

FREE RECORDING IN
ACCORDANCE
WITH CALIFORNIA GOVERNMENT
CODE SECTIONS 6103 AND 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Homekey Program
Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (the “**Declaration**”), dated [INSERT DATE] for reference purposes only, by [INSERT NAME OF REAL PROPERTY OWNER AND TYPE OF ENTITY], and its successors, assigns and transferees (the “**Owner**”), is hereby given to and on behalf of the Department of Housing and Community Development, a public agency of the State of California (the “**Department**”).

RECITALS

This Declaration affects that certain real property commonly known as [INSERT ADDRESS OF REAL PROPERTY] and located in the City of [INSERT NAME OF CITY], County of [INSERT NAME OF COUNTY], State of California, as more particularly described in the Legal Description attached hereto as Exhibit A and incorporated herein by this reference (the “**Property**”) and is entered into based on the following facts and understandings:

1. [NAME OF EACH AWARDEE] (“**Sponsor**”) (each, a “**Co-Sponsor**,” and collectively, the “**Sponsor**”) and the Department entered into an agreement [INSERT STANDARD AGREEMENT NUMBER] dated [INSERT DATE OF EXECUTION BY THE DEPARTMENT], (the “**Standard Agreement**”), under the Department’s Homekey Program (“**Homekey**,” “**Program**,” or “**Homekey Program**”).

2. [INSERT BRIEF DESCRIPTION OF THE SPONSOR'S ROLE AS, OR RELATIONSHIP TO, THE OWNER.]
3. The statutory basis for the Homekey Program is Health and Safety Code section 50675.1.1. Assembly Bill No. 83 (2019-2020 Reg. Sess.) added sections 50675.1.1 and 50675.1.2 to the Multifamily Housing Program (“**MHP**” or “**MHP Program**”) (Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31 of the Health and Safety Code).
4. The Department issued a Notice of Funding Availability (“**NOFA**”) for the Homekey Program on July 16, 2020. The NOFA incorporates by reference the MHP Program, as well as the MHP Final Guidelines (“**MHP Guidelines**”), dated June 19, 2019, both as amended and in effect from time to time. The NOFA states that the 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).
5. The MHP Program, the NOFA, the MHP Guidelines, the federal CARES Act, and the Standard Agreement comprise the “**Program Requirements.**”
6. Pursuant to the terms of the Standard Agreement, the Department agreed to provide the Sponsor with a grant under the Program (the “Grant”) in an amount not to exceed \$[INSERT TOTAL AMOUNT OF GRANT], which amount includes \$[INSERT AMOUNT OF CRF MONEY] of CRF money for capital expenditures, and \$[INSERT AMOUNT OF STATE GENERAL FUND MONEY] of State General Fund money for a capitalized operating subsidy.
7. The Standard Agreement requires the Sponsor to acquire the Property, and to ensure that it shall be used to provide decent, safe, and sanitary Interim Housing (as defined below) for households that are experiencing homelessness or that are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and, because of that and for other reasons, are or have been impacted by the COVID-19 pandemic (the “**Target Population**”). For purposes of this Declaration, “**Interim Housing**” is defined in accordance with the NOFA and means any facility that is primarily intended to provide temporary shelter or lodging for the Target Population, and that does not require occupants to sign leases or occupancy agreements.

8. As consideration for the Homekey Program Grant, the Owner agreed to enter into this Declaration to restrict the development, use and occupancy of the Property to the continued and lawful operation of the Interim Housing thereon.
9. The term “**Owner**” as used in this Declaration shall include all successors, assigns and transferees to or of any or all of the Owner’s interest in the Property and the Interim Housing.

NOW, THEREFORE, in consideration of the Department’s Grant to the Sponsor and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby covenants, agrees and declares that the Property shall be owned, held, used, maintained, and transferred pursuant to the following restrictive covenants, conditions, restrictions, and limitations (“**Covenants**”). Such Covenants shall be binding upon all of Owner’s successors, assigns and transferees to or of the Property, and upon all leases, tenants, contractors, agents, and persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing.

COVENANTS

1. Operation of Interim Housing. Owner, for itself and for its successors and assigns, hereby declares and covenants that use of the Property is restricted to the operation of the Interim Housing, to uses ancillary to such Interim Housing, and to such other uses as may be approved by the Department in its sole and absolute discretion. The Interim Housing shall include, at a minimum, the number and size of units that are described in Exhibit B, which is attached hereto and incorporated by this reference. Furthermore, such units shall be subject to the occupancy restrictions that are set forth and more fully described in said Exhibit B.

2. Maintenance, Repair, and Improvement of the Property and the Interim Housing. Owner agrees:

- a. To keep the Property in decent, safe, sanitary, tenantable condition and repair, and to permit no waste thereof;
- b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable, except in accordance with these Covenants;
- c. Not to construct any buildings or improvements on the Property, other than the buildings and improvements contemplated as part of the Interim Housing; or add to, remove, demolish or structurally alter

any buildings or improvements now or hereinafter located on the Property;

- d. To promptly repair, restore or rebuild any buildings or improvements on the Property that may be damaged or destroyed while subject to this Declaration;
- e. To comply with all applicable laws affecting the Property, and not to suffer or permit any violations of any such applicable law, nor of any covenant, condition or restriction affecting the Property;
- f. Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without the Department's prior written consent; and
- g. Not to alter the use of all or any part of the Property without the Department's prior written consent.

3. Restrictions on Sale, Encumbrance, and Other Acts.

- a. Owner shall not, except with the Department's prior written consent, make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer of the Property, the Interim Housing, or of any of its interest in either of them.
- b. If the Department determines, in its sole and absolute discretion, to grant its prior written consent for a sale, transfer or conveyance of the Property or the Interim Housing, such consent may impose terms and conditions, as necessary, to preserve or establish the fiscal integrity of the Property or the Interim Housing, or to ensure compliance with the Program Requirements.

4. Charges; Liens. Owner shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Property or to the Interim Housing, if any, by Owner making payment, when due, directly to the payee thereof. Owner shall promptly furnish to the Department all notices of amounts due under this paragraph, and where Owner makes direct payments, Owner shall promptly furnish to the Department its receipts evidencing such payments. Owner shall pay when due all encumbrances, charges, and liens on the Property or to the Interim Housing, and shall make payments on notes or other obligations secured by an interest in the Property or Interim Housing, with interest in accordance with the terms thereof. Owner shall have the right to contest in good faith any claim or

lien, or payment due thereunder, so long as Owner does so diligently and without prejudice to Department.

5. Building Permits. Owner agrees not to apply for or accept any permits for the construction of improvements on the Property that are inconsistent with the lawful operation of the Interim Housing, as such Interim Housing is described in Exhibit B hereto.

6. Hazard and Liability Insurance and Condemnation.

- a. Owner shall keep the Property and the Interim Housing insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Department. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to the Department.
- b. In the event of any fire or other casualty to the Property or Interim Housing, or eminent domain proceedings resulting in condemnation of the Property or Interim Housing or any part thereof, the Owner shall have the right to rebuild the Property or the Interim Housing, and to use all available insurance or condemnation proceeds therefor, provided that, as determined by the Department in its sole and absolute discretion, **(a)** such proceeds are sufficient to rebuild the Property or Interim Housing in a manner that ensures continued operation of the Interim Housing in accordance with the Program Requirements; and **(b)** no material breach or default then exists under the Standard Agreement. If the casualty or condemnation affects only part of the Property or Interim Housing and if total rebuilding is infeasible, then the insurance or condemnation proceeds may be used for partial rebuilding and/or partial repayment of the Grant. The Department has the right but not the obligation to approve the plans and specifications for any major rebuilding, as well as the right but not the obligation to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement.

7. Covenants Run with the Land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to these Covenants. The foregoing Covenants are intended to constitute both equitable servitudes and covenants running with the land. Owner expressly acknowledges and agrees that the Covenants are reasonable restraints on the Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an

unreasonable restraint on alienation. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such Covenants, regardless of whether such Covenants are set forth in such contract, deed, or other instrument.

8. Binding Effect. Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from the Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the Property, shall by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the Covenants set forth in this Declaration.

9. Term of Declaration. The Covenants in this Declaration shall be binding, effective, and enforceable commencing upon the execution of this Declaration, and they shall continue in full force and effect for a period of not less than ten (10) years after the date of December 29, 2020 (the “**Interim Housing Period**”), regardless of any sale, assignment, transfer, or conveyance (including, without limitation, by foreclosure sale) of the Property or any portion thereof.

10. Default, Remedies. A default under this Declaration or the Standard Agreement shall entitle the Department to any rights, remedies, or damages available at law or in equity, including, but not limited to, those that are specified below. The Department’s failure to exercise any specific right or remedy shall not be construed as a waiver of that or any right or remedy.

a. Specific Performance. The use, repair, and maintenance of the Property in support of the Interim Housing is of a special and unique kind and character, so that a breach of any material provision of this Declaration by the Owner would not have an adequate remedy at law. Therefore, the Department’s rights may be enforced by an action for specific performance and such other equitable relief as is provided by the laws of the State of California.

b. Injunctive Relief. In pursuing specific performance of the Covenants, the Department shall be entitled to petition the court for injunctive relief to preserve the Department’s interests in the Property and its rights under this Declaration. Such injunctive relief may include a court order restraining any development of the Property that is inconsistent with the foregoing Covenants.

c. Appointment of Receiver. In conjunction with any other remedy available at law or in equity, the Department may apply to a court of competent jurisdiction for the appointment of a receiver to take over and operate the Property or the Interim Housing in accordance with the Program Requirements.

11. Attorneys' Fees. The prevailing party in an action to enforce this Declaration shall be entitled to reasonable attorneys' fees as determined by the trier of fact in that forum.

12. Department Review and Inspection.

- a. At any time during the term of this Declaration and upon reasonable notice, the Department or its designee may, but is not obligated to, enter and inspect the Property, and inspect all records pertaining to the operation, repair, and maintenance of the Interim Housing. Upon request by the Department, the Owner shall notify occupants of upcoming inspections in accordance with state law.
- b. The Department may, but is not obligated to, request any other information that it deems necessary to confirm compliance with the foregoing Covenants. The Owner shall provide such requested information within fourteen (14) calendar days of the Department's written request for the information.
- c. The Department shall not, by the fact of making or not making any entries or inspections, or by taking or failing to take any action in response thereto: **(i)** incur or undertake, or be deemed to incur or undertake, any obligation, duty, or liability whatsoever, whether to the Owner, to the Sponsor, or to any other person or entity; **(ii)** be deemed as approving or disapproving any matter, action, incident, or condition related to the Property or the Interim Housing; or **(iii)** be deemed as approving or disapproving any matter related to the compliance of the Property or the Interim Housing with the Program Requirements or other applicable laws. In no event or circumstance shall the Department's exercise or non-exercise of its discretion under this paragraph constitute, or be deemed or interpreted as constituting, any termination, limitation, alteration, or waiver by the Department of any right, benefit, or remedy under or with respect to this Declaration.

13. Owner Representations. Owner represents and warrants to the Department that: **(1)** Owner has sufficient interest in the Property to support the operation of the Interim Housing in accordance with the Program Requirements and this Declaration; **(2)** to Owner's actual knowledge and belief, there are no agreements, contracts, covenants, conditions, or exclusions to which Owner (or its predecessor in interest) is a party which would, if enforced, prohibit or restrict the use of the Property in accordance with the terms of this Declaration; **(3)** Owner has

the full right and authority to enter into this Declaration; **(4)** this Declaration constitutes a valid and legally binding obligation on Owner, enforceable in accordance with its terms; and **(5)** Owner is duly organized and authorized to do business in the State of California.

14. Amendment, Modification. Owner shall not amend, modify, waive, or release this Declaration, or any part of this Declaration, without the prior and express written consent of an authorized representative of the Department, which consent may be withheld, conditioned, or delayed in the Department's sole and absolute discretion. Any amendment, modification, waiver, or release without the prior and express written consent of the Department shall be void.

15. Severability. Every provision of this Declaration is intended to be severable. If any provision of this Declaration is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

16. Governing Law. This Declaration shall be governed by and interpreted under the laws of the State of California.

17. Recordation of Agreement. This Declaration shall be recorded in the Official Records of the County of **[NAME OF COUNTY]** no later than March 31, 2021. The Declaration shall be recorded, and shall remain, as a lien against the Property in first position over all other agreements, covenants, liens, or other matters of record on the Property.

[signature page follows]

IN WITNESS WHEREOF, the Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

OWNER:

[NAME OF OWNER, TYPE OF LEGAL ENTITY]

By: _____

[INSERT NAME OF AUTHORIZED SIGNATORY]

Its: [INSERT TITLE OF SIGNATORY]

All signatures must be acknowledged.

ADD NOTARY ACKNOWLEDGEMENT

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Declaration of Restrictive Covenants
Homekey Program
NOFA: 7/16/2020
Owner: [INSERT NAME OF REAL PROPERTY OWNER]
Project: [INSERT NAME OF PROJECT]
Approved Date: DRAFT 1-15-2021 (v.1)
Prep: [INSERT DATE DOCUMENT IS PREPARED]
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EXHIBIT “B”

AFFORDABLE HOUSING DEVELOPMENT

[INSERT UNIT MIX FROM THE STANDARD AGREEMENT]

[ANY “INCOME RESTRICTIONS” OR “INCOME LIMIT” SHALL BE IDENTIFIED TO INCLUDE THE FOLLOWING PARENTHETICAL: “(as Applicable to the Target Population)”]