

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City and County of San Francisco
Mayor's Office of Housing
and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Agnes Defiesta
APN#: Block 0306/Lot 007
Address: 440 Geary Street, San Francisco, CA 94103

No fee document pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**DECLARATION OF RESTRICTIONS AND AFFORDABLE HOUSING
COVENANTS**

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

RECITALS

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

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

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

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

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

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

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

G. The City has made a loan in the amount of \$47,386,810 to DECLARANT to assist DECLARANT refinance a bridge loan and provide permanent financing for the Project (the "Loan"). The Loan is evidenced by, among other documents, a Loan Agreement between the City and DECLARANT dated as of _____, 2023, as it may be amended from time to time (the "Agreement"). The Agreement is incorporated by reference in this Declaration as though fully set forth in this Declaration.

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

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

Article I. DEFINITIONS

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

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

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

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

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

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

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

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

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

Article II. OPERATION OF THE PROJECT

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Under the Standard Agreement with HCD for Homekey funds, the City is required to provide an operating subsidy for the first five (5) years of the Project. If after 5 years, the LOSP subsidy is terminated, discontinued or reduced at no fault of DECLARANT with respect to the Project, then the rent restrictions above may be altered but only to the extent necessary for the Project to remain financially feasible, as determined in City's reasonable discretion; provided that one hundred percent (100%) of the Units formerly under the LOSP must at all times be occupied by Qualified Tenants whose Adjusted Income does not exceed fifty percent (50%) of Median Income and the monthly rent paid by the Qualified Tenants may not exceed (a) thirty percent (30%) of fifty percent (50%) of Median Income (b) less utility allowance. In such event, the City will use good faith efforts to meet with DECLARANT within fifteen (15) days after DECLARANT's request to meet. To the extent financially feasible, as mutually determined by the parties, any such rent increase will be limited to (or will be first implemented with) any vacant units. The relief provided by the paragraph will not be construed as authorizing DECLARANT to exceed any income or rent restriction imposed on the Project by any other agreement. DECLARANT covenants and warrants that it will obtain all necessary approvals or relief from any other applicable income or rent limitations before implementing the relief provided in this paragraph.

Section 2.08. Incorporation of Loan Agreement. For the avoidance of any doubt, notwithstanding any repayment of the Loan or otherwise satisfied or if the Deed of Trust is reconveyed, Borrower will comply with the applicable terms of the Agreement as if fully set forth herein, including, without limitation, Article 6 (Marketing), Article 7 (Affordability and Other Leasing Restrictions), Article 8 (Maintenance and Management of the Project), Article 9 (Governmental Approvals and Requirements), Article 10 (Project Monitoring, Reports, Books and Records), Article 11 (Use of Income From Operations), Article 12 (Required Reserves), Article 16 (Transfers), Article 17 (Insurance and Bonds; Indemnity), Article 18 (Hazardous Substances), and Article 19 (Default).

Section 2.09 Enforcement. If DECLARANT fails to (i) comply with this Declaration to the City's satisfaction, in its sole discretion, and (ii) cure such default as set forth in Section 19.1(c) of the Agreement, the City will have the right to pursue any available remedy at equity or in law, including as set forth in Section 19.2 of the Agreement, to enforce this Declaration. During the Compliance Term, the City may rely on the Deed of Trust and/or this Declaration, in the City's discretion, to enforce any of the City's rights under the City Documents. DECLARANT will pay the City's reasonable costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees and costs.

Article III. MISCELLANEOUS

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

DECLARANT

440 Geary LLC,
a California limited liability company

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

By: _____
Mary Elizabeth Stokes
Its President

[SIGNATURES TO BE NOTARIZED]

EXHIBIT A
(Legal Description of the Property)

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

PARCEL ONE:

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

Being a part of 50 Vara Block No. 195.

PARCEL TWO:

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

Assessor's Lot 007; Block 0306

Street Address:

440 Geary Street, San Francisco, CA 94103