

AGREEMENT FOR EXCHANGE AND CONVEYANCE OF REAL ESTATE

by and between

CITY AND COUNTY OF SAN FRANCISCO

and

KENSINGTON

For the exchange and conveyance of real property
designated as Block/2923, Lot No.10A, 24, 25, 26 and 27

_____, 2023

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EXHIBIT C	CITY DEED
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AGREEMENT FOR EXCHANGE AND CONVEYANCE OF REAL ESTATE

(Block/2923, Lot No.10A, 24, 25, 26 and 27, San Francisco)

THIS AGREEMENT FOR EXCHANGE AND CONVEYANCE OF REAL ESTATE (this "**Agreement**") dated for reference purposes only as of _____, 20__, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and KENSINGTON WAY LLC, a California limited liability company ("**Kensington**"). City and Kensington may each be referred to in this Agreement as a "**Party**", and together referred to as the "**Parties**".

RECITALS

A. City owns certain real property located as follows: (1) one lot located on the Moraga Avenue paper street area, extending east from the intersection of Moraga Avenue with 8th Avenue; (2) one lot located on the Noriega Avenue paper street area, extending east from the intersection of Noriega Avenue with 8th Avenue; (3) three lots located on the Noriega Avenue paper street area and fronting on Laguna Honda Boulevard and 7th Avenue, extending west from the intersection of Noriega Avenue with Laguna Honda Boulevard and 7th Avenue; and (4) a portion of Block 2440 Lot 020; all of which are located in the City of San Francisco, State of California, and more particularly described in Exhibit A attached and shown generally on the map attached as Exhibit A-1 (collectively, the "**City Property**"). Kensington owns certain real property located at Block No. 2923, Lots; 27, 26, 25, 24, and 10A in the City of San Francisco, State of California, and more particularly described in Exhibit B attached and shown generally on the map attached hereto as Exhibit B-1 (collectively, the "**Kensington Property**").

B. City provided a notice of availability of surplus land regarding the City Property as required by California Government Code §§54220 et seq. (the "**Surplus Land Act**"), on or about July 12, 2021. City did not receive any notices of interest or intent to purchase the City Property in response to its notice of availability. As part of City's transfer of the City Property to Kensington, an affordability restriction will be recorded against the City Property in compliance with the Surplus Land Act.

C. City desires to acquire the Kensington Property to retain the hillside on Edgehill Mountain along Kensington Way in its natural state for open space purposes, and to transfer the City Property to Kensington in exchange for its acquisition of the Kensington Property.

D. The Parties agree that the fair market value of the City Property is Three Million Six Hundred Thousand Dollars (\$3,600,000) and the fair market value of the Kensington Property is Three Million Six Hundred Thousand Dollars (\$3,600,000).

E. Due to the unique nature of the Kensington Property and the City Property, and the desired exchange thereof, competitive bidding is not required because it would be impracticable or impossible. Kensington is the only purchaser of the City Property that is willing and able to exchange the Kensington Property for the City Property. The City Property does not consist of separate legal parcels, although City is able to otherwise transfer the City Property to Kensington pursuant to California Government Code Section 66428(a)(2). Concurrently with the exchange of the Property, City requires that a record of survey of the City Property (a "**Record**

Survey") be prepared and recorded in the Official Records of San Francisco County prior to Closing (as defined in Section 6.2).

F. City has not yet completed environmental review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code, and this Agreement is not an approval of any particular project. City has retained complete discretion to grant or deny any and all development approvals, and to condition, process, or order any street vacations, on the City Property following completion of environmental review, and nothing in this Agreement affects or diminishes the right or discretion of the Planning Department, the Planning Commission, the Board of Supervisors, or any City official or department to grant, deny, or condition any development application, regulatory approval, or street vacation relative to the City Property subject to the conditions stated in section 5.

G. Kensington desires to acquire the City Property and City is willing to convey the City Property to Kensington, and City desires to acquire the Kensington Property and Kensington is willing to convey the Kensington Property to City, subject to approval by City's Board of Supervisors and Mayor, on the terms and conditions set forth in this Agreement.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Kensington agree that the foregoing Recitals are true and correct, and agree as follows:

1. SALE AND PURCHASE

1.1 Exchange of Property

Subject to the terms, covenants and conditions set forth herein, at the Closing, City agrees to convey the City Property to Kensington and Kensington agrees to convey the Kensington Property to City. The Kensington Property and the City Property (or any portion of them, as the context requires) shall be collectively referred to as the "Property".

2. PURCHASE PRICE

(a) Exchange Values. The Parties agree that the fair market value for the City Property is Three Million Six Hundred Thousand Dollars (\$3,600,000) and the fair market value of the Kensington Property is Three Million Six Hundred Thousand Dollars (\$3,600,000). Therefore, no additional consideration is required for the exchange of Property.

(b) Escrow. Within fifteen (15) days following the Effective Date, Kensington will open an escrow for the Exchange ("Escrow") with Chicago Title Company in San Francisco (the "Title Company") and deposit a fully executed copy of this Agreement with Title Company. This Agreement will serve as instructions to Title Company as the escrow holder for consummation of the conveyances of the City Property and the Kensington Property pursuant to this Agreement (the "Exchange"). Kensington and City agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided that if there is any conflict

between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement will control.

3. TITLE

3.1 Permitted Title Exceptions to the Property

(a) City Property Permitted Title Exceptions. At the Closing, City will convey all of its right, title and interest in and to the City Property to Kensington by using the form of quitclaim deed attached as Exhibit C (the "City Deed"). Title to the City Property will be subject to (i) prorated liens of local real estate taxes and assessments that are not yet payable, (ii) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Kensington in its due diligence investigation of the City Property, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the City Property, including any encroachments from the City Property onto adjacent property and from adjacent property onto the City Property, (iii) the Surplus Land Act affordability restriction attached hereto as Exhibit E, (iv) any rights of the public, adjoining owners, and City over the City Property, (v) that certain City and County of San Francisco Department of Public Works Order No. 171,146, and (vi) all items of which Kensington has actual or constructive notice or knowledge. All of the foregoing permitted exceptions to title are referred to collectively as the "City Property Permitted Title Exceptions". Without limiting the foregoing, Kensington acknowledges receipt of preliminary reports issued by the Title Company under Order No. 15609833 dated as of September 22, 2022, and Order No. 15609831-156 dated as of September 9, 2022, regarding the City Property and approves all of the exceptions contained therein. If Kensington elects to obtain a policy of owner's title insurance for the City Property, such insurance will be at Kensington's expense.

(b) Kensington Property Permitted Title Exceptions. At the Closing, Kensington will convey its right, title and interest in and to the Kensington Property to City by using the form of deed attached as Exhibit D (the "Kensington Deed"). Title to the Kensington Property will be subject to (i) pro rated liens of local real estate taxes and assessments that are not yet payable, (ii) the exceptions shown as Items 4 through 8, provided that portions of Item 8 have been stricken as described in Section 5.4(d), in the preliminary report issued by the Title Company under Order No. 15609655-156 dated as of June 24, 2022 and (iii) any other exceptions approved in writing by City in its sole discretion. All of the foregoing permitted exceptions to title are referred to collectively as the "Kensington Property Permitted Title Exceptions" and at City's option will be reflected in a CLTA owner's title insurance policy (the "City Title Policy") issued by the Title Company to City, with such endorsements as City may reasonably request, in an amount specified by City to the Title Company, insuring City's fee interest in the Kensington Property, subject only to the Kensington Property Permitted Title Exceptions, all at the expense of City.

3.2 Responsibility for Title Insurance.

Each Party understands and agrees, on behalf of itself and its successors, that neither Party is under any obligation to furnish any policy of title insurance in connection with this transaction. Each Party recognizes that any physical monument of any of the Property's boundary lines may not correspond to the legal description of such Property. Neither Party shall be responsible for any discrepancies in the area or location of the property lines or any other

matters that an accurate survey or inspection might reveal. It is the sole responsibility of each Party to obtain a survey and a policy of title insurance, if desired, and to investigate any and all title, survey and inspection matters affecting the Property it intends to acquire under this Agreement.

3.3 Record Survey Condition; Legal Descriptions; Parcel Legal Status.

The Parties agree to use the legal description for the City Property attached as Exhibit A (the "City Legal Description") and the legal description for the Kensington Property attached as Exhibit B (the "Kensington Legal Description") to effect the Exchange; provided that the Kensington Legal Description must be amended, if necessary, to conform to the Record Survey.

(a) The City Property consists of lots that are not legal parcels pursuant to California Government Code Sections 66410 et seq. (the "Subdivision Map Act") and City is requiring a Record Survey of the City Property to be recorded in the Official Records of San Francisco County prior to Closing (the "Record Survey Condition"). Kensington acknowledges and agrees that (a) City makes no representations or warranties that City, acting in its regulatory capacity, or any other party will approve the recordation of the Record Survey or compliance of the City Property with the Subdivision Map Act, or as to any costs or liabilities that Kensington may incur in connection with the Record Survey or the Record Survey Condition, (b) City shall have no obligation to assist in, effect, or approve of any applications or documents submitted by Kensington in connection with the Record Survey Condition, (c) any City department reviewing any application or documents submitted by Kensington in connection with the Record Survey Condition shall do so in its sole discretion without any obligation to provide special consideration thereto, and (d) City's Board of Supervisors and Mayor shall have no obligation to approve of any ordinance or resolution (as applicable) submitted in connection with the Record Survey Condition, which shall be subject to their sole discretion.

3.4 Environmental Review

City may not release the City Condition to Closing described in Section 5.4(j) until Kensington's proposed rezoning and development of the City Property is found to be in compliance with the California Environmental Quality Act ("CEQA"), the State CEQA guidelines (California Code of Regulations, tit. 14, §§ 15000 et seq.), and the City's Environmental Quality Regulations (San Francisco Administrative Code, Chapter 31). City intends, prior to the Closing, to identify the actions and activities that would be necessary to develop the City Property and thereby facilitate meaningful environmental review, which must be completed prior to any approval action by the City concerning future use of the City Property. City retains absolute discretion to: (1) make modifications it deems necessary to mitigate significant adverse environmental impacts, (2) select feasible alternatives that avoid significant adverse impacts, including the "no project" alternative, (3) balance the benefits of the proposed project against the unavoidable significant impacts prior to taking final action, or (4) determine not to proceed with the Closing.

4. "AS-IS" PURCHASE; RELEASE OF CITY

4.1 Due Diligence and Time for Satisfaction of Conditions

Each Party has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through agents of its own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as it deems fit, as well as the suitability of the Property for its intended uses. Each Party and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both Parties. The period for completion of all such investigations shall expire sixty (60) days after the Agreement is executed by both Parties (the "Due Diligence Period"), subject to the terms and conditions provided below. Each Party agrees to deliver to the other all of the documents and other items described in Subsection 5.1(h) and 5.4(g) within five (5) days after the date hereof, provided that if a Party fails to do so, then the expiration of the Due Diligence Period shall be extended for the other Party by the number of days after the end of such 5 day delivery period that the delayed Party delivers all such items to other Party.

4.2 Property Disclosures

(a) California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, the Parties are hereby advised that occupation of the Property may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, the Parties acknowledge that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(b) On November 2, 2015, the Federal Emergency Management Agency ("FEMA") issued a preliminary Flood Insurance Rate Map ("FIRM") that identifies Special Flood Hazard Areas along City's shoreline, with designations of "Zone A" (areas subject to coastal flooding) and "Zone V" (areas subject to coastal flooding and hazards that accompany wave action). The affected City property includes its waterfront piers, parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek. FEMA expects to finalize the FIRM in mid-2020, which may have significant impacts for developing new structures and reconstructing or repairing existing structures in the identified areas.

(c) According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm> **The Property is located within a wildland area that may contain substantial forest fire risks and hazards and is subject to the requirements of California Public Resources Code Section 4291.**

(d) Kensington acknowledges that the City Property is located on hillsides, which entail associated landslide risks, costs, and liabilities. City acknowledges that the Kensington Property is located on a hillside, which entails associated landslide risks, costs, and liabilities.

(e) Kensington acknowledges that City has disclosed that certain City Department of Public Works Order No. 171,146, which may affect the City Property and any future use of the City Property. (f) Nothing contained in this Section shall limit any of the provisions of this Article or relieve City or Kensington of their obligation to conduct diligent inquiries hereunder, nor shall any such matters limit any of the provisions of Section 4.4 ["As-Is" Purchase], Section 4.5 [Release of Kensington], or Section 4.6 [Release of City].

4.3 Entry and Indemnity

In connection with any entry by either Party or its Agents onto the other Party's Property, the entering Party shall give the other reasonable advance written notice of such entry and shall conduct such entry and any inspections in connection therewith so as to minimize, to the extent possible, interference with uses being made of the Property and otherwise in a manner and on terms and conditions acceptable to the Party that owns the Property. All entries by a Party or its Agents onto the Property to perform any testing or other investigations which could affect the physical condition of the Property (including, without limitation, soil borings) or the uses thereof will be made only pursuant to the terms and conditions of written permission to enter in form and substance satisfactory to the Party that owns the Property.

Kensington shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Kensington and its Agents, arising out of any entry or inspection of the Property in connection with the transaction contemplated hereby, and Kensington shall provide City with evidence of such insurance coverage upon request from City.

Kensington shall indemnify, defend and hold harmless City, its Agents, and each of them, from and against any liabilities, costs, damages, losses, liens, claims and expenses (including, without limitation, reasonable fees of attorneys, experts and consultants and related costs) (collectively, "**Claims**") arising out of or relating to any entry on, under or about the City Property by Kensington, its Agents, contractors and subcontractors in performing the inspections, testing or inquiries provided for in this Agreement, whether prior to the date of this Agreement or during the term hereof, including any injuries or deaths to any persons (including, without limitation, Kensington's Agents) and damage to any property, except to the extent such Claims are caused by the acts or omissions of City or any of its Agents. The foregoing indemnity shall not include any Claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the City Property. The foregoing indemnity shall survive for a period of one (1) year beyond the Closing, or, if the sale is not consummated, one(1) year beyond the termination of this Agreement.

City shall indemnify, defend and hold harmless Kensington, its Agents, and each of them, from and against any Claims arising out of or relating to any entry on, under or about the Kensington Property by City, its Agents, contractors and subcontractors in performing the inspections, testing or inquiries provided for in this Agreement, whether prior to the date of this

Agreement or during the term hereof, including any injuries or deaths to any persons (including, without limitation, City's Agents) and damage to any property, except to the extent such Claims are caused by the acts or omissions of Kensington or any of its Agents. The foregoing indemnity shall not include any Claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Kensington Property. The foregoing indemnity shall survive for a period of one (1) year beyond the Closing, or, if the sale is not consummated, one (1) year beyond the termination of this Agreement.

4.4 "As-Is" Purchase

EACH PARTY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT IS SELLING AND PURCHASING THE OTHER PARTY'S INTEREST IN THE CITY PROPERTY OR THE KENSINGTON PROPERTY, AS THE CASE MAY BE, ON AN "AS-IS WITH ALL FAULTS" BASIS. EACH IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, EXCEPT AS PROVIDED IN SECTIONS 9.4, AND 9.5, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM THE OTHER PARTY OR ITS AGENTS AS TO ANY MATTERS CONCERNING SUCH PROPERTY, ITS SUITABILITY FOR THE ACQUIRING PARTY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS. THE PARTIES DO NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PROPERTY THEY ARE SELLING, NOR DO THEY ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF SUCH PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS THE ACQUIRING PARTY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY THAT IT IS ACQUIRING AND THE USES TO WHICH IT MAY BE PUT.

KENSINGTON ACKNOWLEDGES AND AGREES THAT CITY RETAINS FULL AND ABSOLUTE DISCRETION (A) TO GRANT OR DENY ANY AND ALL DEVELOPMENT APPROVALS, PERMITS, AND PERMISSIONS CONCERNING ANY DEVELOPMENT OF THE CITY PROPERTY, AND (B) TO CONDITION, PROCESS, OR ORDER ANY STREET VACATIONS CONCERNING THE CITY PROPERTY, FOLLOWING COMPLETION OF ENVIRONMENTAL REVIEW, AND NOTHING IN THIS AGREEMENT AFFECTS OR DIMINISHES THE RIGHT OR DISCRETION OF THE PLANNING DEPARTMENT, THE BOARD OF SUPERVISORS, OR ANY CITY OFFICIAL OR DEPARTMENT TO GRANT, DENY, OR CONDITION ANY DEVELOPMENT APPLICATION, REGULATORY APPROVAL, OR STREET VACATION RELATIVE TO THE CITY PROPERTY.

4.5 Release of City

As part of its agreement to purchase the City Property in its "As-Is With All Faults" condition, Kensington, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or

unforeseen, that may arise on account of or in any way be connected with (i) Kensington's and its Agents and customer's past, present and future use of the City Property, (ii) the physical, geological or environmental condition of the City Property, including, without limitation, any Hazardous Material in, on, under, above or about the City Property, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Kensington expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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 TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, KENSINGTON SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT KENSINGTON WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: KENSINGTON: _____

4.6 Release of Kensington

As part of its agreement to purchase the Kensington Property in its "As-Is With All Faults" condition, City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, Kensington, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without

limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) City's and its Agents past, present and future use of the Kensington Property, (ii) the physical, geological or environmental condition of the Kensington Property, including, without limitation, any Hazardous Material in, on, under, above or about the Kensington Property, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, CERCLA, as amended by SARA, RCRA, the Clean Water Act, the TSCA, Hazardous Materials Transportation Act, the California Superfund law, Hazardous Waste Control Act, Business Plan Law, Porter-Cologne Water Quality Control Act, and Proposition 65.

In connection with the foregoing release, City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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 TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, CITY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT CITY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: CITY:_____

5. CONDITIONS PRECEDENT

5.1 Kensington's Conditions Precedent

Kensington's obligation to acquire the City Property and convey the Kensington Property is conditioned upon the following conditions precedent ("**Kensington's Conditions**"):

- (a) City has performed its obligations hereunder in all material respects.
- (b) No action or proceeding before any court or other governmental body is filed or otherwise instituted that restrains or prohibits the transactions contemplated by this Agreement, and no pending or threatened condemnation exists.
- (c) Kensington's review and approval of an updated preliminary title report, together with copies of the underlying documents, and at Kensington's option, review and approval of a policy of title insurance and current "as-built" survey in sufficient detail to support the issuance of an ALTA owner's policy of title insurance (the "**Survey**").
- (d) City's complete vacation of any rights of the public and the public right of way over all portions of the City Property that are encumbered by such rights, in accordance with

California Streets and Highways Code Section 8300 et. seq. Kensington shall be responsible for preparing the materials, processing the street vacations with City, and attending any hearings required for any petition to vacate the rights of public access, and shall bear any costs associated with such street vacations.

(e) The City Property has been rezoned from Public Use (P) to Residential Use (RH). Specifically, the Noriega and Moraga Street parcels on 8th Avenue have been rezoned as RH-2 and the 3 Laguna Honda parcels have been rezoned as RH-3.

(f) City issues a determination that curb cuts are necessary for the development of the Laguna Honda parcels and acknowledges that the Laguna Honda parcels are eligible for curb cuts of sufficient size to allow ingress and egress to each Laguna Honda parcel.

(g) Kensington's review and approval of the physical condition of the City Property.

(h) Kensington's review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the City Property.

(i) Kensington's review and approval of documents of significance to the City Property files maintained by City's Department of Public Works ("DPW"). City shall make available to Kensington, at DPW or the Real Estate Division's offices, without representation or warranty of any kind whatsoever, all non-privileged items maintained in DPW files relating to the City Property for Kensington's review and inspection, at Kensington's cost, during normal business hours. Notwithstanding the foregoing, Kensington's review shall not include a review of any of City's internal memoranda or reports, any privileged or confidential information, or City's appraisals of the City Property, if any.

(j) The Record Survey Condition is satisfied.

(k) City conveys the City Property to Kensington at Closing.

5.2 Approval or Waiver of Kensington's Conditions

Kensington shall have until the Closing to review and approve or waive Kensington's Conditions. If Kensington elects to proceed with the purchase of the City Property, then Kensington shall notify City in writing that Kensington has approved all such matters. If before the end of the Contingency Period Kensington fails to give City such written notice and fails to object to any of Kensington's Conditions, then Kensington shall be deemed to have waived Kensington's Conditions. However, under no circumstances shall 5.1 (d), (e), or (f) be deemed waived unless Kensington expressly waives those conditions in writing. Notwithstanding the foregoing, if Kensington objects to any of the matters contained in Section 5.1, then City may, but shall have no obligation to remove or remedy any objectionable matter. If City agrees to remove or remedy the objectionable matter, it shall notify Kensington within ten (10) days following Kensington's notice of objection. If and when City elects not to remove or remedy the objectionable matter, which City may do at any time including following an initial election to pursue remedial or corrective actions, this Agreement shall automatically terminate, and neither Party shall have any further rights or obligations hereunder except as provided in Sections 4.3

[Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority] or as otherwise expressly provided herein.

5.3 Failure of Kensington's Conditions Precedent

Each of Kensington's Conditions are intended solely for the benefit of Kensington. If any Kensington Condition is not satisfied, Kensington shall have the right in its sole discretion either to waive in writing the Kensington Condition and proceed with the Closing or, in the alternative, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority] or as otherwise expressly provided herein.

5.4 City's Conditions Precedent

City's obligation to acquire the Kensington Property and convey the City Property is conditioned upon the following conditions precedent ("**City's Conditions**"):

(a) Kensington has performed its obligations hereunder in all material respects and all of Kensington's representations and warranties are true and correct.

(b) No action or proceeding before any court or other governmental body is filed or otherwise instituted that restrains or prohibits the transactions contemplated by this Agreement, and no pending or threatened condemnation exists.

(c) City's review and approval of an updated preliminary title report for the Kensington Property, together with copies of the underlying documents, and at City's option, review and approval of a policy of title insurance and current Survey.

(d) Kensington has caused all unlawful discriminatory covenants to be stricken from that certain document recorded at Book 4211, Page 59 in the Official Records of San Francisco County, in accordance with California Government Code Section 12956.2.

(e) City's review and approval of the physical condition of the Kensington Property.

(f) City has removed all of its equipment and personal property from the City Property, if any.

(g) City's review and approval of all zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Kensington Property.

(h) City's review and approval of (i) the following documents, all to the extent such documents exist and are either in the possession or control of Kensington or may be obtained by Kensington through the exercise of commercially reasonable efforts: recent inspection reports by Kensington's engineers; utility contracts; maintenance contracts; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Kensington Property (collectively, the "**Kensington Documents**"); and (ii) such other information relating to the Kensington Property that is specifically requested by City of Kensington in writing (collectively, the "**Other Information**").

(i) A resolution approving and authorizing the transactions contemplated hereby and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Property, are adopted by the City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted.

(j) City's enactment of appropriate legislation and satisfaction that the sale and proposed project on the City Property is in compliance with the CEQA, the State CEQA guidelines (California Code of Regulations, tit. 14, §§ 15000 et seq.), and the City's Environmental Quality Regulations (San Francisco Administrative Code, Chapter 31). City intends, prior to the Closing, to identify the actions and activities that would be necessary to develop the City Property and thereby facilitate meaningful environmental review, which must be completed prior to any approval action by the City concerning the future use of the City Property. City retains absolute discretion to: (1) make modifications it deems necessary to mitigate significant adverse environmental impacts, (2) select feasible alternatives that avoid significant adverse impacts, including the "no project" alternative, (3) balance the benefits of the sale of the City Property and the proposed project against the unavoidable significant impacts prior to taking final action, or (4) determine not to proceed with the sale of the City Property.

(k) City's enactment of an ordinance approving the rezoning of the City Property from Public Use (P) to Residential Use (RH). Specifically, the Noriega and Moraga Street parcels on 8th Avenue are rezoned as RH-2 and the 3 Laguna Honda parcels are rezoned as RH-3.

(l) City's enactment of an ordinance approving the City's complete vacation of all public rights and the public right of way over all portions of the City Property that are encumbered by such rights. Kensington shall be responsible for preparing the materials, processing the street vacations with City, and attending any hearings required for any petition to vacate the rights of public access, and shall bear any costs associated with such street vacations.

(m) The Surplus Land Act affordability restriction attached hereto as Exhibit E, in form and substance satisfactory to City, is recorded against the City Property.

(n) The Record Survey Condition is satisfied.

(o) Kensington conveys the Kensington Property to City at the Closing.

(p) Title Company has agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.5 below).

5.5 Approval or Waiver of City's Conditions

City shall have until the Closing to review and approve or waive City's Conditions. If City elects to proceed with the purchase of the Kensington Property, then City shall notify Kensington in writing that City has approved all such matters. Notwithstanding the foregoing, if City objects to any of the matters described in Section 5.4, then Kensington may, but shall have no obligation to remove or remedy any objectionable matter. If Kensington agrees to remove or remedy the objectionable matter, it shall notify City within ten (10) days following City's notice of objection. If and when Kensington elects not to remove or remedy the objectionable matter, which Kensington may do at any time including following an initial

election to pursue remedial or corrective actions, this Agreement shall automatically terminate, and neither Party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority] or as otherwise expressly provided herein.

5.6 Failure of City's Conditions Precedent

Each of City's Conditions are intended solely for the benefit of City. If any City Condition is not satisfied, City shall have the right in its sole discretion either to waive in writing the City Condition and proceed with the Closing or, in the alternative, terminate this Agreement, provided that the City Conditions described in Sections 5.4(i)-(l) above may not be waived. If any of City's Conditions are not satisfied, City may, at its option, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority] or as otherwise expressly provided herein.

6. ESCROW AND CLOSING

6.1 Escrow

Within fifteen (15) days after the Parties execute this Agreement, Kensington and City shall deposit an executed counterpart of it with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and Kensington agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Closing Date

The closing of the transactions contemplated hereunder (the “**Closing**”) shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company ninety (90) days after all Parties have executed this agreement, or such earlier date and time as Kensington and City may agree upon in writing (the “**Closing Date**”). If the City fails to pass an Ordinance meeting the requirements of Section 5.1 (d) and (e), and Section 5.4 (k) and (l) by the Closing Date, Kensington may opt to extend the Closing Date by providing written notice to the City. In no event may Kensington extend the Closing Date beyond January 1, 2025 without City’s written approval in its sole discretion. In the event that the Closing has not occurred by the Closing Date, as such date may be extended, this Agreement shall be terminable upon written notice of either Party, and neither Party shall have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or 9.4 [Authority] or as otherwise expressly provided herein.

6.3 Deposit of Documents

(a) At or before the Closing, City shall deposit into escrow the duly executed and acknowledged City Deed conveying the City Property to Kensington subject to the City Property Permitted Title Exceptions;

(b) At or before the Closing, Kensington shall deposit into escrow (i) the funds necessary to close this transaction, and (ii) the duly executed and acknowledged Kensington Deed conveying the Kensington Property to City subject to the Kensington Property Permitted Title Exceptions.

(c) City and Kensington shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

(d) Each Party shall deliver to the other originals (or to the extent originals are not available, copies) of any other items which it is required to furnish copies of or make available at the Property pursuant to Section 2 above, within five (5) business days after the Closing Date.

6.4 Prorations

Any real property taxes and assessments; water, sewer and utility charges; amounts payable under any service contracts; annual permits and/or inspection fees (calculated on the basis of the period covered); and any other expenses normal to the operation and maintenance of the Property, shall all be prorated as of 12:01 a.m. on the date the City Deed and the Kensington Deed are recorded, on the basis of a three hundred sixty-five (365)-day year. City and Kensington hereby agree that if any of the above described prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated as soon as reasonably practicable after the Closing Date and either Party owing the other Party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other Party.

6.5 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 the Parties, in connection with the Closing. Kensington 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 hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Kensington and City shall 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.

7. RISK OF LOSS

7.1 Loss

Either Party shall give the other Party notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of its Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then this Agreement shall terminate, and neither Party shall

have any further rights or obligations hereunder except as provided in Sections 4.3 [Entry and Indemnity], 8.2 [Brokers], or otherwise expressly provided.

7.2 Self-Insurance

Notwithstanding anything to the contrary, Kensington acknowledges that City self-insures and is not obligated to purchase any third-party commercial liability insurance or property insurance.

8. EXPENSES

8.1 Expenses

Kensington shall pay any transfer taxes applicable to the sale of the City Property and the Kensington Property, all personal property taxes, escrow fees, recording charges, and any other costs and charges of the escrow for the sale of the Property.

8.2 Brokers

The Parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Kensington or City, then the Party through whom such person makes a claim shall defend the other Party from such claim, and shall indemnify the indemnified Party from, and hold the indemnified party against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

9. GENERAL PROVISIONS

9.1 Notices

Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

CITY:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Re: Kensington Exchange

BUYER:

Kensington Way LLC
2190 Folsom St., 2nd Floor
San Francisco, CA 94110
Attn: Jason Lok

with a copy to:

Real Estate Team Leader
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Re: Kensington Exchange

or such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

9.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Kensington's rights and obligations hereunder shall not be assignable without the prior written consent of City; provided that even if City approves any such proposed assignment, in no event shall Kensington be released of any of its obligations hereunder.

9.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Kensington and City.

9.4 Authority of Kensington

Kensington represents and warrants to City that Kensington is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California. Kensington further represents and warrants to City that this Agreement and all documents executed by Kensington which are to be delivered to City at Closing are or at the time of Closing will be duly authorized, executed and delivered by Kensington and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Kensington is a party or to which Kensington is subject. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Kensington contained herein or in other agreements or documents executed by Kensington in connection herewith, shall survive the Closing Date.

9.5 Kensington's Representations and Warranties

Kensington represents and warrants to and covenants with City, to the actual knowledge of Jason Lok, Kensington's Manager, as follows:

(a) There are now, and at the time of the Closing will be, no material physical or mechanical defects of the Kensington Property, and no violations of any laws, rules or regulations applicable to the Kensington Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) The Kensington Documents and Other Information furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Kensington Property to the extent available to Kensington and are and at the time of Closing will be true, correct and complete copies of such documents.

(c) No document or instrument furnished or to be furnished by Kensington to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

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

(e) There are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Kensington Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Kensington Property to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Kensington Property's boundary nor any claims or actions involving the location of any fence or boundary.

(f) There is no litigation pending or threatened against Kensington or any basis therefor that arises out of the ownership of the Kensington Property or that might detrimentally affect the use or operation of the Kensington Property for its intended purpose or the value of the Kensington Property or the ability of Kensington to perform its obligations under this Agreement.

(g) Kensington is the legal and equitable owner of the Kensington Property, with full right to convey the same, and without limiting the generality of the foregoing, Kensington 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 Kensington Property.

(h) Kensington is a limited liability company duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Kensington which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Kensington and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Kensington is a party or to which Kensington or the Kensington Property is subject.

(i) Kensington has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Kensington is so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore 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.

(j) Kensington knows of no facts nor has Kensington failed to disclose any fact that would prevent City from using and operating the Kensington Property after Closing in the normal manner in which it is intended.

(k) The following statements are true and correct and will be true and correct as of the Closing Date: (i) neither the Kensington Property nor any real estate in the vicinity of the Kensington Property is in violation of any Environmental Laws; (ii) the Kensington Property is not now, nor has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (iii) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Kensington Property; (iv) 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 Kensington Property; (v) the Kensington Property does not consist of any landfill or of any building materials that contain Hazardous Material; and (vi) the Kensington 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 Kensington Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(i) "Environmental Laws" shall mean 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 Kensington Property, including, without limitation, soil, air and groundwater conditions.

(ii) "Hazardous Material" shall mean 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.

(iii) "Release" or "threatened release" when used with respect to Hazardous Material shall include 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 Kensington Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(l) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Kensington Property. At the time of Closing there will be no outstanding written or oral contracts made by Kensington for any improvements that have not been fully paid for and Kensington shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Kensington Property prior to the time of Closing. There are no obligations in connection with the Kensington Property which will be binding upon City after Closing.

(m) Kensington is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

9.6 Governing Law

This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code.

9.7 Merger of Prior Agreements

This Agreement, together with the exhibits hereto, contain any and all representations, warranties and covenants made by Kensington and City and constitutes the entire understanding between the Parties with respect to its subject matter. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the exhibits.

9.8 Parties and Their Agents

The term "**Kensington**" as used herein shall include the plural as well as the singular. If Kensington consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Kensington shall be joint and several. As used herein, the term "**Agents**" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such Party.

9.9 Interpretation of Agreement

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. This instrument (including any exhibit(s), which are hereby made a part of this Amendment) contains the entire agreement between the parties regarding the subject matter hereof and all prior written or oral negotiations, discussions, understandings, and agreements are merged in this Agreement. 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 shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

9.10 Time of Essence

Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

9.11 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 shall be personally liable to Kensington, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Kensington, its successors and assigns, or for any obligation of City under this Agreement.

9.12 Conflicts of Interest

Through its execution of this Agreement, Kensington 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 constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Kensington shall immediately notify the City.

9.13 Notification of Prohibition on Contributions

Through its execution of this Agreement, Kensington 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. Kensington 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. Kensington further acknowledges that the **(i)** prohibition on contributions applies to each Kensington; each member of Kensington's board of directors, and Kensington's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Kensington; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Kensington; and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Kensington certifies that Kensington 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.

9.14 Sunshine Ordinance

Kensington 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. Kensington hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.15 Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

9.16 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by Kensington.

9.17 Effective Date

As used herein, the term "**Effective Date**" shall mean the date on which (i) the City's Board of Supervisors and Mayor have enacted an ordinance approving and authorizing this Agreement and the transactions contemplated hereby, and (ii) this Agreement is executed by both Parties.

9.18 Severability

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall 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, shall not be affected thereby, and each other provision of this Agreement shall 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.

9.19 Acceptance by Kensington

This Agreement shall be null and void unless it is accepted by Kensington and two (2) fully executed copies hereof are returned to City on or before 5:00 p.m. San Francisco time on _____, 2023.

9.20 Counterparts

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

A signature delivered on any counterpart by facsimile or other electronic means shall for all purposes be deemed to be an original signature to this Agreement.

9.21 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 shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, KENSINGTON ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS IS DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED BY CITY'S BOARD OF SUPERVISORS NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By: _____
Andrico Penick
Director of Real Estate

KENSINGTON WAY LLC,

a California limited liability company

By: _____
Jason Lok

Its: _____

By: _____
[NAME]

Its: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

APPROVED BY BOARD OF SUPERVISORS
Pursuant to Ordinance No. _____
Adopted _____

[ALL EXHIBITS WILL NEED UPDATING]

EXHIBIT A

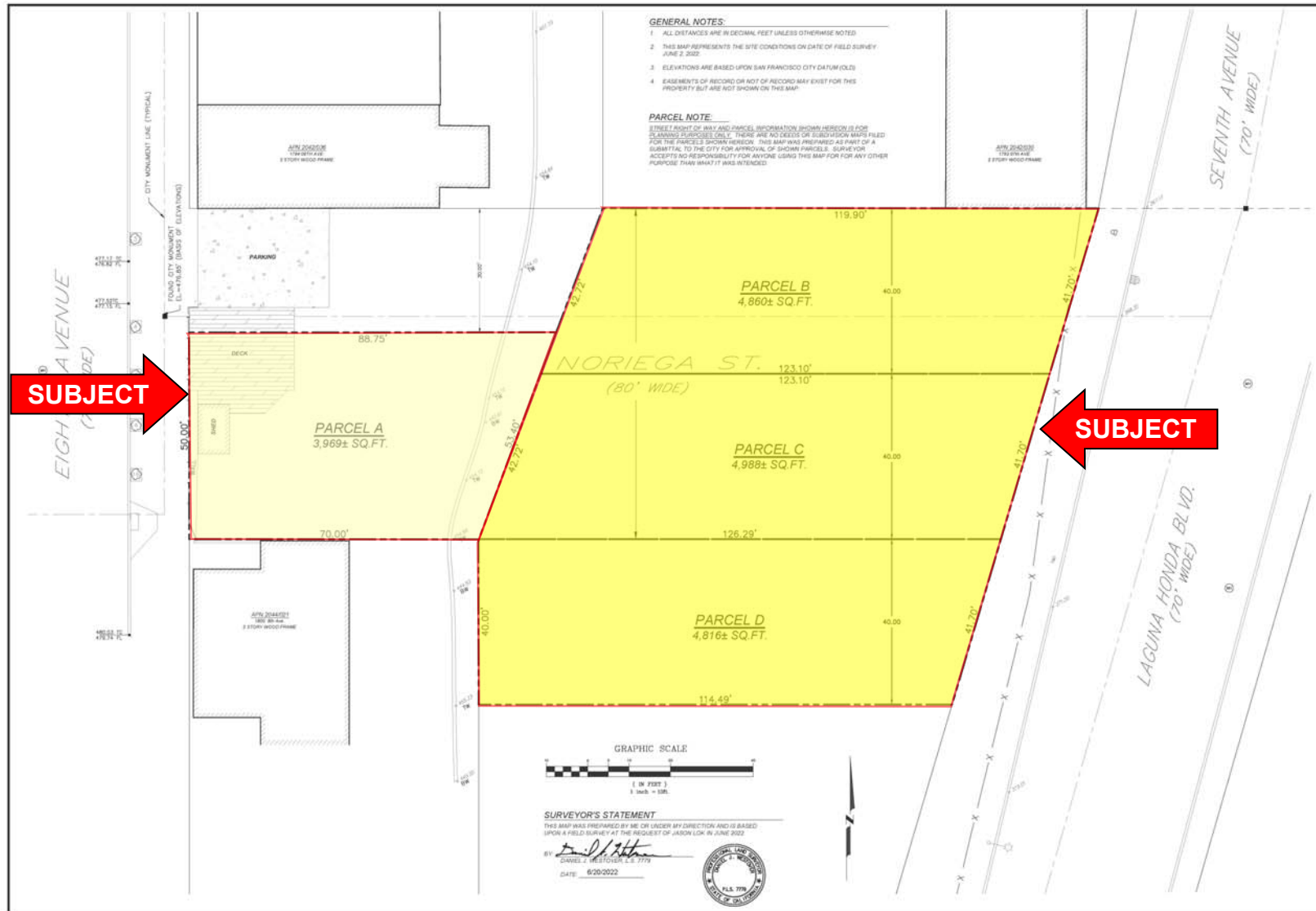
CITY PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[NOTE: DESCRIPTION TO COME FROM TITLE REPORT]

Parcel Map – Noriega Street and Laguna Honda Boulevard Parcels

Exhibit A



336 CLAREMONT BLVD. STE 1 SAN FRANCISCO, CA 94117 (415) 242-5400 www.westoversurveying.com	
WS Westover Surveying	JOB NO. 22042
R/NO [DATE] [] [] []	COMMENTS [] [] []
DRAWN BY: GNL CHECKED BY: DP, JW DATE: 06/27/22 SCALE: 1"=50'	SITE SURVEY NORIEGA ST. BETWEEN EIGHTH AVENUE AND SEVENTH AVENUE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA
SHEET 1 OF 1	

Parcel Map – Moraga Street Parcel

Exhibit A

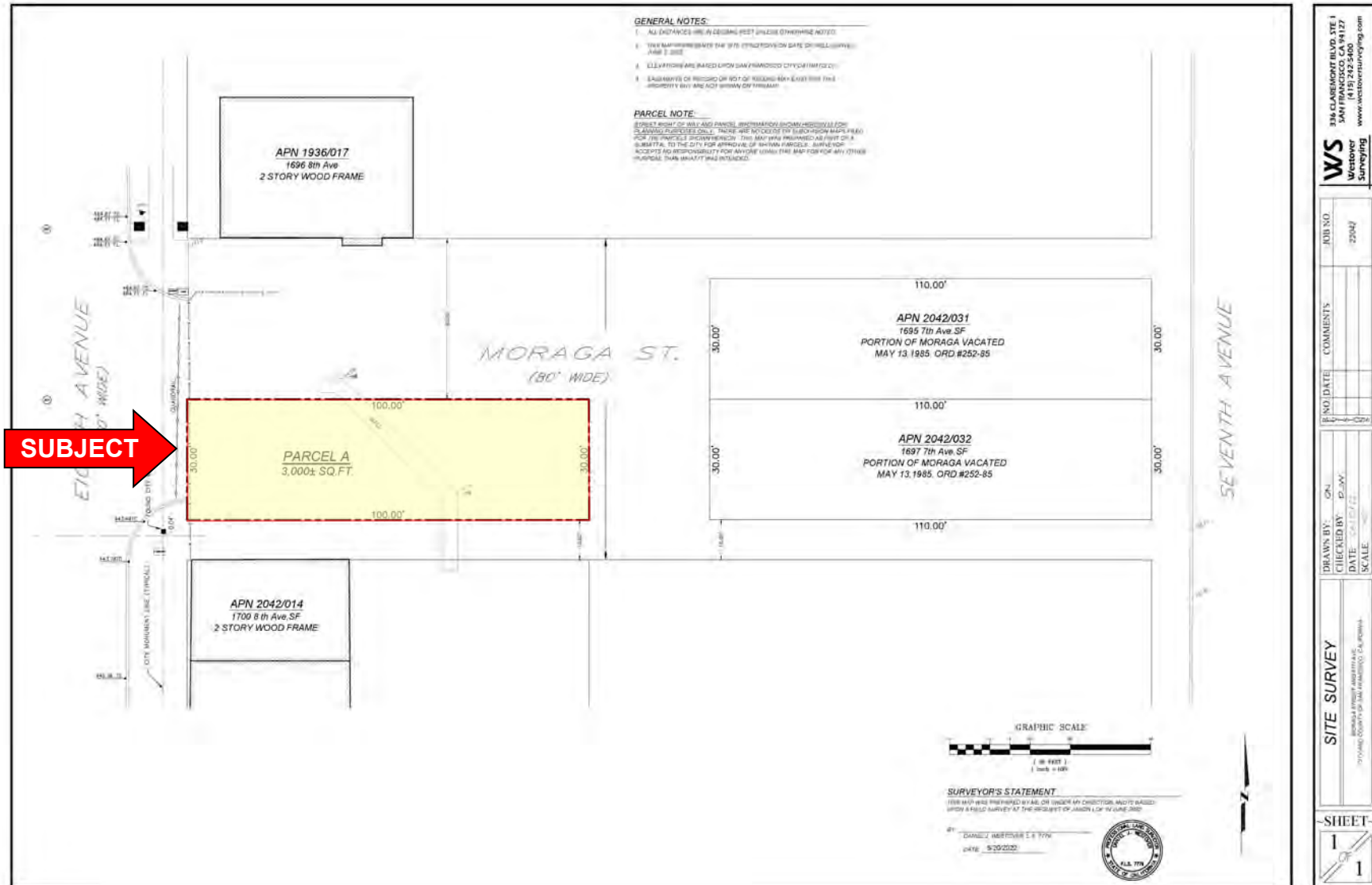


EXHIBIT B

KENSINGTON PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

[NOTE: DESCRIPTION TO COME FROM TITLE REPORT]

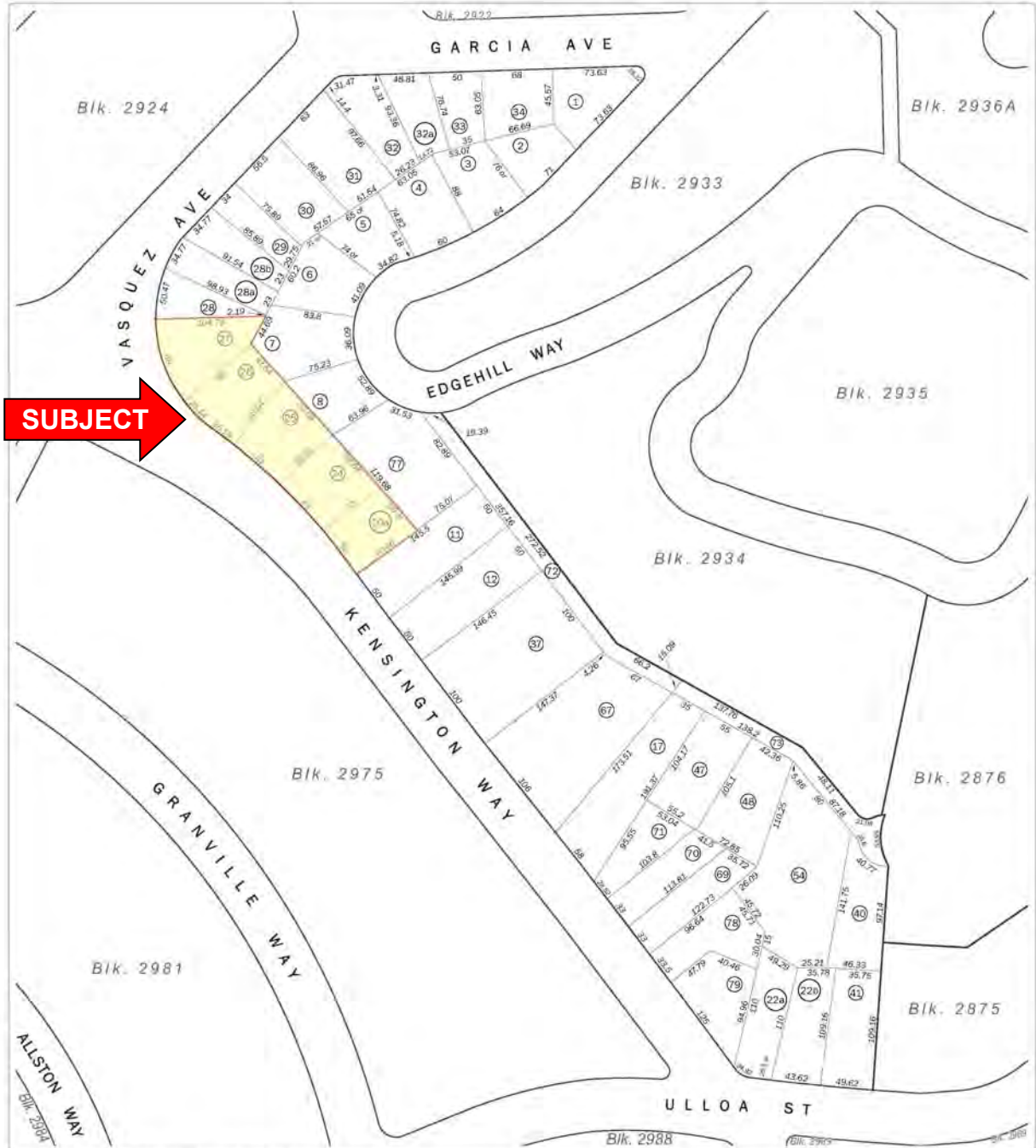
ASSESSOR'S MAP

Volume 20

CLAREMONT CRT. PARCEL 2

Block 2923

SHEET 1 OF 2



SAN FRANCISCO CITY & COUNTY ASSESSOR'S BLOCK MAP

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT
PURPOSES ONLY. ASSESSOR'S PARCELS MAY NOT COMPLY
WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.



REVISED 2019

0 50 100 200 Feet

EXHIBIT C

QUITCLAIM DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

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

MAIL TAX STATEMENTS TO:

Attn: _____

Address: _____

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

Block _____, Lot _____

Documentary Transfer Tax of \$_____ based upon full market value of the property without deduction for any lien or encumbrance

**QUITCLAIM DEED [WITH RESTRICTIONS
AND EASEMENT RESERVATIONS]
[(Assessor's Parcel No. _____)]**

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 20____ and approved by the Mayor on _____, 20____, hereby RELEASES, REMISES AND QUITCLAIMS to _____, any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof.

Executed as of this _____ day of _____, 20__.

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: _____
Elizabeth Dietrich
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer

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)

EXHIBIT D

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 hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(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, KENSINGTON WAY LLC, a California 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 Exhibit A attached hereto and 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 Property and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property.

[SIGNATURES ON FOLLOWING PAGE]

Executed as of this _____ day of _____, 20____.

KENSINGTON WAY LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

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 _____)

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 located at _____ conveyed by the foregoing Grant Deed dated _____ to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and Ordinance No. _____, approved _____, 20____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Andrico Q. Penick
Director of Property

EXHIBIT E
DECLARATION OF AFFORDABILITY RESTRICTIONS
(per Government Code Section 54233)

(Attached)

Free Recording Requested Pursuant to
Government Code Sections 27383 and
27388.1

Recording requested by,
and when recorded return to:

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

MAIL TAX STATEMENTS TO:

Attn: _____

Address: _____

Block _____, Lot _____

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

**DECLARATION OF AFFORDABILITY RESTRICTIONS
(per Government Code Section 54233)**

THIS DECLARATION OF AFFORDABILITY RESTRICTIONS ("**Declaration**") is made as of _____, 20__, by KENSINGTON WAY LLC, a California limited liability company ("**Declarant**"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**").

RECITALS

A. The City is transferring its interest in certain real property described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**") to Declarant.

B. As a condition to City's transfer of the Property to Declarant, this Declaration is recorded against the Property in compliance with California Government Code §§54220 et seq. (the "**Surplus Land Act**"). Declarant's covenants and agreements described in this Declaration are a material part of the consideration for City in transferring the Property, and without

Declarant's agreement to subject the Property to this Declaration, City would be unwilling to transfer the Property to Declarant.

AGREEMENT

Now, therefore, in consideration of the City's transfer of the City Property, Declarant agrees as follows:

1. Affordability Restriction. If ten (10) or more residential units are developed on the Property, not less than 15 percent of the total number of residential units developed on the property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

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

3. Covenants Run with the Land. This Declaration and its affordability restrictions constitute covenants running with the land and bind successors and assigns of Declarant. In the event that Declarant fails to comply with this Declaration to the City's satisfaction, in its sole discretion, within thirty (30) days of Declarant's receipt of notice from the City to so comply, the City at its option may exercise any rights available at equity or in law, including, without limitation, institute an action for specific performance. Declarant shall pay the City's costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees and costs.

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

Executed as of this ____ day of _____, 20__.

DECLARANT:

KENSINGTON WAY LLC,
a California limited liability company

By: _____
Name: Jason Lok
Title: _____

CITY:

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: _____
Elizabeth Dietrich
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]

City Engineer

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)

EXHIBIT F

STORMWATER FLOOD RISK DISCLOSURE

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS BLOCK _____, LOT _____, AT THE FOLLOWING STREET ADDRESS:

_____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ARTICLE 51 OF THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE CITY, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE TRANSFEREE MAY WISH TO OBTAIN.

I

The City discloses the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to acquire the subject property. City authorizes any agent(s) representing any transferee in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated lease of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE CITY AS REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE CITY AND TRANSFEREE.

The City and County of San Francisco recognizes that it is in the public interest to ensure that persons who own properties at risk of flooding have information about their flood risk so they can take steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is also in the public interest to ensure that before persons purchase, rent, or lease real property they have notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rental, or lease is an effective tool for ensuring that transferees (including buyers and tenants) of real property in San Francisco have access to this important information.

*Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year - Storm Flood Risk Map. **The above-described property is located in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map. Accordingly, the property may be subject to deep and contiguous flooding during a 100-year storm event due to stormwater flow and drainage, and you may experience inconveniences, costs, and governmental requirements related to that flooding.***

A 100-year storm event means a storm that has a 1% probability of occurring at a particular location in a given year.

If the property is in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map, that does not mean the property is subject to flooding only during a 100-year storm event. The property may also flood at other times and from other causes.

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages, or other causes of flooding, and should not be relied upon to provide a complete assessment of a property's risk of flooding.

The 100-Year Storm Flood Risk Map may be found at <https://www.sfwater.org/index.aspx?page=1229> and is on file with the San Francisco Public Utilities Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco Public Utilities Commission at RainReadySF@sfwater.org or (415) 695-7326.

The person signing below on behalf of the City certifies that the information in this disclosure is true and correct to the best of such person's knowledge as of the date below.

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

By: _____

Print Name: _____

Print Title: _____

Date _____

II

TRANSFeree MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Transferee _____ Date _____

Transferee _____ Date _____

Agent for Transferee _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.