

State of California  
Department of Housing and Community Development  
Division of Financial Assistance

***The Golden State Acquisition Fund***

**Program Guidelines**

**Table of Contents**

**Article 1. General**

Section 100. Purpose and Scope ..... 4  
Section 101. Fund Description – An Overview ..... 4  
Section 102. Definitions ..... 5

**Article 2. Loan Fund Manager Requirements**

Section 103. Fund Manager Selection Summary ..... 6  
Section 104. Fund Manager Eligibility Requirements ..... 6  
Section 105. Eligible Fund Manager Entities ..... 7  
Section 106. Loan Fund Investment Requirement..... 7  
Section 107. Fund Manager Responsibilities..... 7

**Article 3. Fund Manager Loan**

Section 108. Loan Amount ..... 8  
Section 109. Agreement Term..... 8  
Section 110. Interest Rate on Loan ..... 9  
Section 111. Loan Disbursements..... 9  
Section 112. Fund Manager Fee ..... 9  
Section 113. Forty-eighth Month Deadline..... 10

**Article 4. Project Parameters**

Section 114. Applicant Eligibility Requirements..... 10  
Section 115. Eligible Uses ..... 10  
Section 116. Eligible Projects ..... 11

**Article 5. Project Loans**

Section 117. Maximum Loan Amount..... 12  
Section 118. Maximum Loan to Value ..... 12  
Section 119. Loan Term ..... 12  
Section 120. Interest Rate ..... 12  
Section 121. Allowable Fees ..... 13  
Section 122. Funding Decisions ..... 13

**Article 6. Additional Loan Requirements**

Section 123. Equity Recapture Provisions..... 14

**Article 7. Fund Manager Selection Procedures**

Section 124. Application Process ..... 15  
Section 125. Selection Criteria ..... 16

**Article 8. Program Operations**

Section 126. Term of These Guidelines ..... 17

Section 127. Legal Documents..... 17

Section 128. Reporting Requirements..... 18

Section 129. Performance Goals..... 20

Section 130. Default and Award Cancellations..... 20

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## Article 1. General

### **Section 100. Purpose and Scope**

- (a) The purpose of these Guidelines is to implement and interpret Section 50705, 50706 and 50708 of Chapter 8.5 of Part 2 of Division 31 of the Health and Safety Code, which establish the Loan Fund as one component of the Affordable Housing Revolving Development and Acquisition Program, referred to herein as the “Golden State Acquisition Fund” (GSAF) or the “Fund.”,
- (b) These Guidelines establish terms, conditions and procedures for the award and disbursement of funds allocated to the Fund by the Housing and Emergency Shelter Trust Fund Act of 2006 and the passage of SB 586 (Dutton, Chapter 652 Statutes of 2007) pursuant to Section 53545.9(a)(2) of the Health and Safety Code.

### **Section 101. Fund Description – An Overview**

In 2006, the voters of the State of California passed Proposition 1C, the Housing and Emergency Shelter Trust Fund Act of 2006, which authorized the issuance of bonds in the amount of \$2,850,000,000. A portion of these bond sale proceeds, \$100,000,000, are authorized for transfer to the Affordable Housing Innovation Fund (AHIF) established in the State Treasury. Of this amount, a total of \$25,000,000 is available for the Golden State Acquisition Fund, including state administrative costs.

#### **“Golden State Acquisition Fund”**

One of the major impediments to the development and preservation of affordable housing in California is the lack of ready access to capital by affordable housing developers for the acquisition of property. The need is for loan funds available in amounts sufficient to purchase sites as they become available, with a speedy process from application to loan close. The **“Golden State Acquisition Fund”** is intended to respond to this need.

As required in the statute (Health and Safety Code § 50705 et seq.), the Department will choose a manager for the Fund. This manager will originate loans to developers. The developers will be required to leverage the Department’s loan with additional resources to meet the statutory requirement of 3:1 leverage of State funds.

## Section 102. Definitions

In addition to the definitions found in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code, the following definitions shall apply to these Guidelines. References to sections refer to the sections of these Guidelines unless otherwise noted.

- (a) "Affordable Housing" means both for-sale homeowner units subject to enforceable restrictions that limit the incomes of at least the initial owner-occupants to Lower Income Households, as defined in subsection (k) below, and residential rental or mixed-use developments subject to enforceable public agency restrictions that limit tenant income to no more than 60% of area median income, and the rents of these units to affordable rents, as defined pursuant to 25 CCR 7312 of the Multifamily Housing Program regulations.
- (b) "Department" means the Department of Housing and Community Development.
- (c) "Eligible Household" means the same as "lower-income household."
- (d) "Fund Manager" means the manager of the Fund selected by the Department.
- (e) "Fund Manager Loan" means the loan from the Department to the Fund Manager.
- (f) "Homeownership" means fee simple title on real property or a leasehold interest on real property that enables the lessee to make improvements on and encumber the property and has a term sufficient to secure a permanent loan. Homeownership also includes ownership of manufactured housing on a permanent foundation and membership, ownership and occupancy in a limited-equity co-op development.
- (g) "Household" means one or more persons occupying the same housing unit.
- (h) "Leveraged Capital" means the funds provided to the Golden State Acquisition Fund by the Fund Manager to meet the 3:1 leverage requirement.
- (i) "Loan-to-value ratio" (LTV) means the ratio between the amount of all indebtedness liened, or to be liened, against a property and the appraised value of the property securing the liens.

- (j) "Lower-or Low-Income Household" means the same as defined in Section 50079.5 of the Health and Safety Code.
- (k) "Manufactured Housing" means a structure, transportable in one or more sections as defined by Section 18007 of the Health and Safety Code.
- (l) "Project Loan" means a loan made by the Fund Manager to a developer, using Fund Manager Loan funds and Leveraged Capital.
- (m) "Rural Area" means the same as defined in Health and Safety Code, Section 50101. "Rural area" means any open country or any place, town, village, or city which by itself and taken together with any other places, towns, villages, or cities that it is part of or associated with: (a) has a population not exceeding 10,000; or (b) as a population not exceeding 20,000 and is contained within a nonmetropolitan area. "Rural area" additionally includes any open country, place, town, village, or city located within a Standard Metropolitan Statistical Area if the population thereof does not exceed 20,000 and the area is not part of, or associated with, an urban area and is rural in character. This definition may be changed by the Department or the agency, as the case may be, to conform to changes in federal programs.
- (n) "Standard Agreement" means the contract entered into between the Department and a Fund Manager pursuant to Section 127.

## **Article 2. Loan Fund Manager Requirements**

### **Section 103. Fund Manager Selection**

The Department will select a Fund Manager to administer the Golden State Acquisition Fund through a competitive application process. Fund Manager eligibility requirements are detailed in Sections 104 – 106. The application and selection process is described in Sections 124 and 125.

### **Section 104. Fund Manager Eligibility Requirements**

To be eligible to be selected as the Fund Manager, applicants must:

- (a) be a non-profit lender with experience making real property acquisition loans in California;

- (b) have originated and serviced not less than thirty million dollars (\$30,000,000) in loans used to develop or acquire real property, of which at least ten million dollars (\$10,000,000) must be for acquisition;
- (c) have at least twenty-five million dollars (\$25,000,000) of its own capital invested in loans to affordable housing developers. Fund Manager's "own capital" means capital under management of the applicant; and
- (d) have originated at least twenty-five million dollars (\$25,000,000) in loans using bank or other investor capital.

### **Section 105. Eligible Fund Manager Entities**

Fund manager applicants may consist of either:

- (a) A single nonprofit entity that qualifies under Section 501(c)(3) of the Internal Revenue Code, or
- (b) A consortium or group of nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code applying together.

If the applicant is a consortium, applicant eligibility will be measured based on the aggregate of not more than two consortium members with active roles in managing the consortium and a combined commitment of Leveraged Capital (see Section 106) equal to or greater than fifty percent (50%) of the required capital.

### **Section 106. Leveraged Capital Requirement**

The Fund Manager must provide Leveraged Capital from resources other than the Fund Manager Loan in the amount of approximately sixty-nine million seven hundred fifty thousand dollars (\$69,750,000), which is three times the amount of the Fund Manager Loan. The Leveraging Capital must be used on at least a 3:1 ratio in every Project Loan transaction.

### **Section 107. Fund Manager Responsibilities**

The Fund Manager's responsibilities include:

- (a) Developing marketing, application and underwriting materials
- (b) Marketing the Fund to potential customer base
- (c) Establishing terms and conditions for Project Loan applications

- (d) Receiving, reviewing and approving Project Loan applications
- (e) Originating and servicing the Project Loans
- (f) Disbursing Project Loan funds and receiving Project Loan repayments
- (g) Maintaining records of the Fund Manager Loan and the Project Loans, including but not limited to, loan applications records of repayments and loan documents.
- (h) Complying with the reporting requirements contained in Section 129.
- (i) Complying with all other state and federal laws applicable to the origination, servicing and repayment of the Project Loans.

### **Article 3. Fund Manager Loan**

#### **Section 108. Loan Amount**

The Department will enter into a loan agreement (Standard Agreement, see Section 127) with the selected Fund Manager for a loan in the amount of approximately twenty-three million two-hundred fifty thousand dollars (\$23,250,000). This is the Fund Manager Loan.

#### **Section 109. Fund Manager Loan Term**

- (a) The term of the Fund Manager Loan shall be five years.
  - (1) The term of the Fund Manager Loan may be extended, upon approval by the Department, in five year increments upon successful completion of the conditions stated in the Standard Agreement.
  - (2) The Department will consider extensions at the end of year two of the original term and at each second anniversary of the agreement date thereafter.
- (b) Repayment of the outstanding principal balance of the Fund Manager Loan is due in full at the end of the term or any extension of the term.

## **Section 110. Interest Rate**

The Fund Manager Loan will be made at 0% interest.

## **Section 111. Fund Manager Loan Disbursements**

The Fund Manager Loan will be disbursed by the Department to the Fund Manager in two draws, each draw equal to one-half of the total Fund Manager Loan.

- (e) The first draw will be released to the Fund Manager upon execution of the Standard Agreement
- (f) The second draw will be released to the Fund Manager one year after the release of the first draw if an agreed-upon percentage of the first draw has been disbursed for Project Loans (see Article 5) prior to one year after the first draw. The second draw may be released earlier if the funds from the first draw have all been disbursed for Project Loans.

## **Section 112. Fund Manager Compensation**

- (a) Up to \$100,000 of Fund Manager Loan proceeds may be used by the Fund Manager from the first loan disbursement toward documented GSAF start-up costs.
- (b) The Fund Manager may recover costs incurred in the administration, management and operation of the GSAF from the following sources:
  - (1) Interest earned on Fund Manager Loan funds disbursed to the Fund Manager but not yet disbursed as Project Loans
  - (2) The interest rate spread on Project Loans; i.e. the difference between the GSAF's cost of funds (rate paid to capital investors) and the rate charged to the developer/borrower.
  - (3) Regular and customary fees charged to borrowers
  - (4) The remainder of the Fund Manager's cost may be recovered from origination fees charged to recipients of Project Loans.
- (c) The amount of all forms of compensation for the Fund Manager shall be subject to Department approval. Taken as a whole, the total level of compensation shall be within the reasonable and

customary range for nonprofit lenders providing acquisition financing similar to that provided by the Fund.

### **Section 113. Forty-Eighth Month Deadline**

Loan Funds not disbursed to Project Loans by the Fund Manager within forty-eight (48) months after Availability shall be disencumbered and transferred to the Department for use in the CalHome Program, Availability is defined as the date of the Standard Agreement.

## **Article 4. Project Parameters**

### **Section 114. Developer Eligibility**

Project Loans will be made by the Fund Manager from the Golden State Acquisition Fund to Affordable Housing developers that:

- (a) Are organized as a non-profit or, for-profit entity or a public agency;
- (b) Demonstrate adequate organizational stability and capacity, as evidenced by substantial successful experience developing affordable housing and other factors, as determined by the Fund Manager;
- (c) Have completed not less than five housing development projects, with each project having not less than 40 percent of the units sold at an affordable housing cost, as defined by local or state public agency housing programs, or restricted to affordable rents as defined pursuant to 25 CCR 7312 of the Multifamily Housing Program regulations; and
- (d) Evidence support of the local government in which the real property is located for the proposed Project Loan. Support may be demonstrated through a letter from the governing board or the manager of the local housing or community development department.

### **Section 115. Eligible Uses of Project Loan Funds**

- (a) Project Loan proceeds may be used for :
  - (1) Acquisition of real property for development as Affordable Housing, including land to be used for new construction, land improved with buildings to be rehabilitated, and developments qualifying as “at-risk” under the regulations

promulgated by the California Tax Credit Allocation Committee for the Low Income Housing Tax Credit Program; and

- (2) Pre-development costs, as reasonably defined by the Fund Manager.
- (b) Funds from the Fund Manager Loan may only be used for acquisition, as specified in subsection (a)(1) above.

### **Section 116. Eligible Projects**

Eligible projects must be located in the State of California and may be:

- (a) Rental housing projects meeting the requirements of Section 122, or
- (b) Housing built for sale as homeownership units, including
  - (1) Fee simple ownership
  - (2) Limited-equity co-ops
  - (3) Manufactured Housing units located on a rented space in a mobilehome park, or
  - (4) Leasehold interest on real property that enables the lessee to make improvements on and encumber the property and has a term sufficient to secure a conventional first mortgage loan (e.g. a community land trust).
- (c) Mixed-use projects (commercial and residential occupancies on the same site) are eligible for Project Loans covering all acquisition and predevelopment costs if no less than 75% of the total square footage to be developed is either residential units sold at an affordable housing cost, as defined by local or state public agency housing programs, or restricted to affordable rents as defined pursuant to 25 CCR 7312 of the Multifamily Housing Program regulations.

If more than 25% of the proposed square footage is not either units sold at an affordable housing cost, as defined by local or state public agency housing programs, or restricted to affordable rents as defined pursuant to 25 CCR 7312 of the Multifamily Housing Program regulations, the percentage of the acquisition cost eligible to be paid with Project Loan proceeds shall be reduced to an amount equal to the percentage of the project that meets these requirements.

- (d) Mixed-income residential housing projects are eligible for Project Loans covering all acquisition and predevelopment costs if 75% or more of the number of proposed residential units is affordable to Low-Income Households.

If more than 25% of the proposed residential units are not either units sold at an affordable housing cost, as defined by local or state public agency housing programs, or restricted to affordable rents as defined pursuant to 25 CCR 7312 of the Multifamily Housing regulations, the percentage of the acquisition cost eligible to be paid with Project Loan proceeds is reduced to an amount equal to the percentage of the project that is affordable.

### **Article 5. Project Loans**

#### **Section 117. Maximum Loan Amount (Program Funds + Leveraged Capital)**

- (a) The maximum Project Loan amount for acquisition of real property is seven million five hundred thousand dollars (\$7,500,000).
- (b) The maximum Project Loan amount to cover predevelopment expenses is seven hundred fifty thousand dollars (\$750,000).
- (c) The maximum total loan Project Loan amount, including fees, interest, acquisition and predevelopment costs is eight million two hundred fifty thousand dollars (\$8,250,000).

#### **Section 118. Maximum Loan-to-Value (LTV)**

The maximum loan-to-value of the Project Loan to the appraised value of the property acquired, including capitalized interest, is:

- (a) For for-profit developers – 90% LTV
- (b) For non-profit developers – 100% LTV

#### **Section 119. Loan Term**

- (a) The term of the Project Loan will be determined by the Fund Manager.
- (b) The maximum Project Loan term is 5 years.

#### **Section 120. Rate**

- (a) The rate at which the Project Loan is made to the developer will be determined by the Fund Manager with Department approval.

## **Section 121. Fees**

- (a) Project Loan fees charged to the borrowers will be determined by the Fund Manager with Department approval. Fees are not to exceed 2% of the Project Loan amount, plus those fees permitted under subsection (b).
- (b) Additional fees that are regularly and customarily associated with the affordable housing lending industry may be charged to borrowers. A schedule of these fees will be proposed by the Fund Manager and approved by the Department.

## **Section 122. Funding Decisions**

- (a) Project Loan funding decisions are to be made by a committee whose membership is determined by the Fund Manager. The Department shall have a staff advisory role.
- (b) When the Fund Manager has received more Project Loan applications that meet the requirements of Article 4 of these Guidelines than funds available, the applications will be ranked by the level of affordability of the proposed housing units with the project affordable to the lowest incomes ranked first. The Fund Manager will perform a loan underwriting analysis on the application pool. The applications that pass the preliminary underwriting test will be placed in a pool. The pool will then be reviewed for the affordability of the proposed projects. The project affordable to the lowest income households will be scored 100 points. The remainder of the applications will be ranked in order of affordability and assigned scores based on their rank order. Loans will then be made to projects with the highest score first and then to the next highest score until all funds have been disbursed.
- (c) The following funding targets are to be tracked by the Fund Manager:
  - (1) Geographic distribution – a minimum of 45% of total funds loaned to projects in Southern California; a minimum of 30% of funds loaned to projects in Northern California. For the purposes of the GSAF, all counties south of and including Kern County are defined as Southern California. All counties north of Kern County are defined as Northern California.
  - (2) Rural target – 10% of funds committed to rural projects. Rural projects may be located in either Northern or Southern

California. The rural project target is independent of the desired geographic distribution of projects. (See Section 102(m)).

- (3) In order to reach these targets, the Department may direct the Fund Manager to limit funding awards to projects that are located in rural areas or other geographic areas to achieve the geographic targets described in the preceding paragraphs.
- (d) Rental housing projects must meet the following requirements:
  - (1) Rental housing projects – All assisted rental developments must have at least 50% of total units restricted to occupancy by households with incomes at or below 50% of area median income (AMI), adjusted by household size, with rents not exceeding 30% of 50% of AMI.
  - (2) Income restrictions – At least 20% of funds for Project Loans shall be provided to projects restricted to households at or below 50% AMI.
- (e) The Fund Manager shall report to the Department periodically comparing the Project Loans made from the GSAF to the above targets and requirements.

#### **Article 6. Additional Project Loan Requirements**

##### **Section 123. Equity Recapture**

- (a) For every Project Loan, a regulatory agreement shall be recorded with the county recorder for the county in which the real property is located. The regulatory agreement shall provide that, if the property is sold or transferred for purposes other than Affordable Housing, any equity not originally contributed by the borrower is to be returned to the Department.
- (b) The regulatory agreement shall run with the land and have a term of 55 years.

## **Article 7. Fund Manager Selection Procedures**

### **Section 124. Application Process**

The Department shall accept applications for Fund Manager through a Request for Proposal (RFP) process. The Department shall open the process by distributing and posting the RFP and the application.

Application shall be made on a form provided by the Department. The Department-provided application form shall request the following information:

- (a) Applicant identification information including: Organization name, address, telephone number, contact person. If the applicant is a group of organizations, this information is required to be provided by each member of the group.
- (b) Copies of documentation providing evidence that the applicant is a non-profit lender in good standing under the law of the State of California. In the case of consortium or group application, each member of the group must provide evidence of its status in good standing as a non-profit lender in the State of California.
- (c) Documentation providing evidence that the submission of the Fund Manager application has the approval of the applicant's board of directors.
- (d) Evidence that the applicant has made Affordable Housing development loans in California.
- (e) Documentation providing evidence that the applicant:
  - (1) Has originated and serviced loans in the aggregate amount of not less than thirty million dollars (\$30,000,000) that were used to develop or acquire Affordable Housing, including at least ten million dollars (\$10,000,000) or more in acquisition loans.
  - (2) Has at least twenty-five million dollars (\$25,000,000) of its own capital invested in loans to Affordable Housing developers.
  - (3) Has been the originator of loans in the aggregate amount of twenty-five million dollars (\$25,000,000) or more using bank or other investor capital.

- (f) The applicant must also submit a detailed business plan, describing how the applicant intends to meet the requirements of the GSAF, including:
  - (1) Appropriate financial and internal controls
  - (2) Underwriting standards
  - (3) Procedures, and
  - (4) Plan to close loans quickly
- (g) The applicant must provide evidence of a commitment of capital to the GSAF in the amount of sixty-nine million seven hundred fifty thousand dollars (\$69,750,000) as the required leverage to be used to fund Project Loans.

#### **Section 125. Selection Criteria**

- (a) Applications shall not be considered for funding unless the application is received by the deadline stated in the RFP and it demonstrates that the requirements set forth below have been fulfilled in addition to the requirements contained in the RFP.
- (b) Applicants must demonstrate that all of the following conditions exist:
  - (1) the application contains substantially all of the information required by Section 124 and contains sufficient information to allow the Department to apply the rating factors set forth in these Guidelines;
  - (2) the applicant meets the requirements of Sections 104 and 105;
  - (3) the applicant proposes an eligible activity;
  - (4) the applicant proposes an eligible use of the funds;
  - (5) the applicant does not have any unresolved audit findings for prior Department projects or programs;
- (c) Applications shall be reviewed by the Department for compliance with the requirements of Section 124. Applications which comply with these requirements will be scored based on the information in the application relating to;

- (1) Applicant experience operating as an Affordable Housing lender. Points will be given for:
  - (A) Lending volume in both amount of funds lent and number of projects and units developed.
  - (B) Amount of its own capital lent to Affordable Housing developers.
  - (C) Amount of funds invested from other capital sources to Affordable Housing developers.
- (2) Amount of proposed Leveraged Capital that the applicant will be providing to the GSAF from its own or other sources. A score equal to the amount of Leveraged Capital proposed will be assigned to each application.
- (d) The applicant that passed the threshold requirements of Sections 104 and 105, and receives the highest score based on a tally of the points awarded to the selection criteria will be selected as Fund Manager.

## **Article 8. Program Operations**

### **Section 126. Term of These Guidelines**

- (a) Pursuant to Health & Safety Code Section 50705(b), the Department may administer the Golden State Acquisition Fund under these Guidelines for a term of 24 months after the date of their adoption.
- (b) After 24 months, the GSAF must be administered under program regulations subject to the Administrative Procedures Act and approved by the Office of Administrative Law of the State of California.

### **Section 127. Legal Documents**

- (a) Upon selection the Department shall enter into a Standard Agreement with the Fund Manager constituting a conditional commitment of funds. This contract shall require the parties to comply with the requirements and provisions of these Guidelines. The Standard Agreement shall encumber State monies in an amount established in the RFP and consistent with the application.

The Standard Agreement shall contain, but not be limited to, the following:

- (1) a description of the approved Golden State Acquisition Fund including Leveraged Capital committed to the Fund by the Fund Manager;
- (2) requirements for the execution and, where appropriate, the recordation of the agreements and documents required under the GSAF Program;
- (3) the Fund Manager's responsibilities for timing and completion of Fund set-up, including underwriting requirements and Project Loan application process, report submissions, file documentation;
- (4) manner, timing and conditions for disbursement of GSAF program funds to the Fund Manager;
- (5) terms and conditions for extending the term of the Standard Agreement beyond the initial five year term;
- (6) provisions relating to the placement on or in the vicinity of each GSAF funded development project site, a sign indicating that the Department has provided financing for the project. The Department may also arrange for publicity of the Department GSAF project in its sole discretion;
- (7) remedies available to the Department in the event of a violation, breach or default of the Standard Agreement;
- (8) requirements that the Fund Manager permit the Department or its designated agents and employees the right to inspect all books, records and documents maintained by the Fund Manager in connection with the GSAF;
- (9) terms and conditions required by federal or state law; and
- (10) other provisions necessary to ensure compliance with the requirements of the GSAF program.

### **Section 128. Reporting Requirements**

- (a) At any time during the term of the Standard Agreement, the Department may perform or cause to be performed an independent financial audit of any and all phases of the Fund

Manager's operation of the Golden State Acquisition Fund. At the Department's request, the Fund Manager shall provide a financial audit prepared by a certified public accountant.

- (b) At intervals specified by the Department, the Fund Manager shall provide to the Department periodic reports on use of Fund Manager Loan and Project Loan funds, including descriptions of projects funded and loans in process.
- (c) The Fund Manager shall collect all of the following from each borrower and include a summary of this information in an annual report submitted to the Department;
  - (1) A general description of activities undertaken pursuant to these Guidelines.
  - (2) For each property acquired using funds from the Fund Manager Loan,
    - (A) the acquisition price;
    - (B) the amount and terms of the nonstate funds leveraged, and
    - (C) a statement as to whether the state acquisition funds were essential to the leveraging of these other acquisition funds;
    - (D) a description of the expiration date of the project's rent or sales restrictions;
    - (E) the number of assisted units created or preserved;
    - (F) the amount of state funds required for each assisted unit created or preserved; and
    - (G) the level of affordability maintained.
  - (3) If any borrower sells any property acquired with assistance through these state funds, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

- (4) An overall assessment of the effectiveness of these funds as tools in creating and preserving Affordable Housing.

### **Section 129. Performance Goals**

- (a) Within 3 months after the execution of the Standard Agreement the Fund Manager shall have the Golden State Acquisition Fund operational and accepting Project Loan applications from Affordable Housing developers.
- (b) Loan Funds not lent by the Fund Manager within forty-eight (48) months after Availability shall be disencumbered and transferred to the Department for use in the CalHome Program. Availability is defined as the date of the Standard Agreement.

### **Section 130. Defaults and Award Cancellations**

- (a) Funding commitment of the Fund Manager Loan may be canceled by the Department under any of the following conditions:
  - (1) the objectives and requirements of the Golden State Acquisition Fund cannot be met;
  - (2) implementation of the Golden State Acquisition Fund cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement; or
  - (3) funding conditions have not been fulfilled within required time periods.
- (b) In the event of a breach or violation by the Fund Manager of any of the provisions of the Standard Agreement, the Department may give written notice to the Fund Manager to cure the breach or violation within a period of not less than fifteen (15) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:
  - (1) the Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation; and

- (2) the Department may seek such other remedies as may be available under the relevant agreement or any law.
- (c) Upon receipt of a notice of intent to cancel the commitment from the Department, the Fund Manager shall have the right to appeal to the Director.

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