the Homekey Program by adding section 50675.1.3 to the Health and Safety Code (HSC), and it exempted certain Round 2 Homekey Projects from the California Environmental Quality Act (CEQA) by adding section 50675.1.4 to the HSC. The statutory scheme includes new construction of dwelling units as an eligible use and establishes a set-aside of funds for projects serving Homeless Youth and Youth at Risk of Homelessness.

HSC section 50675.1.3, subdivision (e) states, “The Department of Housing and Community Development may adopt guidelines for the expenditure of the funds appropriated to the department, and for the administration of the program. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.”

This NOFA serves as the Department’s guidelines for the expenditure of Homekey funds and the administration of the Homekey Program. As such, this NOFA establishes the terms, conditions, forms, procedures, and other mechanisms that the Department deems

necessary to exercise its powers and to perform its duties pursuant to the Homekey Program. The matters set forth herein are regulatory mandates and are adopted as regulations that have the dignity of statutes. (*Ramirez v. Yosemite Water Company, Inc.* (1999) 20 Cal. 4th 785, 799 [85 Cal.Rptr.2d 844].)

The Multifamily Housing Program (MHP) (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the HSC), and as subsequently amended, is hereby incorporated by reference. In accordance with HSC section 50675.1.3, subdivision (d), in the event of a conflict between this NOFA and the MHP, the provisions of this NOFA are controlling.

The MHP Final Guidelines (MHP Guidelines), effective June 19, 2019, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between any of this NOFA and the MHP Guidelines, the provisions of this NOFA are controlling.

The Department will only amend this NOFA as necessary and in accordance with the Department's guideline authority pursuant to HSC section 50675.1.3, subdivision (e).

All other criteria and matters set forth within the NOFA shall also govern the Tribal Entity set-aside that is further described below, unless and except to the extent expressly provided to the contrary by terms set forth within this NOFA and subject to any potential modification or waiver under or pursuant to Assembly Bill No. 1010 (Stats.2019, c. 660), which is set forth in HSC section 50406, subdivision (p).

#### Section 102. Program Timeline

Homekey funds will be available to Eligible Applicants on a continuous, Over-the-Counter (OTC) basis, rather than on a competitive basis. The following table summarizes the anticipated Homekey Program timeline.

Table 1: Anticipated Timeline for Homekey Applications

NOFA release	September 9, 2021
Application release	Late September 2021
Stakeholder Webinar	September 30, 2021
Final day to submit an application within geographic set-asides and within period for timely submission of application bonus award	January 31, 2022
Application period for statewide pool opens	February 1, 2022
Final application due date	May 2, 2022, or until funds are exhausted, whichever occurs first
Award announcements	Continuous, with individual awards generally announced within 45 days of the Department's receipt of a complete and accurate application and all required supplemental documentation
Standard Agreements issued	Continuous, after the Department's receipt of required information and documentation
Grantee Expenditure and Program Report, annually for five years subsequent to contract execution	Annually by January 31

The Department reserves the right to modify the projected timeline at any time.

## Article II – Program Requirements

### Section 200. Eligible Applicants

- i. Cities, counties, cities and counties, and all other state, regional, and Local Public Entities, including councils of government, metropolitan planning organizations, and regional transportation planning agencies designated in Section 29532.1 of the Government Code; or
- ii. Tribal Entities.

For purposes of this NOFA, a “Local Public Entity” is defined in accordance with HSC section 50079. Such definition includes the duly constituted governing body of an Indian reservation or rancheria; a tribally designated housing entity, as specified; and a housing authority, as specified.

Each of the foregoing entities may apply independently, or each entity may apply jointly with a nonprofit or for-profit corporation as a Co-Applicant.

## Section 201. Eligible Uses

Awarded funds must be used to provide housing for the Target Population of individuals and families experiencing Homelessness or who are At Risk of Homelessness 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. With respect to the list of eligible uses below, an Eligible Applicant may choose to target Project Roomkey properties, or other, non-Project Roomkey properties. The list of eligible uses is as follows:

- i. Acquisition or Rehabilitation, or acquisition and Rehabilitation, of motels, hotels, hostels, or other sites and assets, including apartments or homes, adult residential facilities, residential care facilities for the elderly, manufactured housing, commercial properties, and other buildings with existing uses that could be converted to permanent or interim housing.
- ii. Master leasing of properties for non-congregate housing.
- iii. Conversion of units from nonresidential to residential.
- iv. New construction of dwelling units.
- v. The purchase of affordability covenants and restrictions for units.
- vi. Relocation costs for individuals who are being displaced as a result of the Homekey Project.
- vii. Capitalized operating subsidies for units purchased, converted, constructed, or altered with funds provided pursuant to HSC section 50675.1.3.

## Section 202. Eligible Projects

The Department welcomes and will consider a variety of innovative housing solutions as eligible projects. The following list of eligible projects is not exhaustive.

- i. Conversion of nonresidential structures to residential dwelling units.
- ii. Conversion of commercially zoned structures, such as office or retail spaces, to residential dwelling units.
- iii. Adult residential facilities, residential care facilities for the elderly, manufactured housing, and other buildings with existing residential uses.
- iv. Multifamily rental housing projects.
- v. Excess state-owned properties.
- vi. Shared housing or scattered site housing is permitted as long as the resulting housing has common ownership, financing, and property management, and each household signs a lease.
- vii. The Department may, in its sole and absolute discretion, provide express written approval of structures lacking a permanent foundation, such as manufactured homes,

recreational vehicles, and floating homes, for temporary use only. The Department encourages applicants to explore financing alternatives to Homekey for such structures. Applicants that wish to access Homekey funds for these special uses shall submit, in their application, a detailed explanation of how the use will meet all Homekey Program requirements, including the requirements for use and affordability restrictions set forth at Section 208 of this NOFA.

Applicants seeking the Department's approval of structures lacking a permanent foundation are encouraged to discuss their options at the required pre-application consultation.

- viii. **Existing Homekey Assisted Units, previously awarded under the first round of Homekey funding, are ineligible for funding under this NOFA.**

### Section 203. Geographic Distribution and Set-Asides

COVID-19 impacts people who are experiencing or who are at risk of Homelessness throughout California. As such, the Department would like to ensure jurisdictions throughout the state have an equitable opportunity to apply for Homekey funds to protect the health and safety of their most vulnerable residents.

To this end, the Department has divided the state into eight regions, as outlined in Table 2, below. The regions are largely aligned with the various Councils of Government (COGs). As detailed in Table 3 below, each region has funding reserved. Each region's share of the Homekey allocation is calculated based on its proportionate share of persons experiencing homelessness as indicated by both the sheltered and unsheltered 2019 Homeless Point-in-Time (PIT) counts, plus its proportionate share of extremely low-income (ELI) renter households that are paying more than 50 percent of their income for rent.

The Department has established a four-month priority application period from the release date of the Homekey application in late September through January 31, 2022. During this prioritization period, the Department will group applications into one of the eight geographic regions, unless the application is prioritized for the Homeless Youth or Tribal Entity set-asides.

After January 31, 2022, the Department will stop grouping applications by geographic region, and instead deploy unused funds from any undersubscribed geographic region(s) to fund subsequent applications statewide. The set-aside funding for Homeless Youth and Tribal Entities will remain unchanged. The Department will also redeploy undersubscribed and unused funds beginning May 2, 2022, as specified at Section 400 of this NOFA.

To further encourage the timely submission of Homekey applications, the Department will also award a bonus to applications submitted by January 31, 2022, as further detailed in Section 207.

Table 2: Counties by Geographic Distribution through January 31, 2022

Counties by Geographic Distribution			
Los Angeles County	San Joaquin Valley	Central Coast	Balance of State (Cont.)
<b>Bay Area</b>	Fresno	Monterey	Lassen
Alameda	Kern	San Benito	Mariposa
Contra Costa	Kings	San Luis Obispo	Mendocino
Marin	Madera	Santa Barbara	Modoc
Napa	Merced	Santa Cruz	Mono
San Francisco	San Joaquin	<b>Balance of State</b>	Nevada
San Mateo	Stanislaus	Alpine	Plumas
Santa Clara	Tulare	Amador	Shasta
Solano	<b>San Diego County</b>	Butte	Sierra
Sonoma	<b>Sacramento Area</b>	Calaveras	Siskiyou
<b>Southern California</b>	El Dorado	Colusa	Tehama
Imperial	Placer	Del Norte	Trinity
Orange	Sacramento	Glenn	Tuolumne
Riverside	Sutter	Humboldt	
San Bernardino	Yolo	Inyo	
Ventura	Yuba	Lake	

Table 3: Estimated Homekey Geographic Allocations

Region	PIT Count	Severely Rent-Burdened ELI	CSFRF Allocation	GF Allocation
Los Angeles County	58,936	395,380	\$296,715,462	\$61,966,491
Bay Area	35,028	196,270	\$165,312,376	\$34,524,079
Southern CA	15,360	188,835	\$101,785,576	\$21,257,049
San Joaquin Valley	10,064	100,400	\$60,041,459	\$12,539,146
San Diego County	8,102	88,470	\$50,514,984	\$10,549,623
Sacramento Area	8,167	68,640	\$45,065,261	\$9,411,495
Central Coast	8,157	35,795	\$35,671,365	\$7,449,660
Balance of State	7,464	30,834	\$32,093,517	\$6,702,457

Set-Asides

The \$1.45 billion in Homekey funds will be allocated as follows:

Table 4: Homekey Funding Categories

Category	CSFRF Allocation	GF Allocation
<b>Total Homekey Allocation</b>	<b>\$1,200,000,000</b>	<b>\$250,000,000</b>
Total Geographic Allocation	\$787,200,000	\$164,400,000
Discretionary Reserve at 20%	\$196,800,000	\$41,100,000
State Administrative at 5%	\$60,000,000	\$12,000,000
Tribal Set-Aside at 5%	\$60,000,000	\$12,500,000
Homeless Youth Set-Aside at 8%	\$96,000,000	\$20,000,000

The Department will reserve 20 percent of the Homekey money to address unforeseen circumstances and to ensure that funding is effectively aligned with need. (For instance, the Department may use this reserve money to fund high-scoring projects in oversubscribed regions.)

Of the total amount provided under this NOFA, set-asides shall be reserved for Homeless Youth and Tribal Entity Projects meeting the criteria set forth below, and in the amounts set forth in Table 4 above. Unless otherwise indicated, all scoring criteria and other NOFA provisions shall govern the set-aside awards provided under this NOFA.

1. Homeless Youth: Pursuant to HSC section 50675.1.3, subdivision (c), the Department will set aside eight percent (8%) of Homekey funding for Projects serving Homeless Youth, or Youth at Risk of Homelessness, as defined in 24 Code of Federal Regulations (CFR) part 578.3. Projects within this set-aside may expand the Target Population to include current and former foster youth through the age of 25.

This set-aside is not subject to geographic allocation, but the Department will aim to promote geographic equity. Homekey Projects are not required to serve Homeless Youth, or Youth at Risk of Homelessness. Homekey Projects proposing to serve Homeless Youth, or Youth at Risk of Homelessness, may also serve other qualifying members of the Target Population.

Projects that meet the threshold requirements of Sections 300-303, as well as the following criteria, will be prioritized for Homeless Youth set-aside funds:

- Have at least 25 percent (25%) of Assisted Units reserved for Homeless Youth or Youth at Risk of Homelessness; (See Section 304, 4a for points awarded)
- Have jointly applied and/or partnered with a nonprofit corporation(s), including community-based organization(s), with experience serving Homeless Youth, or Youth at Risk of Homelessness; and (see Section 304, 2a-c for points awarded)
- Have reasonable proximity to youth-centered amenities, including, but not limited to, community colleges, universities, trade schools, apprenticeship programs, employment programs, childcare centers for parenting youth, and community centers for youth (e.g., LGBTQ+ centers, drop-in youth centers). (See Section 304, 4g for points awarded)

The Department will also prioritize Projects that provide supportive services for Youth Assisted Units using a Positive Youth Development (PYD) model and trauma-informed care. Services may include, but are not limited to, case management, income supports, educational and employment counseling, life skills, legal assistance, health and wellness, and family connection services.

2. Tribal Entities: The Department will set aside five percent (5%) of the Homekey funding for Eligible Applicants that meet the definition of a Tribal Entity, as set forth and provided in this NOFA. This set-aside is not subject to geographic allocation, but the Department will aim to promote geographic equity.

The Department will endeavor to provide comprehensive technical assistance to Tribal Entities, and Tribal Entities are highly encouraged to utilize available technical assistance throughout the application process and during implementation of the Project.

The requirements set forth in this NOFA are subject to AB 1010 (Stats.2019, c. 660), which is set forth in HSC section 50406, subdivision (p). Accordingly, and pursuant to HSC section 50406, subdivision (p), **(a)** where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or legal structure would cause a violation or not satisfy the requirements of this NOFA, said requirements may be modified as necessary to ensure program compatibility; and **(b)** where provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity legal structure or agency create minor inconsistencies (as determined by the Director of the Department or a duly authorized designee thereof) with the requirements set forth in this NOFA, the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden. Matters set forth or otherwise provided for in this NOFA that may be modified or waived include, without limitation, threshold scoring requirements and any other matters set forth in HSC section 50406, subdivision (p)(2). Tribal Applicants are accordingly encouraged to discuss any such potential modifications or waivers and their options in that regard at the required pre-application consultation.

#### Section 204. Program Deadlines

**Capital funds must be expended within eight months of the date of award.** For Projects that involve acquisition and are receiving capital awards, Grantees must expend the funds by the expenditure deadline and the project escrow must be closed by the expenditure deadline. To meet this requirement, the Department will provide ongoing support to assist Grantees and has developed an accelerated award and disbursement process.

Additionally, Grantees shall complete all applicable construction and/or Rehabilitation within 12 months of the date of award. All Projects shall achieve a full occupancy (fully occupied with consideration for an average of 10% vacancy rate at any given time) within 90 days of construction and/or Rehabilitation completion. The Grantee may ask the Department for an extension for construction and/or Rehabilitation completion, where it is clear that the extension is due to circumstances or conditions beyond their control and granting an extension will enable the Project to complete construction and/or Rehabilitation or achieve full occupancy of the Assisted Units. In cases where an extension for construction and/or Rehabilitation completion is granted by the Department, the deadlines for capital fund expenditure and full occupancy may be extended within the constraints of applicable law.

Pursuant to 31 CFR part 35.5, the Department may reimburse eligible costs incurred beginning on March 3, 2021. Applicants are encouraged to discuss their options at the required pre-application consultation.

**All operating funds must be fully expended by the Grantee by no later than June 30, 2026.**

## Section 205. Maximum Grant Amounts and Capital Funding Match

Homekey will fund a maximum grant amount per door, pursuant to the conditions of this section, which includes both the acquisition cost and any needed Rehabilitation or new construction. **The award will be the lower of the maximum grant amount, or the sum of the acquisition amount supported by an appraisal and any additional construction and Rehabilitation expenses as supported by documentation required by the Department.** "Door" refers to units at the time of the acquisition, which may differ from the number of units that are available after a conversion of the property. For those projects that undergo a future conversion, the number of units may need to be reduced in order to accommodate kitchenettes, additional bedrooms, space for supportive services and other amenities. For new construction and conversion of office, commercial, or other non-residential structures into residential dwelling units, Homekey will fund a maximum grant amount per completed Assisted Unit serving the Target Population, or an amount as supported by an appraisal, whichever is lower. "Assisted Unit" refers to units that are available after the construction or conversion of the property.

The Department will contribute a baseline amount per door, as outlined below, in whichever category is higher for the Assisted Unit. This baseline contribution does not require a local match.

### Unit Size -- Baseline Capital Amounts:

- i. Studio or one-bedroom units will receive a baseline amount of \$150,000 per door.
- ii. Two-bedroom units will receive a baseline amount of \$175,000 per door.
- iii. Three-bedroom or larger units will receive a baseline amount of \$200,000 per door.

Note that Homekey will fund "doors" based upon the number of units and unit size at the time of acquisition. In situations where units are combined to make larger units, awards will default to the number of doors and size of units at acquisition. In situations where multi-bedroom (two or more bedrooms) units at acquisition are divided into smaller unit sizes, awards will default to the number of doors and size of units with the lower baseline amount per door.

## **OR**

### Sub-Populations Served -- Baseline Capital Amounts:

- i. Assisted Units reserved for those experiencing Chronic Homelessness will receive a baseline amount of \$200,000 per door.
- ii. Assisted Units reserved for Homeless Youth or Youth at Risk of Homelessness will receive a baseline amount of \$175,000 per door.

### Additional Contribution Amount – Local Match

Beyond the applicable baseline amount, the Eligible Applicant may leverage a 1:1 local match to provide up to \$100,000 in additional funds per door. For example, where the Applicant shows \$100,000 in matching funds, the Department will fund no more than \$250,000 for a 1-bedroom Assisted Unit, \$275,000 for a 2-bedroom Assisted Unit,

\$300,000 for a 3+ bedroom Assisted Unit, \$300,000 for an Assisted Unit serving those experiencing Chronic Homelessness, and \$275,000 per door for an Assisted Unit serving Homeless Youth/Youth at Risk of Homelessness.

Appendix A shows how maximum funding awards from Homekey vary with different per-door costs, unit types, and Applicant contribution levels.

For relocation costs, the Department will pay for one-half of the relocation cost per door in addition to the capital award. For example, if a Project includes \$15,000 in relocation costs, then the Department will pay for \$7,500 of that relocation cost.

For the purchase of affordability covenants and restrictions, and for master-leasing, the Department may size the award per door based on a recent market study within the past year which conforms to guidelines adopted by the Tax Credit Allocation Committee (TCAC), and/or a rent roll, and/or other supporting documentation. For these uses, the maximum Homekey contribution per door shall not exceed the maximum amounts referenced in this section for acquisition, Rehabilitation, and new construction.

### Section 206. Operating Subsidies and Match

- i. Where an operating subsidy is requested, the total amount of operating subsidy per Assisted Unit is limited as follows:
  - a. Assisted Units reserved for those experiencing Chronic Homelessness, for Homeless Youth, or for Youth at Risk of Homelessness shall not exceed \$1,400 per month; and
  - b. All other Assisted Units shall not exceed \$1,000 per month.
- ii. The total duration of the operating subsidy (as described in i. above) is tied to the amount of the Applicant's matching funds, and is limited as follows:
  - a. If Projects can demonstrate a commitment of three years of non-Homekey operating funds for Assisted Units, the Department will provide an operating subsidy sized for two years.
  - b. If Projects can demonstrate a commitment of four or more years of non-Homekey operating funds for Assisted Units, the Department will provide an operating subsidy sized for three years.
  - c. If Projects have application scores of 140 or more, the Department may consider providing an operating subsidy sized for three years without the Applicant demonstrating a commitment of four or more years of non-Homekey operating funds.
- iii. Operating subsidy may pay for necessary, recurring Project Operating Expenses in an amount approved by the Department. Qualifying expenses include utilities, maintenance, management fees, taxes, licenses, and supportive services costs, but not debt service or required reserve account deposits. Operating Expenses should be included in the Project's submitted budget.

- iv. If requesting an operating subsidy, the Eligible Applicant must submit a letter of support from the local Continuum of Care (CoC) or Housing Authority confirming the need for an operating subsidy and evidencing that other operating funding, such as rental subsidies, were sought for the Project, but the funding isn't available for this use. A letter template and a list of potential Homekey complementary funding can be found on the Homekey [webpage](#).
- v. The Homekey-funded portion of the operating subsidy must be expended (liquidated) by June 30, 2026, with the Grantee establishing a capitalized operating subsidy reserve and disbursing the funds as outlined in this NOFA.
- vi. Eligible Applicants are required to demonstrate a five-year commitment to provide operating funds for the proposed project. The first two years of operating funds may include an award from Homekey. Operating match may be obtained from any source, including any federal, state, local, private, or philanthropic source. Eligible Applicants will have an opportunity to discuss the match requirements and potential match sources during the pre-application consultation.

Additionally, the following requirements apply to operating match contributions:

- i. The Eligible Applicant must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Homekey funds; and
- ii. If the State General Funds are used to satisfy the matching requirements of another program, then funding from that program may not be used to fulfill the matching requirements of the Homekey Program.

## Section 207. Bonus Awards

### Timely Submission of Application

The Department will award an additional \$10,000 per Assisted Unit as a bonus award for each Project with a timely submission of a complete application to the Department by January 31, 2022. Application packages that are incomplete or that do not meet the filing requirements will not be awarded the bonus award. This bonus may be used for either operating or capital expenses.

### Expedited Occupancy

The Department will award \$10,000 per Assisted Unit as a conditional bonus amount for Projects meeting the following expedited occupancy timeframe:

- i. Project's Assisted Units achieve full occupancy (with consideration for an average of 10 percent vacancy) within eight (8) months of the date of award.

This bonus award can be used for operating costs only, including the reimbursement of operating costs already incurred. Projects eligible for this bonus award must commit to achieving full occupancy within eight (8) months after the award date. Projects will not receive the bonus award if reaching full occupancy in eight (8) months was not planned in their application, nor required in their Standard Agreement.

The Department will not disburse the conditional bonus amount until proof of full occupancy (rent roll) is provided to the Department within eight (8) months of the date of award. Once the documentation is deemed sufficient by the Department, the Grantee may submit a request for funds disbursement. If Grantee fails to meet the expedited occupancy timeframe as indicated in their application, the Department may reallocate the conditional bonus amount to fund other Eligible Applicants.

#### Section 208. Affordability Term

The Grantee shall duly encumber all Interim Housing, Transitional Housing, and Congregate Shelter Projects with a 15-year covenant, declaration, regulatory agreement, or similar use restriction that (a) is recorded in first position against the Project real property for the benefit of the Department, (b) restricts the use, operation, occupancy, and affordability of the Project in accordance with all applicable requirements of this NOFA and all other Program requirements, and (c) is otherwise in form and substance acceptable to the Department.

The Grantee shall duly encumber all Permanent Housing Projects with a 55-year covenant, declaration, regulatory agreement, or similar use restriction that (a) is recorded in first position against the Project real property for the benefit of the state, regional, local, or tribal Grantee, (b) restricts the use, operation, occupancy, and affordability of the Project in accordance with all applicable requirements of this NOFA and all other Program requirements, (c) duly names the Department as a third party beneficiary with the right and privilege, but not the obligation, of enforcement thereof, and (d) is otherwise in form and substance acceptable to the Department.

#### Section 209. Flexibility

The Department recognizes the limited availability of local, state, and federal funds, and the corresponding imperative for flexibility in the Homekey Program. Therefore, subject to the Department's advance written approval, a Grantee may use a capital expenditure award to fund the proposed project's operating costs, or an operating award to fund the proposed capital expenditure, so long as the aggregate Homekey award is expended on eligible uses.

### **Article III – Threshold and Scoring Criteria**

#### Section 300. Threshold Requirements

To be eligible to receive funding, all Projects must meet the following requirements as they relate to the Eligible Applicant and the project types:

- i. Applications may be submitted independently by an Eligible Applicant, as defined in Section 200 and Article VII. Alternatively, each of the foregoing Eligible Applicants may apply jointly with a nonprofit or for-profit corporation as Co-Applicant.
- ii. Projects must serve persons qualifying as members of the Target Population.
- iii. Applications must include an initial plan for providing supportive services based on the anticipated needs of the Target Population and any proposed sub-populations to be served by the Project. The initial plan shall be reasonably detailed and

comprehensive, as determined by the Department in its sole and absolute discretion. The supportive services plan shall provide a description of the services that will be available at the housing site including but not limited to case management, behavioral health services, physical health services, assistance obtaining benefits and essential documentation, and education and employment services. The plan shall include a description of the on-site staffing plan proposed to deliver these services. Also, the plan shall describe the approach to securing and/or connecting residents to off-site services including primary care and other needed physical health and behavioral health services as well as other tenancy supports.

- iv. Applications must include an overview of the plan and timeline for any required entitlements, permits, and environmental clearances. Eligible Applicants will have an opportunity to discuss their land use and environmental clearance plans, and related statutory authorities during the pre-application consultation.
- v. Applications must include a completed Racial Demographic Data Worksheet, which reports CoC outcomes by race and ethnicity. The completed worksheet may be submitted by the Applicant and the template can be found on the Homekey [webpage](#).
- vi. The Grantee shall have site control of the property at the time of application, and such control shall not be contingent on the approval of any other party. The status and nature of the Grantee's title and interest in the property shall be subject to the Department's approval. 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 all program requirements;
  - c. A leasehold estate held by a Tribal Entity in federal tribal trust lands property, or a valid sublease thereof that has been or will be approved by the Bureau of Indian Affairs;
  - d. An executed disposition and development agreement, or irrevocable offer of dedication to a public agency;
  - e. A sales contract, or other enforceable agreement for the acquisition of the property;
  - f. A letter of intent, executed by a sufficiently authorized signatory of the Eligible Applicant, that expressly represents to the Department, without condition or reservation, that, upon successful application, the Eligible Applicant 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 acknowledged by the party selling or otherwise conveying an interest in the subject property to the Eligible Applicant. If this form of evidence is relied upon at the time of application, the Department may impose additional milestones, in the Standard Agreement, regarding increased evidence of eventual site control closer to the likely close of escrow; or

- g. Other forms of site control that give the Department assurance (equivalent to items a. through f. above) that the Applicant will be able to complete the Project in a timely manner and in accordance with all the Program's objectives and requirements.
- h. For Applicants proposing sites that will require a use change for permanent housing, there should be a commitment and plan to facilitate or expedite those processes, so as to not delay expenditure and occupancy requirements.
- vii. The Eligible Applicant applying for the Homekey funding is the entity that the Department relies upon for experience and capacity, and will control the project during acquisition, development, and occupancy.
- viii. A development plan that supports acquisition of a site and fund expenditure before all program deadlines and demonstrates evidence of strong organizational and financial capacity to develop the project.
- ix. Assisted Units and other units of the Project must meet all applicable state and local requirements pertaining to rental housing, manufactured housing, including but not limited to requirements for minimum square footage, and requirements related to maintaining the project in a safe and sanitary condition.
- x. Applicants and Co-Applicants must be in good standing with the State of California and all agencies and departments thereof. By way of example and not limitation, an Applicant and Co-Applicant must be qualified to do business in the State of California and must be in good standing with the California Secretary of State and the California Franchise Tax Board. Applicants that are delinquent in meeting the material requirements of previous Department awards may, in the Department's reasonable discretion, fail threshold review.
- xi. The Department will require Eligible Applicants to submit a complete application with all required documents. The Department reserves the right to request clarification of unclear or ambiguous statements made in an application and other supporting documents.
- xii. Relocation Assistance Narrative. Applicant shall submit a concise, sufficiently detailed narrative to demonstrate its consideration of, and early engagement with, applicable relocation assistance laws and requirements. (This Relocation Assistance Narrative does not take the place of the relocation plan, or the Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, that the Grantee shall submit as a condition of funding.) Applicant's Relocation Assistance Narrative shall include or identify the following:
  - a. A diagrammatic sketch of the Project site.
  - b. Clear, high-resolution photographs of the Project site and all improvements thereon (e.g., buildings, parking lots, billboards).
  - c. The projected dates of any Homekey-funded acquisition, construction, Rehabilitation, demolition, or similar development activities at the Project site.

- d. A description of any persons, businesses, or farm operations that will or may be displaced from the Project site by the foregoing development activities. Applicant shall specify whether any such displacement will be permanent or temporary.
  - i. If no such displacement will occur, Applicant shall conclude the narrative by expressly confirming that Applicant's eligible use(s) of the funds will not result in the displacement of any persons, businesses, or farm operations from the Project site.
  - ii. If such displacement will occur, Applicant shall further develop the narrative by including the additional elements set forth at (e) – (i) below.
- e. A description and evidence of attempts made to maintain the tenure of existing residents that may qualify under the criteria for the Target Population.
- f. A description of the aggregate relocation needs of the persons, businesses, or farm operations that will or may be displaced by the Homekey-funded activities.
- g. A brief description of how those relocation needs will be met, as well as the Applicant's projected timeline for fully meeting those needs, including the dates of planned notices to displaced persons, businesses, or farm operations.
- h. An identification of the Applicant's relocation consultant and/or relocation services provider in connection with the project site. Applicant shall also submit legible copies of its services contract or letter of intent with or to the relocation consultant and/or relocation services provider.
- i. Applicant's cost estimate (and associated funding strategy) for providing relocation assistance and benefits to the persons, businesses, or farm operations that will or may be displaced by the Homekey-funded activities.

### Section 301. Permanent Housing Requirements

In addition to Section 300 above, Permanent Housing projects will also be evaluated on the following requirements:

- i. Funding commitments or other reasonable assurance to cover operations and service costs with specific funding sources (government/philanthropic/private) for the proposed project for five (5) years and a budget which covers operations and services costs through year 15 from the recordation of the use restriction.
- ii. If the Eligible Applicant is acquiring, rehabilitating, and operating a Permanent Housing project, the Eligible Applicant or Co-Applicant shall demonstrate the following minimum experience requirements:
  - a. Development, ownership, or operation of a project similar in scope and size to the proposed project; or development, ownership, or operation of at least two affordable rental housing projects in the last ten years, with at least one of those projects containing at least one unit housing a tenant who qualifies as a member of the Target Population.
  - b. The property manager and supportive service provider shall have three or more years of experience serving persons of the Target Population. If a property manager is not yet selected for the proposed project, the Eligible Applicant shall certify that this requirement will be reflected in any future solicitation or memorandum of understanding
  - c. Experience administering a Housing First program that includes principles of harm reduction and low barriers to entry.
- iii. One-for-one replacement of assisted housing
  - a. If the acquired housing or site is to be redeveloped/repositioned as part of the locality's overall goal to address the needs of the Target Population and the community, the Applicant shall provide as part of the application a commitment to ensure one-for-one replacement of units.
  - b. If the target site is going to be demolished before any occupancy by the Target Population, no one-for-one replacement commitment needs to be provided. The unit mix will be evaluated based on the project proposal.
  - c. The application shall include a site map indicating the original target housing location and all proposed housing location(s). If all proposed housing will be located within the neighborhood, no additional documentation is necessary. If replacement housing is proposed outside the target neighborhood, the application must also include a justification explaining why it is necessary to locate this replacement housing outside the target neighborhood (i.e., offsite) and how doing so supports and enables the Target Population to maintain housing.

### Section 302. Interim Housing Requirements

In addition to Section 300 above, Interim Housing projects will also be evaluated on the following requirements:

- i. Funding commitments or other reasonable assurance to cover operations and service costs with specific funding sources (government/philanthropic/private) for the

proposed project for five (5) years and submit a budget to cover operations and services costs through year 15 from the recordation of the use restriction.

- ii. If the Eligible Applicant is acquiring, rehabilitating, and/or operating an Interim Housing project, the Eligible Applicant or Co-Applicant shall demonstrate the following minimum experience requirements:
  - a. Successful development, ownership, or operation of an Interim Housing project, such as an emergency shelter or Transitional Housing for at least three of the last ten years for individuals who qualify as members of the Target Population;
  - b. Experience in linking Interim Housing program participants to Permanent Housing to ensure long-term housing stability; and
  - c. Experience administering a Housing First program that includes principles of harm reduction and low barriers to entry.

### Section 303. Other Requirements

- i. Units serving the Target Population and occupied units serving ELI households are eligible for funding.
  - a. Homekey may fund all units in a project or a portion of the units. If seeking Homekey funding for a portion of the units in a given project, Applicants must identify committed sources for the non-Homekey units. The non-Homekey units are not required to serve the Homekey Target Population.
  - b. If, at the time of acquisition, an existing tenant's household income is at or below the ELI limit, but the tenant does not qualify as a member of the Target Population, the tenant may remain in place and the unit may still be funded by Homekey. When, in the course of normal tenant turnover, the ineligible household moves from the unit, the unit shall thereafter be occupied by the Target Population. There should be no more than 49 percent of the Assisted Units that do not meet the Target Population. An existing household who meets the Target Population definition or was a member of the Target Population at the time they moved into the property will not be counted towards the 49 percent cap. Evidence confirming that existing tenants qualify as either ELI or Target Population will be required of the Applicant.
- ii. At year 15 from the recordation of the use restriction, in circumstances where the Grantee has exhausted available operating funding and demonstrated to the Department that the Project is no longer feasible, the Department may approve an increase in income levels, to the minimum extent required for fiscal integrity, in five percent increments of Assisted Units up to 50 percent AMI.
- iii. The Department reserves the right to set restrictions on the unit mix, rent levels, and other factors deemed necessary. To the maximum extent possible, these changes shall minimize the impact on the lowest income Project residents and shall be phased in as gradually as possible. If, following any increase in rents and income limits, or modification of Target Population occupancy requirements, new resources become available, or market demand changes, allowing reversion to the former income and

rent limits or Target Population occupancy requirements, the Department may re-impose these income limits and rent limits or Target Population occupancy requirements, in whole or in part, subject to an analysis of Project feasibility.

- iv. In addition to Section 300 above, Applicants purchasing affordability covenants and restrictions will also be evaluated on the following requirements:
  - a. The Grantees that purchase affordability covenants and restrictions for existing residential units shall restrict those units to individuals and families who are Homeless or who are At Risk of Homelessness, as defined in 24 CFR part 578.3. Such restriction shall run for at least 15 years.
- v. In addition to Section 300 above, master leasing projects will also be evaluated on the following requirements:
  - a. The Grantee shall provide a 15-year plan from the recordation of the use restriction to cover operations and service costs for the Project with specific funding sources (government/philanthropic/private). The Department may waive the requirement for a 15-year plan to cover operating and services costs in cases where master-leased units are intended for a shorter-term need, including, but not limited to, the housing of individuals temporarily displaced as a result of Rehabilitation, or immediate and short-term placement of individuals while permanent units are under construction.
  - b. The Department can consider and has the discretion to approve other master leasing timeframes and scenarios. Applicants are encouraged to discuss their options at the required pre-application consultation.

**Section 304. Application Scoring Criteria**

In addition to meeting the other minimum program requirements outlined in Article III, Applicants must score a **minimum of 120 points to be eligible for funding**. Scores will be based on the following:

Table 5: Homekey Application Scoring Criteria

Categories and Maximum Point Scores	Evaluation Criteria
1. Ability to expend funds timely and demonstration of operating leverage  <b>(Up to 40 points)</b>	<ul style="list-style-type: none"> <li>a. Identification of the site suitable for development and evidence of site control, or a plan and timeline for obtaining site control along with other supporting evidence (e.g., letter of intent, an exclusive negotiating agreement, ground lease, etc.). <b>NOTE:</b> Sections 300-303 of this NOFA further outline site control requirements related to specific project type. <b>(Up to 20 points)</b> <ul style="list-style-type: none"> <li>- Fee title/leasehold (20 points)</li> <li>- Option agreement/sales contract (20 points)</li> <li>- Exclusive negotiating agreement (15 points)</li> <li>- Letter of intent (15 points)</li> </ul> </li> <li>b. Documented commitment of non-Homekey rental or operating subsidies that will be used to maintain the ongoing affordability of the project. <b>(Up to 20 points)</b></li> </ul>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>Project-Based or Grantee-Based Enforceable Funding Commitments for operating assistance, or rental subsidies (including, but not limited to project-based vouchers, VASH vouchers, tenant-based vouchers, or locally funded rental assistance): (1 point for each 5 percentage increment of Assisted Units with committed funding, up to a maximum of 20 points)</p> <p>Contingencies in commitment documents based upon the receipt of Round 2 Homekey funding will not disqualify a source from being counted as committed. However, the Department must approve evidence that funding will reliably be available.</p>
<p>2. Experience <b>(Up to 55 points)</b></p>	<p>a. Demonstration of Applicant or member(s) of development team’s experience in development, ownership, or operation of a project(s) similar in scope and size to the proposed Project. <b>NOTE:</b> Sections 300-303 of this NOFA further outline threshold experience requirements related to specific project type. <b>(Up to 25 points)</b></p> <ul style="list-style-type: none"> <li>- Development, ownership, or operation of one project similar in scope and size to the proposed Project; or development, ownership, or operation of at least two affordable rental housing or interim projects in the last ten years, with at least one of those projects containing at least one unit housing a tenant who qualifies as a member of the Target Population. (10 points)</li> <li>- 5 additional points awarded for each additional project (development, ownership, or operation of affordable rental housing or interim projects in the last ten years serving at least one member of the Target Population) (up to 15 additional points)</li> </ul> <p>b. Demonstration of service provider’s experience helping persons address barriers to housing stability and providing other support services, not necessarily within a housing project. Service provider may be Applicant, or a member of the development team described in Applicant’s response to point category 2.c., below. Service provider experience must be with the specific population(s) housed within the Homekey units to count toward points in this section (e.g., families, singles, Homeless Youth, Chronically Homeless) <b>(Up to 15 points)</b></p> <ul style="list-style-type: none"> <li>- 1 point awarded for each year of service experience, up to a maximum of 15 points.</li> <li>- <b>NOTE:</b> Sections 300-303 of this NOFA further outline threshold experience requirements related to specific project type.</li> </ul> <p>c. Commitment letter(s) or MOU(s) documenting how the complete development and management team (which may include Applicant, developer, property manager, lead service provider, etc.) are connected and will work together on the Project. Applicants are encouraged to complete due diligence checklists to ensure all members of the team are aware of roles and responsibilities <b>(Up to 15 points)</b></p>
<p>3. Racial equity and Community Engagement <b>(Up to 20 points)</b></p>	<p>a. Racial Disparities Analysis <b>(Up to 10 points)</b> Using the Racial Demographic Data Worksheet (in application), provide the Continuum of Care Outcomes by Race and Ethnicity and the following analysis. <b>NOTE:</b> Section 300 of this NOFA further outlines this threshold requirement.</p> <p>Using the data from the worksheet, provide a narrative analysis of the racial and ethnic disparities in systems outcomes. What are the root</p>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>causes or factors leading to these racial inequities? For service providers with prior experience, provide an analysis of prior program outcomes.</p> <p>Detail how the Applicant will address racial and ethnic disparities in program outcomes at each stage of the project design and development.</p> <p>b. <b>Community Engagement (Up to 10 points)</b> Detail how the Applicant has engaged or will engage with the target community, including people currently experiencing homelessness and people with lived experience of homelessness, to inform the design of the project.</p> <p>Provide documentation of this engagement, including but not limited to meeting notes, community planning documents, MOU of partnership with community organization, etc.</p>
<p>4. Community impact and site selection <b>(Up to 92 points)</b></p>	<p>a. <b>The Project serves specific sub-populations (20 points)</b></p> <ul style="list-style-type: none"> <li>- 25% or more of Assisted Units are reserved for those experiencing Chronic Homelessness (20 points); <b>OR</b></li> <li>- 50% or more of Assisted Units are reserved for those experiencing Homelessness (20 points); <b>OR</b></li> <li>- 25% or more of Assisted Units are reserved for Homeless Youth or Youth at Risk of Homelessness (20 points);</li> </ul> <p>b. <b>Assisted Units include units for large family housing types (10 points)</b></p> <ul style="list-style-type: none"> <li>- At least twenty-five percent (25%) of the Assisted Units in the project shall be three-bedroom or larger units, <b>AND</b></li> <li>- At least an additional twenty-five percent (25%) of the Assisted Units in the project shall be two-bedroom or larger units, consistent with TCAC Regulations (4 CCR § 10325(g)(1)(A-I)), (10 points)</li> </ul> <p>c. <b>Commitment to 55 year deed restriction to serve Target Population, waiving any potential accommodation by the Department to increase income limits as described in Section 303. (Up to 20 points)</b></p> <ul style="list-style-type: none"> <li>- At least 25% of Assisted Units restricted (5 points)</li> <li>- At least 50% of Assisted Units restricted (10 points)</li> <li>- At least 75% of Assisted Units restricted (15 points)</li> <li>- 100% of Assisted Units restricted (20 points)</li> </ul> <p>d. <b>The extent to which the Project (with 20 or more units) commits to being accessible to persons with disabilities (Up to 10 points)</b></p> <ul style="list-style-type: none"> <li>- Exceeds the state and federal accessibility requirements set forth Section 505, specifically providing a minimum of 15 percent of units with features accessible to persons with mobility disabilities, as defined in 24 C.F.R. Section 8.22 and the parallel ADAAG 2010 and CBC provisions; (5 points)</li> <li>- A minimum of 10 percent of units with features accessible to persons with hearing or vision disabilities, as defined in 24 CFR Part 8.22 and the parallel ADAAG 2010 and CBC Chapter 11B provisions. (5 points)</li> </ul> <p>e. <b>The proposed project requires no Rehabilitation or construction, or the Rehabilitation/construction and full occupancy can be completed within eight (8) months of award. Those receiving points in this category are</b></p>

Categories and Maximum Point Scores	Evaluation Criteria
	<p>also able to utilize the bonus award as outlined in Section 207. <b>(10 points)</b></p> <p>f. For any project where the Applicant’s capital match exceeds the minimum match required per Assisted Unit, one (1) point will be assigned for every \$10,000 over the minimum match required <b>(Up to 10 points)</b>;</p> <p><b>OR</b></p> <p>For any project where the average total cost per Assisted Unit is below the minimum baseline per door, one (1) point will be assigned for every \$10,000 under the baseline amount. <b>(Up to 10 points)</b></p> <p>g. Site Selection <b>(Up to 12 points)</b></p> <p>The project site is located within 1/2 mile of a bus rapid transit station, light rail station, commuter rail station, ferry terminal, bus station, or public bus stop OR the project includes an alternative transportation service for residents (e.g., van or dial-a-ride service), if costs of obtaining and maintaining the van and its service are included in the budget and the operating schedule is either on demand by tenants or a regular schedule is provided (4 points)</p> <p>The Project site is in proximity to essential services:</p> <ul style="list-style-type: none"> <li>i. Grocery store – within 1/2 mile of a full-scale grocery store/supermarket where staples, fresh meat, and fresh produce are sold. (1 mile for projects in rural areas) (2 points);</li> </ul> <p><b>NOTE:</b> If applying for TCAC, it is advisable that the grocery store be at least 25,000 gross interior square feet.</p> <ul style="list-style-type: none"> <li>ii. Health facility – within 1/2 mile (1 mile for projects in rural areas) of a qualifying medical clinic with a physician, physician’s assistant, or nurse practitioner on-site for a minimum of 40 hours each week, or hospital (not merely a private doctor’s office).</li> </ul> <p>A qualifying medical clinic must accept Medi-Cal payments, or Medicare payments, or Health Care for the Homeless, or have an equally comprehensive subsidy program for low-income patients; (1 point)</p> <ul style="list-style-type: none"> <li>iii. Library – within 1/2 mile of a book-lending public library (1 mile for projects in rural areas); (1 point)</li> <li>iv. Pharmacy – within 1/2 mile of a pharmacy (1 mile for projects in rural areas). May be included in a grocery store or health facility (2 points)</li> <li>v. For projects with units serving Homeless Youth: within one mile of at least two of the following: community colleges, universities, trade schools, apprenticeship programs, employment programs, childcare centers for parenting youth, and/or community centers for youth (e.g., LGBTQ+ centers, drop-in youth centers) (2 points)</li> </ul>
<p>5. Negative Points <b>(Up to -20 points)</b></p>	<ul style="list-style-type: none"> <li>a. For any project resulting in the permanent displacement of residents (not businesses or farm operations), as outlined below: <ul style="list-style-type: none"> <li>- The project permanently displaces existing residents in 5% of total units. <b>(-5 points)</b></li> <li>- Applicants lose one point (up to an additional 15 points) for each additional percentage point of households displaced out of total units.</li> </ul> </li> </ul>

In the event of program oversubscription, where Applicants have the same score and the same date and time stamp, the Department may consider additional criteria as a tiebreaker, including, but not limited to, cost-effectiveness, community impact, affirmatively furthering fair housing, innovative housing types, tenant stability and proximity to transit, and services and amenities.

## **Article IV. Application Submission, Review, and Award Process**

### Section 400. Application Process and Submission

For OTC funding, applications will be accepted and evaluated on a first-come, first-served basis at any time from the release of the application until May 2, 2022, or until the available funds are exhausted, whichever occurs first. Funds are awarded to those applicants that meet the minimum threshold criteria, including the minimum point score.

Homekey Round 2 application materials must be submitted electronically to the Department's [website](#).

Electronic Submission - Requirements for uploading the Homekey Round 2 Application and required supporting documentation, including naming conventions, are described in the Homekey Round 2 Application instructions/checklist tab. Applicants must upload all complete application materials to the Department's website no later than 11:59 p.m. Pacific Daylight Time on Wednesday, May 2, 2022, to the extent that funds remain available at that time.

Application packages that are incomplete or that do not meet the filing requirements will not be considered for funding but may be amended and resubmitted. Applications must be on the Department's forms and, forms cannot be altered or modified by the Applicant. Excel forms must be submitted in Excel format, not as a PDF document.

- i. Applications will be prioritized as described in Section 203.
- ii. The Department will evaluate applications for compliance with the minimum program requirements set forth in this NOFA.
- iii. After each Applicant has been certified to meet the minimum program requirements, each project must receive a minimum overall score of 120 points, as outlined in Section 304, to be considered for a funding award.
- iv. Each Applicant and Co-Applicant shall submit an authorizing resolution that, in the Department's reasonable determination, materially comports with the Program's requirements and is legally sufficient. In addition, each Co-Applicant shall submit a complete set of its organizational documents (including any amendments thereto). The Department will not disburse Homekey funds until it receives the foregoing documentation, as specified.
- v. Applicant shall provide documentation of its ability to obtain the insurance coverages outlined in Article VIII of this NOFA.
- vi. The application is a public record, which is available for public review pursuant to the California Public Records Act (CPRA) (Chapter 3.5 (commencing with Section 6250))

of Division 7 of Title 1 of the Government Code). After final Homekey awards have been issued, the Department may disclose any materials provided by the Applicant to any person making a request under the CPRA. The Department cautions Applicants to use discretion in providing information not specifically requested, including but not limited to, bank account numbers, personal phone numbers, and home addresses. By providing this information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

- vii. The Department reserves the right to do the following:
  - a. Score an application as submitted even if information is missing from the application;
  - b. Request clarification of unclear or ambiguous statements made in an application or request additional clarifying documentation or information; and
  - c. Beginning May 2, 2022, deploy unused funds from an undersubscribed set-aside to fund other Eligible Applicants for other subsets of the Target Population.

#### Section 401. Pre-Application Consultation and Technical Assistance

The Department requires all Applicants to engage in a pre-application consultation with the Department prior to applying. The consultation will allow the prospective Applicant to discuss the proposed project, along with other applicable programmatic considerations, including those related to site acquisition, the CEQA, land use and land entitlements, CoC coordination and services partnerships, and long-term financing approaches. Pre-application consultations will be available upon the release of this NOFA and may be requested by emailing [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).

#### Section 402. Award Process

The Department will send an award letter to the successful Applicant. Funds will be disbursed after the Standard Agreement has been fully executed and approved by the Department unless the Standard Agreement specifies conditions precedent to disbursement.

The Department is committed to disbursing Homekey funds in a timely manner. To avoid any expenditure delays, funds may be issued directly to an escrow company that has been approved by the Department if the full award is toward acquisition. The Applicant shall identify the name and address of the escrow company, the name of the escrow officer, the escrow number, and any other information requested by the Department.

#### Section 403. Appeals

Basis of Appeals.

1. Applicants may appeal the Department's written determination that an application is incomplete, has failed threshold review, or has otherwise been determined to provide an insufficient basis for an award.
2. No Applicant shall have the right to appeal a decision of the Department relating to another Applicant's application (e.g., eligibility, point score, award, denial of award).

3. The appeal process provided herein applies solely to decisions of the Department made pursuant to this NOFA.

#### Appeal Process and Deadlines.

1. **Process.** To file an appeal, Applicants must submit to the Department a written appeal, which sets forth all relevant facts, arguments, and evidence in support of the appeal. In addition, the Applicant must specify the area(s) of the application that are relevant to or provide context for the appeal. New or supplemental information must be limited and necessary to provide clarification or to address the insufficiencies identified in the subject application. No new or supplemental information will be considered if it would result in an unfair competitive advantage to the Applicant. Appeals are to be submitted to the Department at [Homekey@hcd.ca.gov](mailto:Homekey@hcd.ca.gov).
2. **Filing Deadline.** Appeals must be received by the Department no later than five (5) business days from the date of the Department's written determination regarding the subject application.
3. **Decision.** The requirements of this NOFA and all other applicable law will govern the Department's determination. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

### **Article V – Other Program Requirements**

#### Section 500. Article XXXIV

Per HSC section 37001, subdivision (h)(2), article XXXIV, section 1 of the California Constitution (Article XXXIV) is not applicable to development that consists of the acquisition, Rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units using moneys received from the CSFRF established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2). As such, Article XXXIV is not applicable to Homekey-funded development.

#### Section 501. Housing First

The Eligible Applicant shall certify to employ the core components of Housing First, as set forth at Welfare and Institutions Code section 8255, in its property management and tenant selection practices. Projects shall accept tenants regardless of sobriety, participation in services or treatment, history of incarceration, credit history, or history of eviction in accordance with practices permitted pursuant to Housing First practices, including local Coordinated Entry System prioritization protocols, or other federal or state Project funding sources.

#### Section 502. Tenant Selection

Referrals to Homekey Assisted Units shall be made through the local Coordinated Entry System (CES) for persons who are experiencing Homelessness. For persons At Risk of Homelessness, CES or another comparable prioritization system based on greatest need shall be used. All referral protocols for Homekey Assisted Units must be developed in collaboration with the local CoC and implemented consistent with the requirements set forth

in this NOFA. CoC collaboration in Project and supportive service design is also strongly encouraged to help target and serve greatest need populations.

### Section 503. Participation in Statewide HDIS/HMIS

All Homekey Grantees shall support CoC participation in the statewide Homeless Data Integration System (HDIS), and, in accordance with state and federal law (including all applicable privacy law), disclose relevant data to the local Homeless Management Information System (HMIS).

### Section 504. Relocation

1. Grantee must comply with all applicable federal, state, and local relocation law. Pursuant to relocation law, a Grantee must have a relocation plan prior to proceeding with any phase of a project or other activity that will result in the displacement of persons, businesses, or farm operations. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the Homekey award will be disbursed, Grantee must have either:
  - a. A Department-approved relocation plan; or
  - b. A Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed and approved by the Department.

The Department will identify its form, substance, and submittal requirements for these relocation documents in the Homekey application materials. Where the Grantee's activities will or may result in displacement, the Grantee's development budget shall include enough funds to pay all costs of relocation benefits and assistance. Any modifications to the foregoing process requirements must be approved in advance by the Department in writing.

### Section 505. Accessibility and Non-Discrimination

All developments shall adhere to the accessibility requirements set forth in California Building Code Chapter 11A and 11B and the Americans with Disabilities Act, Title II. In addition, developments shall adhere to either the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 8, or HUD's modified version of the 2010 ADA Standards for Accessible Design (Alternative 2010 ADAS), HUD-2014-0042-0001, 79 F.R. 29671 (5/27/14) (commonly referred to as "the Alternative Standards" or "HUD Deeming Memo"). Accessible units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout the Project and be available in a sufficient range of sizes and amenities consistent with 24 CFR part 8.26.

Grantees shall adopt a written non-discrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other

classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with program funds made available pursuant to this NOFA.

Grantees shall comply with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act, the California Fair Employment and Housing Act, the Unruh Civil Rights Act, Government Code section 11135, Section 504 of the Rehabilitation Act of 1973, and all regulations promulgated pursuant to those statutes, including 24 CFR Part 100, 24 CFR Part 8, and 28 CFR Part 35.

#### Section 506. Prevailing Wages

Applicant's contemplated use of Homekey funds is subject to California's prevailing wage law (Lab. Code, § 1720 et seq.). Applicant is urged to seek professional legal advice about the law's requirements. Prior to disbursing the Homekey funds, the Department will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid, and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Grantee.

#### Section 507. Environmental Clearances

The Department encourages Eligible Applicants to fully engage with the Department's technical assistance and to consider the CEQA exemption set forth at HSC section 50675.1.4 and the provision for land use consistency and conformity set forth at HSC section 50675.1.3, subdivision (i).

Applicants should consult with their counsel for legal advice in construing application of the foregoing exemptions to their Project. It is entirely within an Applicant's discretion to determine whether to use the statutory CEQA exemption, whether the exemption applies to the Applicant's proposed activity, or whether some other mechanism applies and could be used to satisfy obligations under CEQA.

### **Article VI – Program Operations**

#### Section 600. Program Oversight

As specified by the Department and upon request, Grantees shall provide progress reports in connection with the development plan and any updates to the timeline for completion of the Project. The development plan should include the Project's completion milestones and any updates or substantial changes.

Grantees shall promptly notify the Department upon any changes in Grantee organization, authorization, or capacity.

#### Section 601. Reporting

Grantees shall submit an annual Homekey Program and Expenditure Report to the Department for five years following Standard Agreement execution. The report will be due no

later than January 31 for the prior calendar year of January 1 to December 31. The report shall be in such form and contain such information as required by the Department in its sole and absolute discretion. At minimum, the report shall include the following data:

- i. The amount of funds expended for the project.
- ii. The location of any properties for which the funds are used.
- iii. The number and size of habitable housing units produced, or planned to be produced, using the funds.
- iv. The number and demographics of individuals housed, or likely to be housed, using the funds.
- v. The racial and ethnic composition of the tenants assisted.
- vi. The number of units, and the location of those units, for which operating subsidies have been, or are planned to be, capitalized using the funds.
- vii. Detail of supportive services offered to tenants.
- viii. Any lessons learned from the use of the funds.
- ix. The proposed development vision that identifies the financial and regulatory mechanisms to be used to maintain the long-term affordability of the project.
- x. The progress and status in securing any required entitlements, permits, environmental clearances.
- xi. The proposed timeline for the completion of the project.

If a project received an award for an operating subsidy, Grantees shall also report their operating expenditures in the annual report.

In addition to the foregoing, the Grantee shall submit to the Department such periodic reports, updates, and information as deem necessary by the Department to monitor compliance and/or perform program evaluation. Any requested data or information shall be submitted in electronic format on a form provided by the Department.

The Grantee shall ensure that the expenditure of Homekey funds is consistent with the requirements of the Program. The Department shall monitor the expenditures to ensure that those expenditures comply with this NOFA.

The Department may request the repayment of funds or pursue any other remedies available, at law or in equity, for failure to comply with Program requirements.

#### Section 602. Disbursement of Grant Funds

Pursuant to 31 CFR part 35.5, the Department may disburse funds to cover Homekey-critical expenditures that were incurred beginning March 3, 2021. Homekey Program funds will be disbursed to the Grantee after the Department has received a request for funds from the Grantee and a Standard Agreement between the Grantee and the Department is fully

executed. The Standard Agreement will set forth the general conditions of disbursement, any conditions precedent to disbursements (e.g., documentation requirements for pre-Standard Agreement expenditures or conditional performance measures), and the Department's remedies upon an event of default. The Standard Agreement will also identify the payee. Where Co-Grantees wish to receive the grant award outside of escrow, they must identify, and memorialize in the Standard Agreement, which Grantee will serve as the designated payee for all award amounts.

### Section 603. Legal Documents

Upon the award of Homekey funds to a Project, the Department shall enter into one or more agreements with the Grantee(s), including a Standard Agreement, which shall encumber funds from the Homekey Program, subject to specified conditions. The agreement or agreements shall include, but not be limited to:

- i. A description of the approved project and the permitted uses of funds;
- ii. The amount and terms of the program grant;
- iii. The use, income, occupancy, and rent restrictions, to be imposed on the project through a use restriction (e.g., covenant, regulatory agreement) recorded against the property of the project;
- iv. Performance milestones, and other progress metrics, governing the completion of the project, along with the remedies available to the Department in the event of a failure to meet such milestones or metrics;
- v. Provisions governing the manner, timing, and conditions of the disbursement of the program grant;
- vi. Special conditions imposed as part of the Department's approval of the project;
- vii. Terms and conditions required by federal and state law;
- viii. Requirements for reporting to the Department;
- ix. Remedies available to the Department in the event of a violation, breach, or default of the agreement; and
- x. Provisions regarding Grantee liability. Specifically, the Grantee will remain liable to the Department for compliance with and the performance of all Program requirements regardless of any Department-approved transfer or assignment of interest. Likewise, each co-Grantee will remain jointly and severally liable to the Department for compliance with and the performance of all Program requirements regardless of any Department-approved transfer or assignment of interest, and notwithstanding the co-Grantees' identification of a designated payee.

The agreement will also include such other provisions as are necessary to ensure adherence to the objectives and requirements of the program.

## Section 604. Sales, Transfers, and Encumbrances

An Applicant(s) shall not sell, assign, transfer, or convey the awarded Project, or any interest therein or portion thereof, without the express prior written approval of the Department, which may be granted, delayed, or withheld in the Department's sole and absolute discretion.

## Section 605. Defaults and Grant Cancellations

Funding commitments may be canceled by the Department under any of the following conditions:

- i. The objectives and requirements of the Homekey Program cannot be met and the implementation of the Project cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement or the regulatory agreement.
- ii. In the event of a breach or violation by the Grantee, the Department may give written notice to the Grantee to cure the breach or violation. If the breach or violation is not cured to the satisfaction of the Department within a reasonable time period, the Department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:
  - a. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the Project in accordance with Homekey Program requirements; and
  - b. The Department may seek such other remedies as may be available under the relevant agreement or at law, or in equity.

## **Article VII – Definitions**

Below are the definitions for purposes of the Homekey Program:

- i. "Applicant" means the "Eligible Applicant," as that term is defined in this NOFA, as well as the Eligible Applicant's nonprofit or for-profit corporation Co-Applicant(s), if applicable. As allowed or required by context, the term "Applicant" shall refer to all such entities in their individual and/or collective capacity.
- ii. "Area Median Income" or "AMI" means the most recent applicable county median family income published by the California Tax Credit Allocation Committee (TCAC) or the Department.
- iii. "Assisted Unit" means a residential housing unit that is subject to rent, income, occupancy, or other restrictions associated with a Homekey site.
- iv. "At Risk of Homelessness" has the same meaning as defined in Title 24 CFR Part 578.3.
- v. "Co-Applicant" means the nonprofit or for-profit corporation that is jointly applying for Homekey funds with a state, regional, or local public entity, or with a Tribal Entity.

- vi. "City" means a city or city and county that is legally incorporated to provide local government services to its population. A city can be organized either under the general laws of this state or under a charter adopted by the local voters.
- vii. "Chronic Homelessness" means a person who is chronically homeless, as defined in Title 24 CFR Part 578.3.
- viii. "Continuum of Care" means the same as defined by the United States Department of Housing and Urban Development at Title 24 CFR Part 578.3.
- ix. "Department" means the Department of Housing and Community Development.
- x. "Eligible Applicant" means a city; county; a city and county; any other state, regional, and local public entity, including a council of government, metropolitan planning organization, and regional transportation planning agency designated in Section 29532.1 of the Government Code; or a Tribal Entity(ies) as defined in this NOFA. For purposes of this definition, a "local public entity" is further defined in accordance with HSC section 50079. As allowed or required by context, "Applicant" shall be interpreted to include any of the foregoing entities, as well as that entity's nonprofit or for-profit corporation Co-Applicant. Upon receiving an award of Homekey funds, the Eligible Applicant and any Co-Applicant(s) will, both individually and collectively, be referred to as the "Grantee" for purposes of this NOFA.
- xi. "Extremely Low Income" or "ELI" has the same meaning as in Title 24 CFR Part 93.2.
- xii. "Enforceable Funding Commitment" means a letter or other document, in form and substance satisfactory to the Department, which evidences an enforceable commitment of funds or a reservation of funds by a Project funding source, and which contains the following:
  - a. The name of the Applicant or Grantee;
  - b. The Project name;
  - c. The Project site address, assessor's parcel number, or legal description; and
  - d. The amount, interest rate (if any), and terms of the funding source.

The Enforceable Funding Commitment may be conditioned on certain standard underwriting criteria, such as appraisals, but may not be generally conditional. Examples of unacceptable general conditions include phrases such as "subject to senior management approval," or a statement that omits the word "commitment," but instead indicates the lender's "willingness to process an application" or indicates that financing is subject to loan committee approval of the Project. Contingencies in commitment documents based upon the receipt of tax-exempt bonds or low-income housing tax credits will not disqualify a source from being counted as committed.
- xiii. "Grantee" means the Eligible Applicant (and, if applicable, the Co-Applicant) that has been awarded funds under the Program, and that will be held responsible for compliance with and performance of all Homekey Program requirements. The Grantee may comprise one or more entities, so long as the Grantee structure includes an "Eligible Applicant," as that term is defined in this NOFA. All such entities shall, in their

individual and collective capacity as the “Grantee,” be bound by the Homekey Standard Agreement and each and every one of the Homekey Program terms, conditions, and requirements.

- xiv. “HDIS” means the statewide Homeless Data Integration System.
- xv. "Homeless" has the same meaning as defined in Title 24 CFR Part 578.3.
- xvi. “Homeless Youth” or “Youth at Risk of Homelessness” has the same meaning as defined in Title 24 CFR Part 578.3.
- xvii. "Housing First" has the same meaning as in Welfare and Institutions Code section 8255, including all of the core components listed therein.
- xviii. "HUD" means the U.S. Department of Housing and Urban Development.
- xix. "Interim Housing", “Transitional Housing” or "Congregate Shelter" means any facility whose primary purpose is to provide a temporary shelter for the Homeless in general or for specific populations of the Homeless, and which does not require occupants to sign leases or occupancy agreements.
- xx. “Local Public Entity” is defined in accordance with HSC 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. “Local public entity” also includes two or more local public entities acting jointly.
- xxi. "NOFA" means a Notice of Funding Availability.
- xxii. "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management fees, taxes, licenses, and supportive services costs, but not including debt service or required reserve account deposits.
- xxiii. "Permanent Supportive Housing" has the same meaning as "supportive housing," as defined at HSC section 50675.14, subdivision (b)(2), except that "Permanent Supportive Housing" shall include associated facilities if used to provide services to housing residents.
- xxiv. "Permanent Housing" means a housing unit where the landlord does not limit length of stay in the housing unit, the landlord does not restrict the movements of the tenant, and the tenant has a lease and is subject to the rights and responsibilities of tenancy.
- xxv. “Positive Youth Development (PYD)” is an intentional, prosocial approach that engages youth within their communities, schools, organizations, peer groups, and families in a manner that is productive and constructive; recognizes, utilizes, and enhances young

people's strengths; and promotes positive outcomes for young people by providing opportunities, fostering positive relationships, and furnishing the support needed to build on their leadership strengths.

- xxvi. "Project" means a structure or set of structures providing housing or shelter with common financing, ownership, and management.
- xxvii. "Program Award" means the portion of program funds available for a Grantee to expend toward eligible program uses.
- xxviii. "Point-in-Time Count" or "PIT" means a count of sheltered and unsheltered Homeless persons on a single night conducted by Continuums of Care as prescribed by HUD.
- xxix. "Rehabilitation" means the term as defined at HSC section 50096, but includes improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability and use by the Target Population.
- xxx. "Rural Area" is defined in accordance with HSC section 50199.21.
- xxxi. "Target Population" means individuals and families who are experiencing homelessness or who are at risk of homelessness, as defined at HSC section 50675.1.3, subdivision (l), 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.
- xxxii. "Tribal Entity(ies)" means an Applicant that is any of the following:
  - a. Applicant meets the definition of Indian tribe under Section 4103(13)(B) of Title 25 of the United State Code;
  - b. Applicant meets the definition of Tribally Designated Housing Entity under 25 USC 4103(22);
  - c. If not a federally recognized tribe, either:
    - i. Applicant is listed in the Bureau of Indian Affairs Office of Federal Acknowledgement petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.
    - ii. Applicant is an Indian tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.
- xxxiii. "Unit" means a residential unit that is used as a primary residence by its occupants, including individual units within the project.
- xxxiv. "Youth Assisted Unit" means an Assisted Unit serving Homeless Youth, or Youth at Risk of Homelessness, as defined in Title 24 CFR Part 578.3. Pursuant to Section 203, Youth Assisted Units may also serve current and former foster youth through the age of 25.

## **Article VIII – Insurance Requirements**

### **Section 800. Insurance Requirements**

i. Commercial General Liability

Applicants shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Applicant's limit of liability. **The policy must name the State of California and the Department of Housing and Community Development, as well as the respective appointees, officers, agents, and employees of each, as additional insureds, but only with respect to work performed under the contract.**

**If available in the open market at a reasonable cost, the policy shall also include an endorsement for physical abuse and child/sexual molestation coverage.**

Coverage shall include actual or threatened physical abuse, mental injury, sexual molestation, negligent hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Applicant is responsible. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Applicant's limit of liability. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.

**If available in the open market at a reasonable cost, the policy shall also include an endorsement for assault and battery.**

ii. Automobile Liability

Applicant shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles. **The policy must name the “State of California and the Department of Housing and Community Development”, as well as the respective appointees, officers, agents, and employees of each, as additional insureds, but only with respect to work performed under the contract.**

If Applicant will not have or use any commercially owned vehicles during the term of the Standard Agreement, by signing the Standard Agreement, the Applicant certifies that the Applicant and any appointees, employees, subcontractors, or servants possess valid automobile coverage in accordance with California Vehicle Code sections 16450 to 16457, inclusive. The Department reserves the right to request proof at any time.

iii. Workers' Compensation and Employer's Liability

Applicant shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the contract. In addition, employer's liability limits of \$1,000,000 are required. By signing the Standard Agreement, Applicant acknowledges compliance with these regulations. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California and the Department of Housing and Community Development must be attached to the certificate.**

iv. Builder's Risk/Installation Floater

If there is installation or construction of property/materials on or within the facility at any time during the term of the Standard Agreement, the Applicant shall maintain in force, at its own expense, Builders Risk/Installation Floater covering the labor, materials, and equipment to be used for completion of the Work performed under this contract against all risks of direct physical loss, excluding earthquake and flood, for an amount not less than the full amount of the property and/or materials being installed and/or constructed on or within the facility. The Applicant agrees as a provision of the contract to waive all rights of recovery against the state.

v. Property Insurance

The Applicant shall maintain fire, lightning and extended coverage insurance on the facility which shall be in a form of a commercial property policy, in an amount equal to one hundred percent (100%) of the then current replacement cost of the facility, excluding the replacement cost of the unimproved real property constituting the site. The extended coverage endorsement shall, as nearly as practicable, include but not be limited to loss or damage by an explosion, windstorm, riot, aircraft, vehicle damage, smoke, vandalism, and malicious mischief and such other hazards as are normally covered by such endorsement.

vi. Self-Insured

If a state, regional, or local public entity is the sole Applicant, and if that entity is self-insured in whole or in part as to any of the above-described types and levels of coverage, then that entity shall provide the Department with a written acknowledgment of this fact before execution of the Standard Agreement. If, at any time after the execution of the Standard Agreement, the state, regional, or local public entity abandons its self-insured status, that entity shall immediately notify the Department of this fact and shall comply with all of the terms and conditions of this Section pertaining to insurance requirements. The Department may accept evidence of self-insurance from other Eligible Applicants in its sole and absolute discretion.

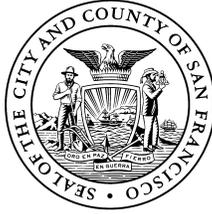
**APPENDIX A: Capital Contributions to Projects\***

Assisted Unit, 1:1 Match	Homekey Capital Contributions		
	Total Cost Per Door *	Maximum Homekey Contribution	Applicant Contribution
Up to 1 Bedroom	\$140,000	\$140,000	\$0
	\$150,000	\$150,000	\$0
	\$160,000	\$155,000	\$5,000
	\$180,000	\$165,000	\$15,000
	\$200,000	\$175,000	\$25,000
	\$220,000	\$185,000	\$35,000
	\$240,000	\$195,000	\$45,000
	\$260,000	\$205,000	\$55,000
	\$280,000	\$215,000	\$65,000
	\$300,000	\$225,000	\$75,000
	\$320,000	\$235,000	\$85,000
	\$340,000	\$245,000	\$95,000
\$350,000+	\$250,000	\$100,000+	
Two Bedrooms	\$155,000	\$155,000	\$0
	\$175,000	\$175,000	\$0
	\$195,000	\$185,000	\$10,000
	\$215,000	\$195,000	\$20,000
	\$235,000	\$205,000	\$30,000
	\$255,000	\$215,000	\$40,000
	\$275,000	\$225,000	\$50,000
	\$295,000	\$235,000	\$60,000
	\$315,000	\$245,000	\$70,000
	\$335,000	\$255,000	\$80,000
	\$355,000	\$265,000	\$90,000
	\$375,000+	\$275,000	\$100,000+
Three or More Bedrooms	\$180,000	\$180,000	\$0
	\$190,000	\$190,000	\$0
	\$200,000	\$200,000	\$0
	\$220,000	\$210,000	\$10,000
	\$240,000	\$220,000	\$20,000
	\$260,000	\$230,000	\$30,000
	\$280,000	\$240,000	\$40,000
	\$300,000	\$250,000	\$50,000
	\$320,000	\$260,000	\$60,000
	\$340,000	\$270,000	\$70,000
	\$360,000	\$280,000	\$80,000
	\$380,000	\$290,000	\$90,000
\$400,000+	\$300,000	\$100,000+	
Experiencing Chronic Homelessness	\$180,000	\$180,000	\$0
	\$190,000	\$190,000	\$0
	\$200,000	\$200,000	\$0

Assisted Unit, 1:1 Match	Homekey Capital Contributions		
	Total Cost Per Door *	Maximum Homekey Contribution	Applicant Contribution
	\$220,000	\$210,000	\$10,000
	\$240,000	\$220,000	\$20,000
	\$260,000	\$230,000	\$30,000
	\$280,000	\$240,000	\$40,000
	\$300,000	\$250,000	\$50,000
	\$320,000	\$260,000	\$60,000
	\$340,000	\$270,000	\$70,000
	\$360,000	\$280,000	\$80,000
	\$380,000	\$290,000	\$90,000
\$400,000+	\$300,000	\$100,000+	
Homeless Youth or Youth At Risk of Homelessness	\$155,000	\$155,000	\$0
	\$175,000	\$175,000	\$0
	\$195,000	\$185,000	\$10,000
	\$215,000	\$195,000	\$20,000
	\$235,000	\$205,000	\$30,000
	\$255,000	\$215,000	\$40,000
	\$275,000	\$225,000	\$50,000
	\$295,000	\$235,000	\$60,000
	\$315,000	\$245,000	\$70,000
	\$335,000	\$255,000	\$80,000
	\$355,000	\$265,000	\$90,000
\$375,000+	\$275,000	\$100,000+	

\* The total cost per door referenced in the table above includes all eligible capital expenses, including acquisition, Rehabilitation, and new construction costs.

**City & County of San Francisco**  
London N. Breed, Mayor



**Office of the City Administrator**  
Carmen Chu, City Administrator  
Andrico Q. Penick, Director of Real Estate

March 25, 2022

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**RE: City's Purchase of Real Property – 333 12<sup>th</sup> Street – Permanent Supportive Housing**

Dear Honorable Board Members:

Attached for your consideration is a Resolution authorizing the execution of a Purchase and Sale Agreement for the acquisition of the property located at 333 12<sup>th</sup> Street (the "Property") for \$145,000,000 (the "Purchase Price") plus an estimated \$180,000 for typical closing costs, for a total aggregate amount not to exceed \$145,180,000. The Property consists of a 200-unit multi-family residential building that will be converted into up to 200 units of Permanent Supportive Housing for families formerly experiencing homelessness.

In July 2020, Mayor London N. Breed announced her Homelessness Recovery Plan that includes the goal of acquiring and operating 1,500 new units of Permanent Supportive Housing over the next two years. To help meet that goal, the City is proposing to purchase the property located at 333 12<sup>th</sup> Street.

The City, through the Department of Homelessness and Supportive Housing ("HSH") and the Real Estate Division ("RED") and in consultation with the Office of the City Attorney, has negotiated the Purchase Agreement to acquire the property from City Gardens Bridge, LLC. I have determined the purchase price of \$145,000,000 to be at or below fair market value.

Along with my recommendation, the Director of HSH recommends approval of the proposed resolution authorizing the purchase. If you have questions regarding the proposed use of the property, please contact Dylan Schneider of HSH at 628.652.7742 or [Dylan.schneider@sfgov.org](mailto:Dylan.schneider@sfgov.org). If you have questions regarding the Purchase Agreement, please contact me at 415.554.9850 or [Andrico.penick@sfgov.org](mailto:Andrico.penick@sfgov.org).

Respectfully,

Andrico Q. Penick  
Director of Property



## 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 #: 220344

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>
Bryn Miller	978-460-2875
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
HOM Homelessness and Supportive Housing	bryn.miller@sfgov.org

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> City Gardens Bridge LLC	<b>TELEPHONE NUMBER</b> 415.933.1170
<b>STREET ADDRESS (including City, State and Zip Code)</b> c/o Panoramic Interests, 1321 Mission St. #101, 94103	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 220344
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> \$147,540,000		
<b>NATURE OF THE CONTRACT (Please describe)</b> Purchase of the property at 333 12th Street.		

7. COMMENTS

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	Kennedy	Patrick	Shareholder
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4			
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**9. AFFILIATES AND SUBCONTRACTORS**

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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**9. AFFILIATES AND SUBCONTRACTORS**

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
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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>
---	---------------------------

**From:** [Paulino, Tom \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Schneider, Dylan \(HOM\)](#); [Cohen, Emily \(HOM\)](#); [Buhse, Caroline \(MYR\)](#); [Barnett, Monica \(BOS\)](#)  
**Subject:** Mayor -- Resolution -- 333 Ellis St  
**Date:** Tuesday, April 5, 2022 3:13:13 PM  
**Attachments:** [333 Ellis St - PACKET.zip](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a resolution 1) approving and authorizing the Director of Property, on behalf of the Department of Homelessness and Supportive Housing (“HSH”), to acquire certain property located at 333-12th Street (“Property”) for \$145,000,000 plus up to \$2,250,000 in interest, payable in two installments, plus an estimated \$290,000 for typical closing costs, for a total anticipated amount not to exceed \$147,540,000; 2) approving and authorizing HSH, on behalf of the City, to apply to the California Department of Housing and Community Development for a Homekey Grant; 3) approving and authorizing an Agreement of Purchase and Sale for Real Estate for the acquisition of the Property from City Gardens Bridge, LLC (“Purchase Agreement”), which includes a liquidated damages clause of up to \$5,000,000, as well as certain other remedies, in case of default by the City; 4) authorizing the Director of Property to execute the Purchase Agreement, make certain modifications, and take certain actions in furtherance of this Resolution and the Purchase Agreement, as defined herein; 5) affirming the Planning Department’s determination under the California Environmental Quality Act; and 6) adopting the Planning Department’s findings that the Purchase Agreement, and the transaction contemplated therein, is consistent with the General Plan and the eight priority policies of Planning Code, Section 101.1.

Please note Supervisor Haney is a co-sponsor of this legislation.

Please let me know if you have any questions.

Cheers,

**Tom Paulino**

He/Him

Liaison to the Board of Supervisors

Office of the Mayor

City and County of San Francisco