

**GROUND LEASE**

**by and between**

**CITY OF SAN LEANDRO,  
as Lessor**

**and**

**HOUSING CONSORTIUM OF THE EAST BAY,  
as Lessee**

**Dated as of \_\_\_\_\_, \_\_\_\_\_**

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## GROUND LEASE

This Ground Lease (the "Ground Lease") is entered into as of \_\_\_\_\_, 202\_\_ (the "Commencement Date"), by and between the City of San Leandro, a California municipal corporation ("Lessor"), and Housing Consortium of the East Bay, a California nonprofit public benefit corporation ("Lessee").

### RECITALS

A. Lessor is the owner of that certain real property located at 555 Lewelling Boulevard, in the City of San Leandro, County of Alameda, State of California, more particularly described in the legal description attached hereto as Exhibit A and depicted on the map attached as Exhibit B (the "Leased Premises"). The Leased Premises is improved with an existing motel and restaurant, together with associated driveways, landscaping, lighting and parking. The existing billboard located on the Leased Premises is not a part of the Leased Premises.

B. Lessor and Lessee have entered into a "Predevelopment Grant Agreement," dated January 20, 2023, pursuant to which Lessor has provided to Lessee a grant of Sixty-Five Thousand Dollars (\$65,000) for the purpose of paying for certain predevelopment activities, including architectural and engineering services and environmental and related studies pertaining to the Leased Premises.

C. Lessor and Lessee have jointly applied for and have received approval of a Project Homekey grant from the State of California in the amount of [Nine Million Three Hundred Twenty-Eight Thousand Two Hundred Fifty Dollars (\$9,328,250)] (the "Project Homekey Grant") to finance the Lessor's acquisition of the Leased Premises and the conversion of the Leased Premises into an interim homeless shelter and navigation center for homeless persons and persons at risk of homelessness. Lessor and Lessee have entered into, or will enter into, a Standard Agreement with the California Department of Housing and Community Development which sets forth the requirements imposed in connection with the Homekey Grant (the "Project Homekey Agreement").

D. The Parties desire for Lessor to ground lease the Leased Premises to Lessee and convert it into an interim homeless shelter with twenty-nine apartment units, navigation center for homeless persons and persons at risk of homelessness, offices for management and services staff, meeting and conference spaces, community room, laundry room, modular trailer for shower services for navigation center clients, modular trailer for office space, parking, landscaping and lighting (the "Project").

E. The Parties have determined that it is necessary for the financial feasibility of the Project for Lessor to provide a grant to Lessee to assist in the cost of the development of the Project (the "City Rehabilitation Grant") in the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000). The City Rehabilitation Grant Funds will be obtained from a special appropriation from the State of California and other local, state and/or federal funds.

F. The Parties will also enter into a separate Operating Subsidy Agreement pursuant to which Lessor will agree to provide specified payments to Lessee as necessary for payment of the costs of operation of the Project, as set forth therein.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE 1. DEFINITIONS**

Section 1.1 **Definitions.** For the purposes of this Ground Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1:

- (a) **“Applicable Laws”** is defined in Section 4.5.
- (b) **“Casualty”** is defined in Article 13.1 hereof.
- (c) **“City”** means the City of San Leandro, California.
- (d) **“City Rehabilitation Grant”** means that certain grant to be provided by City to Lessee for the purposes of the rehabilitation and operation of the Improvements in the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000).
- (e) **“Claims”** means collectively: claims, demands, actions, causes of action, suits, judicial or administrative proceedings, damages, losses, liabilities, costs, expenses (including without limitation reasonable attorneys' fees), damages, penalties, deficiencies, fines, orders, charges, judgments, remedial action requirements, and enforcement actions of any kind.
- (f) **“Commencement Date”** means the date set forth in the first paragraph of this Ground Lease.
- (g) **“County”** means the County of Alameda, California.
- (h) **“Environmental Laws”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of Hazardous Materials, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of Hazardous Materials or the remediation of air, surface waters, groundwater or soil, as now or may at any later time be in effect, together with any regulations promulgated thereunder.

(i) **“Event of Default”** is described in Article 14.1 of this Ground Lease.

(j) **“Governmental Authorities”** means any applicable federal, State or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

(k) **“Hazardous Materials”** means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Leased Premises, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. (**“CERCLA”**); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 5101, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. (**“RCRA”**). The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and in any and all amendments thereto; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), asbestos and asbestos-containing materials, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyl; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Leased Premises, to adjacent properties, or to persons on or about the Leased Premises, (ii) which causes the Leased Premises to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Leased Premises requires investigation, reporting or remediation under any such laws or regulations. Hazardous Materials do not include substances that are used or consumed in the normal course of constructing, developing, operating, or occupying a residential project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

(l) **“Improvements”** means the twenty-nine (29) apartment units, Navigation Center, offices for management and services staff, meeting and conference spaces, community room, laundry room, modular trailer for shower services for navigation center clients, modular trailer for office space, parking, landscaping and lighting, to be rehabilitated and constructed on the Leased Premises.

(m) **“Indemnitees”** means Lessor and its elected and appointed officials, officers, employees, agents, contractors, representatives and volunteers.

(n) **“Insurance Requirements”** means the requirements, whether now or hereafter in force, of any insurer or insurance carrier, any board of fire underwriters or any other company, bureau, organization or entity performing the same or similar functions, applicable to the Leased Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

(o) **“Leased Premises”** means the Leased Premises as described in Exhibit A and depicted on Exhibit B, together with the Project and any other improvements now or hereafter located thereon, and together with all and singular rights, easements, licenses, privileges and appurtenances thereunto attaching or in any way belonging thereto.

(p) **“Lease Year”** means the twelve month period commencing on the Commencement Date of this Ground Lease and each anniversary thereof.

(q) **“Legal Requirements”** means all laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions thereof, whether now or hereafter in force applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion thereof, to the extent so applicable.

(r) **“Net Condemnation Award”** means the net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment.

(s) **“Party”** means Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties."

(t) **“Person”** means an individual, partnership, corporation, public benefit corporation, trust, unincorporated association, or other entity or association.

(u) **“Plans and Specifications”** means those plans and specifications approved by the Lessor for the rehabilitation and construction of the Improvements, as they may be amended from time to time and as approved by Lessor.

(v) **“Project”** means the interim shelter and Navigation Center to be rehabilitated, constructed and operated by Lessee on the Leased Premises.

(w) **“Project Homekey Agreement”** means the agreement to be entered between Lessor, Lessee, and the State of California which provides for the State of California to make the Project Homekey Grant to the Project.

(x) **“Project Homekey Grant”** means the grant in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be made by the State of California pursuant to the Project Homekey Agreement.

(y) **“Rent”** is described in Section 4.1 hereof.

(z) **“Taking”** means a taking during the Term hereof of all or any part of the Leased Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain materially affecting the Leased Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

(aa) **“Term”** means the period of time described in Section 2.2 hereof.

(bb) **“Transfer”** means any sale, assignment, transfer, conveyance, lease, sublease, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

Section 1.2 **Exhibits.** The Exhibits referred to in this Ground Lease and attached hereto are:

Exhibit A	Legal Description of the Leased Premises
Exhibit B	Site Map of the Leased Premises
Exhibit C	Memorandum of Lease
Exhibit D	Scope of Development
Exhibit E	Financing Plan
Exhibit F	Regulatory Agreement
Exhibit G	Operating Subsidy Agreement

## **ARTICLE 2. LEASE OF THE LAND**

Section 2.1 **Lease of Leased Premises.** Subject to the terms hereof and in consideration of the covenants stipulated herein, Lessor leases the Leased Premises to Lessee, and in consideration thereof, Lessee takes, hires and leases the Leased Premises from the Lessor, pursuant to the terms of this Ground Lease. This Ground Lease, the interests of Lessor and Lessee hereunder, and the Leased Premises, are in all respects subject to and bound by all of the covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record prior to the date of this Ground Lease. Lessee hereby accepts the Leased Premises and acknowledges that the Leased Premises is in the condition required by this Ground Lease.

Section 2.2 **Term.** Unless sooner terminated pursuant to the provisions hereof, this Ground Lease shall continue in full force and effect for a term ("Initial Term") commencing on the Commencement Date and expiring on the fifth (5th) anniversary of the date that the City issues a final Certificate of Occupancy for the construction and rehabilitation of the Improvements.



(a) **Extension Terms.** The Term of this Ground Lease shall automatically be extended for a one year period (“Extension Term”) at the end of the Initial Term and each Extension Term, provided that, at the time of the commencement of an Extension Term, Lessee is not in breach of its material obligations under this Ground Lease beyond any applicable notice and cure periods provided in this Ground Lease, and neither Party has timely provided written notice to the other Party of the termination of this Ground Lease. The Initial Term and Extension Terms are collectively referred to herein as the “Term.” In no event shall the Term exceed a total of ten (10) years after the date that the City issues a final Certificate of Occupancy for the construction and rehabilitation of the Improvements.

(b) **Termination.** Either Party may provide written notice to the other Party of the termination of this Ground Lease six (6) months or more prior to the end of the current Term, with or without cause, and such termination shall then become effective as of the last day of the current Term.

Section 2.3 **Use.** Subject to the provisions hereof, Lessee shall use the Leased Premises for the construction, rehabilitation and operation of the Project, which includes the construction, rehabilitation and operation of the Improvements on the Leased Premises in accordance with the restrictions and requirements set forth in Article 2 hereof. Further, Lessee agrees:

(a) that all uses conducted on the Leased Premises, including, without limitation, all activities undertaken by Lessee pursuant to this Ground Lease, shall conform to all applicable provisions of the San Leandro Municipal Code and the Project Homekey Agreement;

(b) not to use or permit the use of the Leased Premises for any disorderly or unlawful purpose;

(c) subject to the laws of the State of California and the rights of Residents, to permit Lessor and its agents to inspect the Leased Premises or any part thereof at any reasonable time during the Term.

Section 2.4 **Possession.** Lessor agrees to and shall provide possession of the Leased Premises to Lessee free and clear of all rights to possession or use by any tenants or other individuals or entities other than Lessee (except as disclosed to Lessee or apparent from Lessee's inspection), and free and clear of any encumbrances except as expressly approved by Lessee in writing.

Section 2.5 **As-Is Condition.** Lessor shall deliver possession of the Property to Lessee on the Commencement Date, in its As-Is Condition, and Lessee hereby accepts the Property in its As-Is Condition. Neither the Lessor, nor any officer, employee, agent or representative of the Lessor has made any representation, warranty or covenant, expressed or implied, with respect to the Leased Premises, the Project, the condition of the soil, subsoil, geology or any other physical condition of the Leased Premises, the condition of any improvements, any environmental laws or regulations, the presence of any Hazardous Substances on the Leased Premises, or any other matter affecting the use, value, occupancy or enjoyment of the Leased Premises, the suitability of the Leased Premises for the uses permitted



by this Ground Lease, the suitability of the Leased Premises for the Project, construction of the Project, or construction or use of the Improvements on the Leased Premises, and Lessee understands and agrees that the Lessor is making no such representation, warranty or covenant, expressed or implied, it being expressly understood that the Leased Premises is being leased in its As-Is Condition with respect to all matters. Lessee acknowledges that it has had the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation and study of the Leased Premises, and has, to the extent it deemed necessary, independently investigated the condition of the Leased Premises, including the soils, hydrology, seismology, and archaeology thereof, and the laws relating to the construction, maintenance, use and operation of the Improvements, including environmental, zoning and other land use entitlement requirements and procedures, height restrictions, floor area coverage limitations and similar matters, and has not relied upon any statement, representation or warranty of Lessor of any kind or nature in connection with its decision to execute and deliver this Ground Lease and its agreement to perform the obligations of Lessee except as provided in this Ground Lease.

Section 2.6 **Memorandum of Lease.** The Parties shall execute and acknowledge a Memorandum of Lease, substantially in the form attached hereto as Exhibit C, which shall be recorded in the official records of Alameda County.

### **ARTICLE 3. RENT**

Section 3.1 **Ground Rent.** For each Lease Year during the Term, Lessee shall pay to Lessor on the Commencement Date of this Ground Lease and on each succeeding anniversary thereof rent in advance for the next succeeding Lease Year ("Rent") in the nominal amount of \$1.00 per Lease Year.

Section 3.2 **Payments.** All Rent, Additional Rent, and other sums, if any, due Lessor hereunder shall be paid by Lessee to Lessor at the address of Lessor set forth hereinafter for notices, or to such other person and/or at such other address as Lessor may direct by written notice to Lessee, without notice or demand, and without abatement, deduction or set off. Lessee may pay all Rent due at the rate set forth in Section 3.1 for the entire Term of this Ground Lease in advance.

### **ARTICLE 4. THE IMPROVEMENTS**

Section 4.1 **Construction and Rehabilitation of Improvements.** Lessee shall cause the Improvements to be constructed and rehabilitated in substantial compliance with the Scope of Development which is attached hereto as Exhibit D and incorporated herein, with the construction plans approved by City, and the terms and conditions of the land use approvals and building permits obtained for the Improvements. Lessee shall commence and complete all of the Improvements within the times set forth in the Schedule of Performance which is attached hereto as Exhibit E and incorporated herein. All Improvements constructed or rehabilitated by or on

behalf of Lessee shall be constructed and rehabilitated in a good, skillful and professional manner, in compliance with all applicable Legal Requirements and in accordance with all of the requirements of the Project Homekey Agreement. Lessee shall bear the entire and sole cost of planning, designing, engineering, financing, constructing, supervising, and inspecting the Improvements, including all fees and mitigation measures.

**Section 4.2 Permits, Licenses and Easements.** Lessor agrees to use Lessor's best reasonable efforts to assist Lessee in obtaining any and all permits, licenses, easements and other authorizations required by any governmental authority with respect to any construction, rehabilitation or other work to be performed on the Leased Premises and to grant, or to assist Lessee in obtaining, as applicable, all permits, licenses, easements and other governmental authorizations that are necessary or helpful for public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Payment of all fees, costs and expenses associated with any of the foregoing shall be the responsibility of Lessee, and Lessor shall have no responsibility to pay any such fees, costs or expenses.

**Section 4.3 Construction Contract.** Lessor shall enter into one or more construction contracts with one or more general contractors for the rehabilitation and construction work for the Improvements with a general contractor reasonably acceptable to the Lessor, which general contractor shall be duly licensed in the State of California and shall have significant experience in organizing and contracting development projects of the type and scale similar to the Project.

**Section 4.4 Prevailing Wage Requirements.**

(a) The Lessee shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction and rehabilitation of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the construction contract documents for the construction of the Improvements must specify that:

(1) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the construction of the Improvements unless registered with the DIR pursuant to Labor Code Section 1725.5.

(2) The Development is subject to compliance monitoring and enforcement by the DIR.

(c) The Lessee, as the "awarding body", shall register the construction of the Improvements as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the construction contract and provide evidence of such registration to the Lessor within two (2) days of such registration and any additional registration reporting to the DIR.

(d) In accordance with Labor Code Sections 1725.5 and 1771.1, The Lessee shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(e) Pursuant to Labor Code Section 1771.4, the construction and rehabilitation of the Improvements is subject to compliance monitoring and enforcement by the DIR. The Lessee shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq., or in such other format as required by the DIR.

(f) The Lessee shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the Lessor provide to the Lessor such records and other documentation reasonably requested by the Lessor.

(g) The Lessee shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction and rehabilitation of the Improvements or any other work undertaken or in connection with the Leased Premises.

(h) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, [www.dir.ca.gov](http://www.dir.ca.gov). The Lessee shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Project site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

(i) If and to the extent required by federal prevailing wage laws, Lessee and its contractors and agents shall pay federal prevailing wages for all work performed with respect to the construction and rehabilitation of the Improvements, in compliance with the Davis-Bacon Act, 40 U.S.C. §3141 - 3148 ("Davis-Bacon"), and its implementing regulations, and perform all other obligations thereunder. Lessor does not make any representations to Lessee as to the applicability of Davis-Bacon to the construction and rehabilitation of the Improvements, and Lessee agrees and acknowledges that it is not relying on any representations of Lessor in making its determination as to the applicability of Davis-Bacon. It is agreed by the Parties that, in connection with the construction and rehabilitation of the Improvements, as between Lessor and Lessee, Lessee shall be solely responsible for determining whether Davis-Bacon is applicable to the construction and rehabilitation of the Improvements, and Lessee shall bear all risks of payment or non-payment of prevailing wages under Davis-Bacon, as the same may be amended from time to time, and/or any other similar federal law. Lessee shall periodically, upon request of Lessor, certify to Lessor that, to its knowledge, it is in compliance with the requirements of this paragraph. The obligations to comply with Davis-Bacon as set forth in this paragraph (i) are in addition to, and not in place of, the obligations to pay Prevailing Wages under California law as provided in this Section 4.4.

(j) Lessee shall indemnify, defend (with counsel approved by Lessor) and hold Lessor and its respective elected and appointed officers, employees, agents, consultants, and contractors (collectively, the "Indemnitees") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "Claims") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction and rehabilitation of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Ground Lease, including but not limited to the Prevailing Wage Laws and Davis-Bacon, or any act or omission of Lessee related to this Ground Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to such Claims. It is further agreed that Lessor does not and shall not waive any rights against Lessee which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by Lessor, or Lessee's deposit with Lessor of any of the insurance policies described in this Ground Lease. The provisions of this Section 4.4 shall survive the expiration or earlier termination of this Ground Lease and the issuance of a Certificate of Occupancy for the Improvements. Lessee's indemnification obligations under this Section 4.4 shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

**Section 4.5 Compliance with Laws.** Lessee shall carry out and shall cause its contractors and subcontractors to carry out the construction and rehabilitation of the Project, and shall operate the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations ("Applicable Laws"), including without limitation, all applicable federal and state labor laws and standards, the City's zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements. To the greatest extent allowed by law, Lessee shall indemnify, defend (with counsel approved by Lessor) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Lessee's obligations set forth in this Section 4.5 whether or not any insurance policies shall have been determined to be applicable to any such Claims. This Section shall survive the expiration or termination of this Ground Lease.

**Section 4.6 Liens.** Lessee shall not have any right, authority or power to bind Lessor, the Leased Premises, or any interest of Lessor in the Leased Premises, for any claim for labor or material, or for any other charge or expense, lien or security interest incurred in connection with Lessee's use of the Leased Premises, or the development, construction or operation of the Improvements, or any change, alteration or addition thereto. Lessee shall not have the right to encumber the Leased Premises with any loans. Lessee shall have the right to enter into utility easements and other customary easements necessary and incidental to the rehabilitation, construction and operation of the Improvements, which such easements shall require the Lessor's consent, not to unreasonably be withheld.

The Lessee shall not create or permit or suffer to be created or to remain upon the Leased Premises, or any part thereof, and will discharge, any lien, including, but not limited to, the liens

of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Leased Premises, or any part thereof. If any claim of lien is filed against the Leased Premises, or a stop notice is served on any third party in connection with the Leased Premises, then the Lessee shall, within twenty (20) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Lessor a surety bond in sufficient form and amount, or provide the Lessor with other assurance satisfactory to the Lessor that the claim of lien or stop notice will be paid or discharged. If the Lessee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Ground Lease, then in addition to any other right or remedy, the Lessor may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at the Lessee's expense. Any expense incurred by Lessor pursuant to this Section shall be immediately due and payable by Lessee to Lessor as Additional Rent under this Ground Lease. The Lessee shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Lessee shall utilize all reasonable means (including the posting of adequate security for payment) to protect the Leased Premises against foreclosure. In addition to any other indemnities provided in this Ground Lease, Lessee shall indemnify, protect, defend (with counsel of Lessor's choosing), and hold harmless the Indemnitees from any and all alleged or actual Claims arising by reason of a mechanic's lien or work, labor, services, or materials supplied or claimed to have been supplied to Lessee or anyone holding the Leased Premises, or any part thereof, through or under Lessee.

Nothing in this Ground Lease shall be construed as constituting the consent of the Lessor, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Leased Premises, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the Leased Premises. The Lessor shall have the right at all reasonable times to post and keep posted on the Leased Premises any notices which the Lessor may deem necessary for the protection of the Lessor and of Lessor's interests in the Leased Premises from mechanics' liens or other claims. In addition, but subject to the paragraph above, the Lessee shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Lessee, or any of its respective contractors or subcontractors in connection with the Leased Premises and the Project. The provisions of this Section 4.6 shall survive the expiration or termination of this Ground Lease.

**Section 4.7 Title to Improvements.** The Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become and remain the property of Lessor, without cost or charge to Lessor. Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Ground Lease or as approved in writing by Lessor.

**Section 4.8 Surrender of Property at End of Term.** Upon the expiration of the Term or other termination of the Ground Lease, Lessee shall peaceably and quietly leave and surrender the Leased Premises and the Improvements to Lessor in good order, condition, and



repair, reasonable wear and tear and obsolescence excepted. Lessee shall leave in place and in good order, condition, and repair, all fixtures and machinery; except Lessee shall have the right to remove only Lessee-owned appliances, other unattached equipment, furniture and merchandise that Lessee shall have installed, which removal must be done without damage to the Leased Premises or Improvements. Lessor agrees that Lessee, at any time prior to the expiration or other termination of this Ground Lease, may remove from the Leased Premises any and all equipment which Lessee has furnished for maintenance purposes or for the use of the property manager, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Upon the expiration or sooner termination of this Ground Lease, Lessee shall deliver the Leased Premises and the Improvements to Lessor free of all monetary liens and encumbrances unless otherwise consented to in writing by Lessor. Any equipment or other personal property not removed from the Leased Premises by the expiration of the Term shall become the property of Lessor, and Lessor shall have the right to dispose of such equipment and property in the manner of Lessor's choosing.

**Section 4.9 No Abandonment.** Lessee shall not abandon or vacate the Leased Premises or the Improvements at any time during the Term of this Ground Lease. If Lessee shall abandon, vacate, or otherwise surrender the Leased Premises or the Improvements, or be dispossessed thereof by process of law or otherwise, the same shall constitute a default under this Ground Lease on the part of Lessee and, in addition to any other remedy available on the part of Lessor, any of Lessee's property left in, upon or about the Leased Premises or the Improvements (except for underground storage tanks) shall, at Lessor's option, be deemed to be abandoned and shall become the property of Lessor.

## **ARTICLE 5.**

### **CITY FINANCIAL ASSISTANCE**

**Section 5.1 City Rehabilitation Grant.** The City shall provide a grant in the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000) (the "City Rehabilitation Grant") to Lessee for the costs of the construction and rehabilitation of the Improvements, upon the terms and conditions and for the purposes set forth in this Agreement. Provided that Lessee has complied with all conditions precedent to disbursement of the City Rehabilitation Grant as set forth in Section 5.3, the proceeds of the City Rehabilitation Grant ("City Rehabilitation Grant Proceeds") shall be disbursed in accordance with Section 5.2 hereof. The City Rehabilitation Grant Proceeds shall be disbursed only for the purposes set forth in Section 5.2. In the event that Lessor determines that it is necessary to amend or supplement this Agreement in order to ensure compliance with the requirements of the different funding sources to be used for the City Rehabilitation Grant, the Parties shall make and execute appropriate amendments to this Agreement and/or the attachments hereto which are mutually acceptable to the Parties.

**Section 5.2 Use and Disbursement of City Rehabilitation Grant Proceeds.** The City Rehabilitation Grant Proceeds shall be used as follows: (a) a portion of the City Rehabilitation Grant Proceeds shall be used to pay for predevelopment costs of the Project incurred after the date of the Predevelopment Grant Agreement and prior to the date of this Ground Lease, to be funded at the commencement of construction and rehabilitation of the

Improvements, and (b) a portion of the City Rehabilitation Grant Proceeds shall be used to pay for the cost of predevelopment expenses, construction and rehabilitation of the Improvements, to be funded through monthly draws. All disbursements shall be in accordance with a Project Budget which is submitted by Lessee to Lessor and approved by Lessor. The Project Budget may be revised from time to time with the mutual approval of the Parties.

**Section 5.3 Conditions to Disbursement of City Rehabilitation Grant Proceeds.** City's obligation to fund the City Rehabilitation Grant and disburse the City Rehabilitation Grant Proceeds for the purposes of Section 5.2 above is conditioned upon the satisfaction of all of the following conditions

(a) City's receipt of a written draw request for disbursement of funds from Lessee specifying the amount and use of the requested funds, setting forth the proposed uses of funds consistent with this Agreement, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred, and City's inspection of the work and determination that the work for which payment is requested has been performed in compliance with the requirements of this Agreement.

(b) Lessee's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Lessee is properly organized, in good standing, and authorized to do business in the State of California, and a certified resolution indicating that Lessee has authorized this transaction and that the persons executing this Agreement and the Regulatory Agreement on Lessee's behalf have been duly authorized to do so.

(c) Lessee's delivery to the City of evidence of insurance coverage accordance with the requirements set forth in Article 8.

(d) Lessee's delivery of the Regulatory Agreement, fully executed and acknowledged.

(e) Recordation of the Regulatory Agreement in the Official Records.

(f) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement.

(g) The City's receipt of a written requisition for disbursement of funds from Lessee specifying the amount and use of the requested funds, which shall be in conformance with the approved Project Budget.

**Section 5.4 Operating Subsidy Agreement.** Lessor and Lessee shall enter into the Operating Subsidy Agreement, substantially in the form attached hereto as Exhibit G and incorporated herein, concurrently with the execution of this Ground Lease.

**Section 5.5 Project Homekey Grant.** Lessor shall be entitled to the disbursement of such portion of the Project Homekey Grant as Lessor determines is necessary for payment of the full amount of the costs of Lessor's acquisition of the Leased Premises. Lessee shall be entitled to

receive the remaining amount of the Project Homekey Grant from the Project Homekey Agreement as necessary for payment of costs of the construction and rehabilitation of the Improvements. If necessary, Lessee shall apply to the State for disbursements of the remaining funds, and Lessor shall cooperate with and assist Lessee and deliver approvals to the State, to the extent required in order to obtain the remaining portion of the Project Homekey Grant from the State for the foregoing expenses.

## **ARTICLE 6. OPERATION OF PROJECT**

**Section 6.1 Use.** For the entire Term of this Ground Lease, the Leased Premises shall be used for the development and operation of the Project in accordance with the terms and conditions of this Ground Lease, the Project Homekey Agreement and the Regulatory Agreement.

**Section 6.2 Compliance with Project Homekey Agreement.** The Parties agree that, regardless of whether Lessor is jointly or solely responsible for performance of the requirements of the Project Homekey Agreement under the terms of that agreement, Lessee shall perform all of the requirements of the Grantee under the Project Homekey Agreement, for so long as the Ground Lease is in effect and Lessee is the lessee under that agreement, and Lessor shall not be responsible for performance of such obligations. Such requirements to be performed by Lessee shall include, without limitation, compliance with maximum income and rent requirements, meeting all program deadlines, compliance with all rent standards, use in accordance with eligible uses, compliance with all performance milestones, preparation and submission of all required reporting, compliance with all conditions of disbursement of the Homekey Grant, compliance with prevailing wage laws, liability for environmental requirements, insurance requirements, relocation requirements, and adaptability and accessibility requirements, submission and compliance with the property management plan, supportive services plan and affirmative fair housing marketing plan, compliance with fair housing requirements, and compliance with record retention, inspection and audit requirements.

**Section 6.3 Non-Discrimination; Compliance with Fair Housing Laws.** Lessee shall not restrict the rental, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Lessee covenants for itself and all persons claiming under or through it, and this Ground Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises or part thereof, nor shall Lessee or any person claiming under or through Lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Leased Premises or part thereof.



Lessee shall include such similar provision in all leases and rental agreements affecting the Leased Premises or part thereof, and shall enforce the same diligently and in good faith.

## **ARTICLE 7. ASSIGNMENT AND TRANSFER**

**Section 7.1 Procedure for Assignment and Transfer.** The qualifications and identity of Lessee are of particular concern to Lessor. It is because of those qualifications and identity that Lessor has entered into this Ground Lease with Lessee. Except as otherwise provided below, during the Term of this Ground Lease, (a) no voluntary or involuntary successor in interest of Lessee shall acquire any rights or powers under this Ground Lease, and (b) Lessee shall not make any total or partial sale, transfer, conveyance, assignment, sublease, or subdivision of the whole or any part of the Leased Premises or the Improvements thereon, without the prior written approval of Lessor, except as expressly permitted below. Lessor's consent shall not be unreasonably withheld, conditioned or delayed. With respect to a proposed Transfer of the Property, Lessee's request for approval shall be accompanied by sufficient evidence regarding the proposed transferee's ability to operate and manage a project of this size, in sufficient detail to enable Lessor to evaluate the proposed transferee pursuant to the criteria set forth in this Section 7.1 and as reasonably determined by Lessor. Lessor shall evaluate each proposed transferee on the basis of the respective qualifications set forth above, and may reasonably disapprove any proposed transferee, during the period for which this Section 7.1 applies, which Lessor reasonably determines does not possess these qualifications. A sublease or an assignment and assumption agreement in form reasonably satisfactory to Lessor shall also be required for all proposed Transfers. Should Lessor consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Ground Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Lessee of its liability under this Ground Lease and such transferring Lessee shall be released from performance of any of the terms, covenants and conditions of this Ground Lease upon such Transfer, and thereafter the assignee Lessee shall be liable under this Ground Lease, provided that the assigning Lessee shall retain all indemnification obligations pursuant to this Ground Lease, and shall remain responsible for any obligations hereunder which arose prior to the effective date of the assignment and assumption agreement. As used herein, "Permitted Transferee" means a person or entity (i) that possesses the experience and qualifications necessary for the proper performance of Lessee's obligations under this Ground Lease following completion of the Project, and (ii) that possesses the financial resources typical of owners of similar projects.

### **Section 7.2 Permitted Transfer by Lessee.**

(a) Notwithstanding the foregoing, Lessor consents to the following ("Permitted Transfers"):

(1) a transfer to an entity which is under the direct control of Lessee or under common control with the Lessee, or in which Lessee is the sole member or partner of the

transferee entity, and that does not change management or operational control of Lessee or the Project;

(2) the lease or license of the residential units consistent with this Ground Lease, the Regulatory Agreement and the Project Homekey Agreement.

## **ARTICLE 8. INSURANCE**

Section 8.1 **Required Insurance Coverage.** Lessee shall during the Lease Term maintain the following policies of insurance:

(a) **Liability and Property Damage Insurance.** During the Lease Term, Lessee shall keep in full force and effect a policy or policies of comprehensive general liability and property damage insurance against liability for bodily injury to or death of any person or property damage arising out of an occurrence on or about the Leased Premises. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit each occurrence, Two Million Dollars (\$2,000,000) annual aggregate, together with Three Million Dollars (\$3,000,000) excess liability coverage, or such other policy limits as Lessor may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) **Workers' Compensation Insurance.** Lessee shall carry or cause to be carried workers' compensation insurance covering all persons employed in connection with the Leased Premises and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor and/or Lessee. Lessee shall furnish or cause to be furnished to Lessor evidence satisfactory to Lessor that Lessee and any contractor that has contracted for the performance of work on the Leased Premises or otherwise pursuant to this Ground Lease carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

(c) **Builders' Risk Insurance.** Upon commencement of construction and continuing until issuance of a temporary certificate of occupancy, or equivalent for the Improvements, Lessee and all contractors working on behalf of Lessee shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming Lessor as loss payee as its interests may appear. During the course of any alteration, construction or reconstruction, the cost of which exceeds Two Hundred Fifty Thousand Dollars (\$250,000), Lessee shall obtain or cause its contractor to obtain builders' risk insurance for the full insurable cost of the work and liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury or property damage insuring the interests of Lessor, Lessee and any contractors and subcontractors.

(d) **Property Insurance.** During the Lease Term, Lessee shall keep in full force and effect a policy or policies of insurance against fire, extended coverage, vandalism, and malicious mischief, and such other additional perils, hazards, and risks as now are or may be

included in the standard "all risk" form in general use in Alameda County, California, with the standard form fire insurance coverage in an amount equal to full actual replacement cost thereof, as the same may change from time to time. The above insurance policy or policies shall include coverage for earthquakes to the extent generally and commercially available at commercially reasonable rates, if such insurance is generally obtained for affordable multifamily housing projects in Alameda County. Lessor shall be a loss payee under such policy or policies and such insurance shall contain a replacement cost endorsement.

## **Section 8.2 Insurance Policies and Premiums.**

(a) All liability policies required by this Ground Lease shall be written on an occurrence basis, and shall name the Indemnitees as additional insureds. Duplicate copies of such policies or certificates of such insurance shall be promptly furnished to Lessor.

(b) All policies of insurance shall include an endorsement that provides that notice of any change or cancellation of said policy must be made in writing and sent to Lessee and Lessor at their respective principal offices at least thirty (30) days before the effective date of change or cancellation.

(c) Companies writing the insurance required hereunder shall be approved to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name Lessor as loss payee.

(d) If any insurance policy or coverage required hereunder is canceled or reduced, Lessee shall, within thirty (30) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Lessor a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Lessor may, with notice and at its option, procure such insurance coverage at Lessee's expense, and Lessee shall promptly reimburse Lessor for such expense upon receipt of billing from Lessor.

(e) Coverage provided by Lessee shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Lessor, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Lessor. Lessee shall furnish the required certificates and endorsements to Lessor prior to the commencement of rehabilitation or construction work on the Project and shall provide Lessor with certified copies of the required insurance policies upon request of Lessor.

(f) Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, Lessor's Risk Manager. At the option of and upon request by Lessor's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Lessee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

### Section 8.3 **Proceeds of Insurance.**

(a) All fire and standard risk or extended coverage (casualty) insurance proceeds shall be applied to the payment of the costs of repairing or rebuilding that part of the Leased Premises damaged or destroyed, provided that the extent of the Lessee's obligation to restore the Leased Premises shall be limited to the amount of the insurance proceeds.

(b) If the Improvements are not repaired or rebuilt, all such proceeds shall be paid to Lessor.

(c) All insurance proceeds received under the policies set forth in this Article 6 shall be paid to Lessee, provided that Lessee agrees that it shall apply such proceeds for reconstruction or repair of the Improvements unless such repair or reconstruction is not economically feasible.

### Section 8.4 **Limitation of Liability.**

(a) In addition to any other indemnities provided in this Ground Lease, Lessee shall indemnify, protect, defend (with counsel reasonably acceptable to Lessor), and hold harmless the Indemnitees from and against all Claims arising out of, attributable to or otherwise occasioned, in whole or in part, by (i) any breach of Lessee's representations and warranties or Lessor's obligations under this Ground Lease, or (ii) the operation of the Leased Premises, except to the extent any such Claim arises from the active negligence or willful misconduct of Lessor or the Indemnitees.

(b) In addition to any other indemnities provided in this Ground Lease, Lessor shall indemnify, protect, defend (with counsel reasonably acceptable to Lessee), and hold harmless Lessee, its officers, employees, agents, contractors, servants, directors, members or partners from and against all Claims arising out of, attributable to or otherwise occasioned, in whole or in part, by any breach of Lessor's representations and warranties or Lessor's obligations under this Ground Lease, except to the extent any such Claim arises from the active negligence or willful misconduct of Lessee or its officers, employees, agents, contractors, servants, directors, members or partners.

(c) The provisions of this Section 8.4 shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 9. MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS**

**Section 9.1 Maintenance of Leased Premises and Landscaping.** During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements hereafter developed, and all appurtenances thereunto belonging, in good and safe order, condition and repair, free of debris, waste, and graffiti, in compliance with the terms of all applicable provisions of the San Leandro Municipal Code, and in accordance with the standard of maintenance of high quality apartment projects within the Bay Area region. To accomplish the maintenance, Lessee shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment,

materials, support facilities, and any and all other items necessary to comply with the requirements of this Ground Lease. All such maintenance and repair shall conform to and comply with all Legal Requirements affecting the Leased Premises. Lessee agrees that Lessor shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Improvements and the Leased Premises. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Lessor as may be provided for in Section 1941 and 1942 of the California Civil Code, if applicable.

## **Section 9.2 Landscaping Maintenance.**

(a) Lessee, at no expense to the Lessor, shall maintain in healthful, attractive and reasonably weed-free manner all the landscaped areas related to the Project as shown in the landscaping plan approved by the Lessor. "Landscaped areas" as used in this Ground Lease shall mean plantings and irrigation systems which have been installed, or are proposed to be installed, pursuant to the City-approved landscaped plan for the Project. All plantings shall be maintained using generally accepted methods of cultivation to ensure reasonably normal, healthy plant growth. Maintenance shall include replacement of plantings, when necessary, and all ordinary and usual care, including, but not limited to, irrigation, fertilization, pest and disease control, weeding, rotation of plantings and the removal of trimmings, rubbish, debris, and other solid waste. Lessee shall, at no expense to the Lessor, install, maintain, repair, and replace, where necessary, such irrigation systems as are required to provide adequate irrigation in compliance with water conservation practices.

(b) If, in the reasonable judgment of the Lessor, Lessee has failed to maintain properly any landscaping as required by this Ground Lease, the Lessor may perform such maintenance, at its option, after thirty (30) days' prior written notice to Lessee of such failure to maintain. In such event, the Lessor's performance of such maintenance shall be at the Lessee's sole expense and Lessee, upon demand by the Lessor, shall pay to the Lessor all reasonable expenses incurred by the Lessor in the performance of such maintenance.

(c) If any maintenance, repair, or replacement of landscaping needs immediate correction as a result of a public safety or health hazard, as reasonably determined by the Lessor, and such maintenance is not performed, or cannot be performed, by Lessee within twenty-four (24) hours of receipt of such notice thereof, the Lessor may perform or cause to be performed such maintenance at Lessee's expense, and Lessee, upon demand by the Lessor, shall pay to the Lessor all reasonable expenses incurred by the Lessor in the performance of such maintenance.

**Section 9.3 Alterations to Leased Premises.** Lessee may make any additions, alterations or changes (sometimes collectively referred to herein as "Alterations") in or to the Improvements subject to the prior approval of the Lessor, which approval shall not be unreasonably withheld, however, to the following conditions:

(a) No Alterations shall be made that would tend to impair the structural soundness of the Improvements;

(b) No Alterations shall be undertaken that are prohibited by, or would cause the Leased Premises, the Improvements, Lessee, or Lessor to be in breach or violation of any Legal Requirements;

(c) No Alterations shall be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, and the consent of Lessor. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorization; and

(d) Any Alterations shall be performed in good, skillful and professional manner and in compliance with all applicable Legal Requirements and all applicable Insurance Requirements.

(e) Any and all Alterations are consistent with the use of the Leased Premises as authorized under this Ground Lease.

**Section 9.4 Indemnifications.** Except with respect to the indemnifications concerning Hazardous Materials which are addressed in Section 10.2 of this Ground Lease, notwithstanding any other provision of this Ground Lease to the contrary, and in addition to any other indemnities provided in this Ground Lease, to the fullest extent permitted by law, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) the Indemnitees from and against any and all Claims, to the extent arising from or relating to Lessee's obligations under this Ground Lease or the construction or operation of the Improvements or any Alterations except to the extent any such Claim arises from the active negligence or willful misconduct of the Indemnitees. In addition and subject to the limitations set forth herein, if any contractor or subcontractor which performed any construction work for Lessee or Lessee's affiliates on the Improvements or Alterations shall assert any claim against Lessor on account of any damage alleged to have been caused by reason of acts of negligence of Lessee or Lessee's affiliates, members, partners, officers, directors, affiliates, agents, employees or construction contractors, Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Lessor shall be allowed, Lessee shall pay or cause to be paid or satisfied such judgment of claim and pay all costs and expenses in connection therewith to the extent such claim results from the acts of negligence alleged against Lessee. The provisions of this Section 9.4 shall survive the expiration or termination of this Ground Lease.

## **ARTICLE 10. HAZARDOUS MATERIALS**

**Section 10.1 Hazardous Materials.** Lessee shall not knowingly permit the Leased Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Leased



Premises except: (a) as may be authorized by an agency of applicable jurisdiction, (b) for cleaning supplies and other materials in volumes and concentrations customarily used in construction, rehabilitation, use or maintenance of residential properties similar in nature to the Leased Premises, and used, stored and disposed of in compliance with Environmental Laws; and (c) as may otherwise be allowed under Environmental Laws.

Lessee shall take commercially reasonable action to prevent the release of any Hazardous Materials into the environment from the Leased Premises. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the standards generally applied by apartment complexes in Alameda County, California, as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials.

Notwithstanding the obligation of Lessee to indemnify Lessor and its officers, officials, members, employees, agents, and representatives pursuant to this section, and provided no Hazardous Materials exist on the Leased Premises as a result of Lessor's action, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state, regional, or local governmental agency or political subdivision or any Environmental Laws and (ii) all actions necessary to make full economic use of the Leased Premises for the purposes contemplated by the Regulatory Agreement, the Project Homekey Agreement and this Ground Lease, which requirements or necessity arise from the presence upon, about, or beneath the Leased Premises, of any Hazardous Materials. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Leased Premises, the preparation of any feasibility studies or reports, and the performance of any cleanup, remedial, removal, or restoration work.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after it becomes aware of the release, furnish to the Lessor a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Lessor, Lessee shall furnish to the Lessor a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Leased Premises including, but not limited to, all permit applications, permits, and reports, including, without limitation, those reports and other matters which may be characterized as confidential.

**Section 10.2 Hazardous Materials Indemnification.** From and after the Commencement Date, to the greatest extent allowed by law, Lessee shall indemnify, defend (with counsel reasonably approved by Lessor) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Leased Premises, or the transportation of any such Hazardous Material to or from, the Leased Premises occurring after the Commencement Date, or (ii) the failure of Lessee, Lessee's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws related to the Leased Premises, unless caused by the Lessor's active or passive negligence. The foregoing indemnity shall further apply to any residual Hazardous Materials in, on, under or about the Leased Premises or affecting any natural resources arising in connection with the generation, use, handling,

treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws, but only to the extent that such release of Hazardous Materials occurs after the Commencement Date. The provisions of this Section 10.2 shall survive the expiration or termination of this Ground Lease.

Lessee's indemnity obligations under this paragraph shall not apply to (a) any release of Hazardous Materials or Claim related to Hazardous Material that occurred or first accrued before the Lessee's possession of the Leased Premises, whether known or unknown, and (b) Claims arising out of the Lessor's failure to disclose any known condition that the Lessor is required to give to the Lessee. Lessor agrees to defend, indemnify, protect and hold harmless the Lessee, and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("Lessee Indemnities") from, regarding and against any and all liabilities, obligations (including but not limited to the duty to respond to any governmental inquiry, investigation, claim or demand regarding such Hazardous Materials), orders, decrees, judgments, liens, demands, actions, environmental response actions, claims, losses, damages, fines, penalties, expenses, environmental response costs or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), resulting from or in connection with (i) the release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Leased Premises, or the transportation of any such Hazardous Material to or from, the Leased Premises occurring during the Lessor's ownership of the Leased Premises and prior to the Commencement Date, or (ii) the failure of Lessor, Lessor's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing, to comply with Environmental Laws, except to the extent caused in whole or in part by the negligence of Lessee or any of the Lessee Indemnities in accordance with the principles of comparative negligence ("Lessee's Indemnification"). If the Lessor discovers Hazardous Materials or other materials subject to legal requirements or corrective action, the Lessor shall immediately notify the Lessee of the same.

## **ARTICLE 11. REPRESENTATIONS AND WARRANTIES**

**Section 11.1 Representations, Warranties and Covenants of Lessor.** As an inducement to Lessee to enter into and proceed under this Ground Lease, Lessor warrants and represents to Lessee as follows, which warranties, representations and covenants are true and correct as of the date of this Ground Lease, to the actual knowledge of Lessor:

- (a) Lessor has the right, power and authority to enter into this Ground Lease and to lease the Leased Premises to Lessee in accordance with the terms, provisions and conditions contained in this Ground Lease, and no other party has any right or option to lease the Leased Premises;
- (b) Lessor has received no written notice and has no actual knowledge of any litigation or action, pending or threatened, materially and adversely affecting the Leased Premises;



(c) Lessor has received no written notice and has no actual knowledge of any pending or threatened Taking relating to all or any part of the Leased Premises;

(d) the entry by Lessor into this Ground Lease with Lessee and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreement relating to the Leased Premises to which Lessor is a party or by which it is bound;

(e) except as disclosed to Lessee or as is apparent from Lessee's inspection, there is no tenant, lessee or other occupant of the Leased Premises having any right or claim to possession or use of the Leased Premises;

(f) Lessor has received no written notice and has no actual knowledge of any violations of any Legal Requirements affecting any portion of the Leased Premises that materially affect the development of the Improvements;

(g) To Lessor's actual knowledge, there is no notice from any Governmental Authority or any Person, claiming any violation of any Legal Requirement pertaining to Hazardous Materials or any liability thereunder, or requiring or calling any attention to the need for any environmental remediation on or in connection with the Leased Premises, and Lessor, its agents or employees have not ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order;

(h) Except for any representations and warranties specifically with respect to the condition of the Leased Premises set forth in this Agreement, Lessor makes no representation or warranty with respect to the condition of the Leased Premises or the Leased Premises or their fitness or availability for any particular use.

**Section 11.2 Representations, Warranties and Covenants of Lessee.** As an inducement to Lessor to enter into and to proceed under this Ground Lease, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants are true and correct as of the date of this Ground Lease:

(a) **Authority.** Lessee has the right, power and authority to enter into this Ground Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Ground Lease;

(b) **No Breach of Obligations.** The entry by Lessee into this Ground Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound;

(c) **Litigation.** Lessee has received no written notice and has no actual knowledge of any litigation or action, pending or threatened, materially and adversely affecting Lessee's ability to carry out its obligations hereunder; and

(d) **Bankruptcy.** Lessee is not the subject of a pending or threatened bankruptcy proceeding.

## **ARTICLE 12. EMINENT DOMAIN**

**Section 12.1 Termination of Ground Lease.** Lessor and Lessee agree that, in the event of a Taking such that Lessee reasonably determines that the Leased Premises cannot continue to be operated, at reasonable cost, for its then-current use, then this Ground Lease shall, at Lessee's sole option, terminate as of the date of the Taking.

**Section 12.2 Continuation of Ground Lease and Presumption of Restoration.** Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Ground Lease pursuant to Section 12.1 above, this Ground Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 12.4 below to Lessor and Lessee, if the terms of the applicable Leasehold Mortgage so require, and shall be used so as to make the same a complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking.

**Section 12.3 Temporary Taking.** If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Ground Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all Rents, impositions and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

**Section 12.4 Apportionment of Award.** If there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration Lessor's fee interest in the Leased Premises (as encumbered by this Ground Lease) and the Improvements. If the Leased Premises are restored as in contemplated in Section 12.2 above, Lessee shall be entitled to recover the costs and expenses reasonably incurred in such restoration out of any Net Condemnation Award payable to Lessee. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated as follows on a proportionate basis reflecting the Parties' respective interests in the Leased Premises and Improvements and the remaining duration of the Term as follows:

**Section 12.5 Award on Total or Substantial Taking.** In the event of a total or substantial taking, the award shall be apportioned as follows, in the following order:

(a) To Lessor that portion of the award equal to the fair market value of the Leased Premises and Improvements. Any "bonus value" attributable to this Ground Lease shall be paid to Lessor.

(b) To Lessee, that portion of the award equal to the fair market value of the Lessee's leasehold estate.

(c) The balance, if any, shall be allocated to Lessor.

**Section 12.6 Award on Partial Taking.** In the event of a partial taking, after application of the Award for restoration, any remaining portion of such award shall be apportioned as follows, in the following order:

(a) To Lessor, that portion of the award attributable to the fair market value of the portion of the Leased Premises taken.

(b) To Lessee, that portion of the award equal to the fair market value of the Lessee's leasehold estate in the Leased Premises.

(c) The balance, if any, shall be allocated to Lessor.

**Section 12.7 Lessor Reservation of Rights.** Notwithstanding any provisions in this Ground Lease to the contrary, nothing herein does or shall be construed to limit or require the Lessor to exercise its ability to condemn any property, including the Leased Premises, in accordance with applicable law. Nothing in this Ground Lease does or shall be construed as requiring the Lessor to pay to Lessee, or any other third party with an interest in the Leased Premises, any amount of money, as compensation for alleged condemnation or otherwise, if Lessor (or its successor) seeks to enforce any of the rights and obligations under this Ground Lease and the Regulatory Agreement and any executed attachments thereto. Except when Lessor exercises its ability to condemn the Leased Premises by adoption of a resolution of necessity and pursuant to other provisions of applicable law, Lessor shall not be construed as pursuing or effectuating a Taking or acting as a "condemning authority" under this Ground Lease.

## **ARTICLE 13. DAMAGE OR DESTRUCTION**

**Section 13.1 Damage or Destruction to Leased Premises.** Lessee shall give prompt written notice to Lessor after the occurrence of any material fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as "Casualty"). Subject to Section 13.2 below, if during the Term the Improvements shall be damaged or destroyed by Casualty, Lessee shall repair or restore the Improvements, so long as Lessee determines, in its sole discretion, that it is feasible to do so and in such event Lessee provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Lessee shall determine, by notice to Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Ground Lease as of a date that is not fewer than thirty (30) days after the date of such notice. If Lessee terminates this Ground Lease pursuant to this Section 13.1, Lessee shall surrender possession of the Leased

Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, as referenced in Section 13.2 below.

**Section 13.2 Distribution of Insurance Proceeds.** In the event that this Ground Lease is terminated pursuant to Section 11.1 hereof, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, such insurance proceeds shall be paid to Lessee or, (b) as applicable pursuant to Section 11.1 above, assigned or paid over to Lessor.

**Section 13.3 Insurance Requirements.** Nothing in this Article 11 does or shall be construed as permitting Lessee to maintain less than the minimum insurance requirements set forth in this Ground Lease.

## **ARTICLE 14. EVENTS OF DEFAULT**

**Section 14.1 Events of Lessee Default.** Each of the following shall be an "Event of Default" by Lessee hereunder:

(a) failure by Lessee to pay any Rent or Additional Rent when due if such failure shall continue for a period of thirty (30) days after notice thereof has been given by Lessor to Lessee;

(b) Lessee's default in the performance of any term, provision or covenant under this Ground Lease (other than an obligation enumerated in this Section 14.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which Lessor shall have given written notice of the default to Lessee, or if the nature of any such non-monetary default is such that it cannot be cured within sixty (60) days, Lessee's failure to commence to cure the default within sixty (60) days and thereafter prosecute and complete the curing of such default with due diligence and in good faith continue to cure the default until completion, but in no event shall the cure be completed more than one hundred twenty (120) days from receipt of the notice of default;

(c) Lessee's failure to maintain insurance on the Leased Premises and the Improvements as required hereunder, and the failure of Lessee to cure such default within fifteen (15) days;

(d) Subject to Lessee's right to contest the following charges, Lessee's failure to pay possessory interest taxes due on the Leased Premises or the Improvements, and Lessee's failure to cure such default within thirty (30) days of delinquency;

(e) Lessee abandons, vacates, or otherwise surrenders the Leased Premises or the Improvements, or is dispossessed (other than dispossession as the result of a Taking subject to Section 12 hereof by process of law or otherwise;

(f) A Transfer occurs, either voluntarily or involuntarily, in violation of this Ground Lease;

(g) The subjection of any right or interest of Lessee in this Ground Lease to attachment, execution, or other levy, or to seizure under legal process, if not released within sixty (60) days;

(h) Lessee shall have voluntarily or involuntarily suspended its business for a period in excess of thirty (30) days for reasons other than Force Majeure, or Lessee shall have been dissolved or terminated;

(i) The appointment of a receiver, to take possession of Lessee's estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated, dismissed or vacated within ninety (90) days after the appointment of the receiver;

(j) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Lessee or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Lessee or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Lessee or any general partner thereof or for the Leased Premises; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(k) The filing against Lessee of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of filing;

(l) The appointment of a trustee or receiver for Lessee or for all or the major part of the Leased Premises, in any involuntary proceeding, or the taking of jurisdiction by any court over all or the major part of the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Lessee, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days;

(m) Any of Lessee's representations or warranties contained in this Ground Lease or in any financial statement, certificate or report submitted to Lessor in connection with this Ground Lease proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to Lessor if the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to the Lessee.

#### **Section 14.2 Rights and Remedies.**

(a) At any time after the occurrence of an Event of Default hereunder, subject in all respects to the provisions of this Ground Lease with respect to Lessor's rights to cure defaults by Lessee, Lessor may, in addition to any other rights and remedies available at law or in equity, terminate this Ground Lease by giving Lessee written notice thereof, setting forth in

such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Ground Lease and Lessee's interests created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Residents or others in possession pursuant to Resident Subleases with Lessee so long as such Resident or others are not in default thereunder and attorn to Lessor as their lessor.

(b) Upon the exercise of Lessor's remedies pursuant to this Section 14.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's rights hereunder.

(c) If Lessee shall have failed to cure a default by Lessee after expiration of the applicable time for cure of a particular default, Lessor, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Lessee, after which Lessor shall retain, and may exercise and enforce, any and all rights that Lessor may have against Lessee as a result of such default, (ii) from time to time without releasing Lessee in whole or in part from the obligations to be performed by Lessee hereunder, may cure the default at Lessee's cost, (iii) may terminate this Ground Lease, and/or (iv) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable cost incurred by Lessor in order to cure such a default by Lessee shall be due immediately from Lessee, together with interest, and may be offset against any amounts due from Lessor to Lessee.

(d) Remedies Cumulative. No remedy provided in this Section shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Ground Lease may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

(e) No Election of Remedies. The rights given in this Section to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Ground Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Lessor upon the conditions and subject to the provisions in this Ground Lease to terminate Lessee's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Ground Lease beyond the applicable cure period.



(f) **Survival of Obligations.** Nothing herein shall be deemed to affect the right of Lessor to indemnification for liability arising prior to the termination of the Ground Lease for personal injuries or property damage or in connection with any other Claim, nor shall anything herein be deemed to affect the right of Lessor to equitable relief where such relief is appropriate. No expiration or termination of this Ground Lease by operation of law or otherwise, and no repossession of the Leased Premises or any part thereof, shall relieve Lessee of any of its obligations to indemnify and defend the Indemnitees pursuant to the provisions of this Ground Lease, and all such provisions, and all of Lessee's accrued liabilities and obligations hereunder, shall survive such expiration, termination or repossession.

(g) **No Waiver.** Except to the extent that Lessor may have agreed in writing, no waiver by Lessor of any breach by Lessee of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Lessor to seek a remedy for any breach by Lessee be deemed a waiver by Lessor of its rights or remedies with respect to such breach.

#### **Section 14.3 Default by Lessor.**

(a) **Events of Default.** Lessor shall be in default of this Ground Lease if it fails to perform any provision of this Ground Lease that is obligated to perform or if any Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within sixty (60) days after written notice of the default has been given to Lessor. If the default cannot reasonably be cured within sixty (60) days, Lessor shall not be in default of this Ground Lease if Lessor commences to cure the default within such sixty (60) days and thereafter prosecutes and completes the cure of such default with due diligence and in good faith, but in no event shall the cure be completed more than one hundred twenty (120) days from the receipt of the notice of default.

(b) **Right to Cure; Lessee's Remedies.** If Lessor shall have failed to cure a default by Lessor after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without releasing Lessor in whole or in part from the obligation to be performed by Lessor hereunder, may cure the default at Lessor's cost provided that Lessor has been given thirty (30) days advance written notice of Lessee's election to do so and Lessor has not within such time notified Lessee that Lessor will cure the default, and/or (iii) may terminate this Ground Lease.

**Section 14.4 Notices.** Notices given by Lessor under Section 14.1 or by Lessee under Section 14.3 shall specify the alleged default and the applicable Ground Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Ground Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Ground Lease unless expressly set forth in such notice.

**ARTICLE 15.**  
**QUIET ENJOYMENT AND POSSESSION; INSPECTIONS**

Section 15.1 **Quiet Enjoyment.** Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Ground Lease and all applicable Legal Requirements.

Section 15.2 **Lessor's Right of Inspection.** Notwithstanding Section 15.1 above, Lessor, in person or through its agents, upon reasonable prior notice to Lessee, shall have the right, subject to the rights of Residents, to enter upon the Leased Premises for purpose of reasonable inspections performed during reasonable business hours in order to assure compliance by Lessee with its obligations under this Ground Lease.

**ARTICLE 16.**  
**VACATION OF LEASED PREMISES**

Section 16.1 **Vacation Upon Termination.** Lessee covenants that upon any termination of this Ground Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Lessee will peaceably and quietly yield and surrender possession of the Leased Premises to Lessor. The foregoing, however, will be subject to the rights of Residents or others in possession pursuant to Resident Subleases with Lessee, provided that such Residents are not in default thereunder and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

**ARTICLE 17.**  
**NON-MERGER**

Section 17.1 **Non-Merger.** Except upon expiration of the Term or upon termination of this Ground Lease, there shall be no merger of either this Ground Lease or Lessee's estate created hereunder with Lessor's fee interest in the Leased Premises by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Ground Lease, Lessee's estate created hereunder or any interest in this Ground Lease or the Improvements, and (b) a fee interest in the Leased Premises or the Improvements, unless and until the Lessor and all persons, including any assignee of Lessor, having an interest in (i) this Ground Lease or Lessee's Estate created hereunder, and (ii) the fee estate in the Leased Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

**ARTICLE 18.**  
**MISCELLANEOUS PROVISIONS**



Section 18.1 **Consents.** Lessor agrees not to unreasonably withhold or delay its consent to matters requiring Lessor's consent hereunder unless the applicable provision of this Ground Lease permits Lessor to exercise Lessor's sole discretion with respect to a particular matter.

Section 18.2 **Enforced Delay; Extension of Times of Performance.** Time is of the essence in the performance of each of the Parties' respective obligations set forth in this Ground Lease. Except as expressly set forth in this Section 18.2, performance by any Party hereunder shall not be deemed to be in default and such Party shall be entitled to an extension of time to perform its obligations hereunder where delays in performance are due to causes beyond the reasonable control and without the fault of such Party, including as applicable: war; acts of terrorism, insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God, acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement), unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other Parties; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Lessor shall not excuse performance of the Lessor); or other causes beyond the control or without the fault of the Party claiming an extension of time to perform ("Force Majeure"). An extension of time for any cause permitted under this Section 18.2 shall be limited to the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. If no written notice is sent within thirty (30) days, for purposes of measuring the extension period for performance of the obligation in question, the period of the enforced delay shall commence to run from the date written notice is sent to the other Party. Times of performance under this Ground Lease may be extended by mutual written agreement of the Parties.

Section 18.3 **Interpretation.** The terms of this Ground Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Ground Lease or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Ground Lease.

Section 18.4 **Entire Agreement; Modifications.** This Ground Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Ground Lease and the executed attachments thereto contain the sole and entire understanding between the parties with respect to the leasing of the Leased Premises. This Ground Lease shall not be modified or amended in any respect, except by written instrument specifically referencing such modification or amendment which is executed by or on behalf of the Parties in the same manner as this Ground Lease is executed.

Section 18.5 **Governing Law.** This Ground Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of California without regard to conflict of law principles. Venue for any dispute hereunder shall be in Alameda County, California.

Section 18.6 **Binding Effect.** This Ground Lease shall inure to the benefit of and be binding upon the Parties hereto, their successors, administrators, executors and permitted assigns.

Section 18.7 **Severability.** In the event any provision or portion of this Ground Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 18.8 **Further Assurances.** From and after the date of this Ground Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Ground Lease.

Section 18.9 **Authority to Execute Agreement.** Each Party represents and warrants to the other Party that by proper action the person executing this Ground Lease on behalf of such Party has been duly authorized to execute and deliver this Ground Lease.

Section 18.10 **Ground Lease Administration and Approvals.** The City Manager of the City of San Leandro, or his or her designee, shall be the person designated by Lessor to administer this Ground Lease on behalf of Lessor. The City Manager of the City of San Leandro shall have the authority to consent to any matter requiring Lessor approval or consent as provided in this Ground Lease, and to perform and carry out any activities concerning this Ground Lease, including but not limited to, the execution of any additional agreements, addenda or amendments so long as such actions do not substantially affect the rights and obligations of Lessor as specified herein.

Section 18.11 **Captions.** All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Ground Lease, shall not supplement, limit or otherwise vary the text of this Ground Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Ground Lease.

Section 18.12 **Gender.** Words of any gender used in this Ground Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 18.13 **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Ground Lease is attached to this Ground Lease and is and shall be construed to be made a part of this Ground Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 18.14 **References.** All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Ground Lease. Unless

otherwise specified in this Ground Lease, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like similar import, shall be deemed to refer to this Ground Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 18.15 **Cumulative.** Except as expressly limited by the terms of this Ground Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 18.16 **Notices.** All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by certified mail, return receipt requested; by reputable commercial delivery service; or by hand delivery by a reputable courier or by electronic mail ("email"), to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable, provided, however, if any notice is given by email, such notice shall not be deemed delivered or given until a copy of such notice is either deposited in the mail or with a reputable commercial delivery service. By giving prior written notice thereof, any Party, from time to time, may change its address for notices under this Ground Lease.

To Lessor: City of San Leandro  
835 E. 14th Street  
San Leandro, CA 94577  
Attention: City Manager

With copy to: Community Development Director and City Attorney

To Lessee: Housing Consortium of the East Bay  
1204 Preservation Park Way, Suite 200  
Oakland, CA 94612  
Attention: Executive Director

With copies to

Section 18.17 **Counterparts.** This Ground Lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 18.18 **Time of Essence.** Time is and shall be of the essence in this Ground Lease.

Section 18.19 **Attorneys' Fees.** In any litigation or other action brought to enforce this Ground Lease or regarding a dispute over terms of the Ground Lease or the performance of a Party, the prevailing Party in such litigation or action shall be entitled to attorneys' fees and the costs of such litigation from the non-prevailing Party.

Section 18.20 **No Third Party Beneficiaries.** Except as expressly set forth herein, nothing contained in this Ground Lease is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

Section 18.21 **Parties Not Co-Venturers; Independent Contractor; No Agency Relationship.** Nothing in this Ground Lease is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Lessee and Lessor is and shall remain solely that of a Lessee and Lessor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. Lessor neither undertakes nor assumes any responsibility or duty to Lessee (except as expressly provided in this Ground Lease) or to any third party with respect to the Project.

Section 18.22 **No Personal Liability.** Notwithstanding anything contained in this Ground Lease to the contrary, the obligations of Lessor under this Ground Lease (including any actual or alleged breach or default by Lessor) do not constitute personal obligations of the individual officers or employees of Lessor, and Lessee shall not seek recourse against the individual officers or employees of Lessor, or against any of their personal assets for satisfaction of any liability with respect to this Ground Lease.

IN WITNESS WHEREOF, this Ground Lease is made and entered into in multiple original counterparts on the day and year first above written.

LESSOR:

CITY OF SAN LEANDRO  
a California charter city and municipal corporation

By: \_\_\_\_\_  
Frances M. Robustelli  
City Manager

ATTEST:

\_\_\_\_\_  
Kelly B. Clancy  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Pio Roda  
City Attorney

LESSEE:

HOUSING CONSORTIUM OF THE EAST BAY,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Darin Lounds  
Executive Director

**EXHIBIT A**

**Legal Description of Leased Premises**

**(Attached)**

DRAFT

**EXHIBIT "A"**  
Legal Description

For [APN/Parcel ID\(s\): 412-0001-004-01](#)

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF THE COUNTY ROAD LEADING FROM SAN LORENZO TO ROBERTS LANDING (ALSO KNOWN AS LEWELLING BOULEVARD, MAIN STREET AND COUNTY ROAD NO. 558), AT THE POINT OF INTERSECTION THEREOF, WITH THE LINE DIVIDING LAND FORMERLY OWNED BY E.T. CRANE FROM LAND FORMERLY OWNED BY J.B. MARLIN; RUNNING THENCE NORTH 89° 42' EAST ALONG SAID NORTHERLY LINE OF SAID ROAD, A DISTANCE OF 100 FEET; RUNNING THENCE NORTH 0° 18' WEST, A DISTANCE OF 300 FEET; RUNNING THENCE SOUTH 89° 42' WEST, A DISTANCE OF 100 FEET TO SAID DIVIDING LINE AND RUNNING THENCE SOUTHERLY ALONG SAID DIVIDING LINE, A DISTANCE OF 300 FEET TO THE POINT OF BEGINNING.

DRAFT

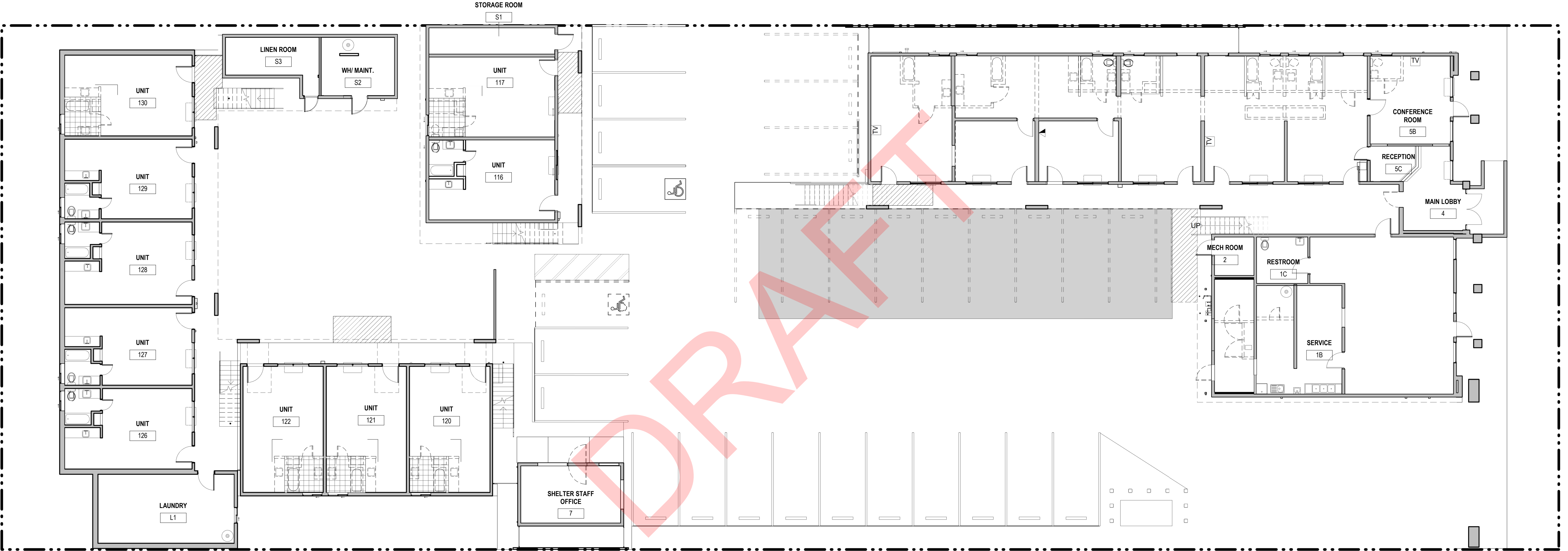


**EXHIBIT B**

**Site Plan of Leased Premises**

**(Attached)**

DRAFT



## EXHIBIT C

### Form of Memorandum of Lease

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

### MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is entered into as of \_\_\_\_\_, 202\_\_, by and between the City of San Leandro, a California municipal corporation (the "**Lessor**"), and Housing Consortium of the East Bay, a California nonprofit public benefit corporation (the "**Lessee**"), with respect to that certain Ground Lease dated \_\_\_\_\_, 202\_\_ (the "**Ground Lease**"), between the Lessor and the Lessee. All capitalized terms used in this Memorandum and not defined shall have the meaning set forth in the Ground Lease.

1. Pursuant to the Ground Lease, Lessor leases to Lessee and Lessee leases from Lessor that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "**Leased Premises**"). The Ground Lease shall commence on \_\_\_\_\_, 202\_\_, and shall remain in effect for the five (5) year Initial Term of the Ground Lease, together with any One Year Extension Terms as provided thereunder, unless sooner terminated pursuant to the terms and conditions of the Ground Lease.
2. As more particularly set forth in the Ground Lease, certain development and use restrictions apply to the Leased Premises.
3. This Memorandum shall incorporate herein all of the terms and provisions of the Ground Lease as though fully set forth herein.
4. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Ground Lease, of which this is a memorandum. In the event

of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Ground Lease, the terms and conditions of the Ground Lease shall control.

5. This Memorandum may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts so executed shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSOR:

CITY OF SAN LEANDRO  
a California charter city and municipal corporation

By: \_\_\_\_\_  
Frances M. Robustelli  
City Manager

ATTEST:

\_\_\_\_\_  
Kelly B. Clancy  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Pio Roda  
City Attorney

LESSEE:

HOUSING CONSORTIUM OF THE EAST BAY,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Darin Lounds  
Executive Director

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 )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, 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.

Name: \_\_\_\_\_  
Notary Public

**Exhibit A**  
**LEGAL DESCRIPTION**  
**(Attached)**

DRAFT

**EXHIBIT "A"**  
Legal Description

For [APN/Parcel ID\(s\): 412-0001-004-01](#)

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF THE COUNTY ROAD LEADING FROM SAN LORENZO TO ROBERTS LANDING (ALSO KNOWN AS LEWELLING BOULEVARD, MAIN STREET AND COUNTY ROAD NO. 558), AT THE POINT OF INTERSECTION THEREOF, WITH THE LINE DIVIDING LAND FORMERLY OWNED BY E.T. CRANE FROM LAND FORMERLY OWNED BY J.B. MARLIN; RUNNING THENCE NORTH 89° 42' EAST ALONG SAID NORTHERLY LINE OF SAID ROAD, A DISTANCE OF 100 FEET; RUNNING THENCE NORTH 0° 18' WEST, A DISTANCE OF 300 FEET; RUNNING THENCE SOUTH 89° 42' WEST, A DISTANCE OF 100 FEET TO SAID DIVIDING LINE AND RUNNING THENCE SOUTHERLY ALONG SAID DIVIDING LINE, A DISTANCE OF 300 FEET TO THE POINT OF BEGINNING.

DRAFT



**EXHIBIT D**  
**SCOPE OF DEVELOPMENT**  
**(Attached)**

DRAFT

## EXHIBIT D SCOPE OF DEVELOPMENT

Construction is required to convert the existing layout of the building at 555 Lewelling Boulevard of 33 motel units to 29 units for interim housing consisting of all single room occupancy units. Each of the 29 units will be furnished with vinyl floors with a full bathroom and a sink in both the bathroom and the main living area. Five (5) of the units will meet ADA requirements for mobility and three (3) of the units will meet requirements for hearing and visually impaired.

The gross building area is approximately 30,000 square feet (SF). The total square footage of the combined units is approximately 13,500 SF (31 units X 400 SF, 2 units X 550 SF). The structure is conventional wood-frame on concrete slab with raised floor. The exterior is stucco with metal-clad doors. The roof material consists of 1) Primary buildings: flat roof construction with modified bituminous finish and 2) Secondary (Shed): asphalt shingles.

Common area finishes will have granite tile floors, painted gypsum board walls and floors. The units will have vinyl plank flooring throughout; vanities have solid surface countertops without cabinets; and painted gypsum board walls and ceilings. Plumbing fixtures for the units include a wet bar, toilets, lavatory, tub/showers with solid surface surrounds. Units have individual PTAC (Packaged Terminal Air Conditioner) units. Source and distribution of electrical are via a main switchboard with copper wiring. Each unit has a smoke and carbon monoxide (CO) detector. Common laundry facilities are located in front and rear buildings.

There is approximately 13,500 SF of commercial space that will be used for supportive service, community, and property management space.

**EXHIBIT E**  
**SCHEDULE OF PERFORMANCE**  
**(Attached)**

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**EXHIBIT E**  
**SCHEDULE OF PERFORMANCE**

<b>Milestone</b>	<b>Estimate Due Date</b>
Homekey Award Date	Late October 2023
Nimitz Motel Acquisition/Close of Escrow	10/30/2023
Homekey/City Financing Close	1/31/2024
Construction Start	2/15/2024
Construction Completion	10/15/2024
Client Engagement/Referrals	10/1/2024
Operations Begin/Occupancy Complete	12/31/2024

**EXHIBIT F**  
**REGULATORY AGREEMENT**  
**(Attached)**

DRAFT

## EXHIBIT F - REGULATORY AGREEMENT

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

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### 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] (“**Grantee**”) (each, a “**Co-Grantee**,” and collectively, the “**Grantee**”) 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 GRANTEE’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. Assembly Bill No. 140 (2021-2022 Reg. Sess.) provided the statutory basis for Round 3 of the Homekey Program by adding section 50675.1.3 to the Health and Safety Code and the MHP Program.
5. The Department issued a Notice of Funding Availability for Round 3 of the Homekey Program on March 29, 2023 , (the Notice of Funding Availability as amended shall be referenced herein as “**NOFA**”). The NOFA incorporates by reference the MHP Program, as well as the MHP Final Guidelines (“**MHP Guidelines**”), dated March 30, 2022, both as amended and in effect from time to time. The Round 3 Homekey grant funds are derived primarily from the state’s direct allocation of the federal Coronavirus State Fiscal Recovery Fund (“**CSFRF**”), which was established by the American Rescue Plan Act of 2021 (“**ARPA**”) (Pub.L. No. 117-2). Additional funding is derived from the state’s General Fund.
6. The MHP Program, the NOFA, the MHP Guidelines, ARPA, federal interpretive guidance relating to ARPA, and the Standard Agreement comprise the “**Program Requirements**.”
7. Pursuant to the terms of the Standard Agreement, the Department agreed to provide the Grantee 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 CSFRF MONEY] of CSFRF money for capital expenditures, and \$[INSERT AMOUNT OF STATE GENERAL FUND MONEY] of State General Fund money for a capitalized operating subsidy.
8. The Standard Agreement requires the Grantee to acquire the Property, and to ensure that it shall be used to provide decent, safe, and sanitary Interim Housing (as defined below) for individuals and families who are experiencing homelessness 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 [INSERT THE FOLLOWING FOR GRANTEES UTILIZING HOME ARP AS MATCH OTHERWISE DELETE and individuals and families who are “Fleeing, or Attempting



to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking” and “Other Populations” as defined in HUD Community Planning and Development (CPD) Notice 21-10] (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.

9. 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.
10. 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 Grantee 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 thirty (30) years after a certificate of occupancy or its equivalent has been issued for the Interim Housing by the local jurisdiction or, if no such certificate is issued, from the date of initial occupancy of the Interim Housing, 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 Grantee, 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]. 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**

DRAFT

## EXHIBIT “B”

### INTERIM HOUSING

[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)”]

DRAFT

**EXHIBIT G**  
**OPERATING SUBSIDY AGREEMENT**  
**(Attached)**

DRAFT

5500784.1

## OPERATING SUBSIDY AGREEMENT

THIS OPERATING SUBSIDY AGREEMENT (this "**Agreement**") is made this \_\_\_\_\_, 202\_\_, by and between the City of San Leandro, a California municipal corporation ("City"), and Housing Consortium of the East Bay, a California nonprofit public benefit corporation ("Operator").

### RECITALS

A. City and Operator have entered into a "Ground Lease," dated \_\_\_\_\_, 2023, which provides for City to lease to Operator that certain real property located at 555 Lewelling Boulevard, San Leandro (the "Property").

B. Pursuant to the Ground Lease, Operator will convert the Property into an interim homeless shelter with twenty-nine non-congregate shelter units, navigation center for homeless persons and persons at risk of homelessness, offices for management and services staff, meeting and conference spaces, community room, laundry room, modular trailer for shower services for navigation center clients, modular trailer for office space, parking, landscaping and lighting (the "Project").

C. The Ground Lease further provides for City and Operator to enter into a separate Operating Subsidy Agreement pursuant to which City will agree to provide specified payments to Operator as necessary for payment of the costs of operation of the Project.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

**"Agreement Date"** means the date set forth in the first paragraph of this Agreement.

**"Annual Operating Budget"** means the operating budget for the Project approved by City attached hereto as Exhibit B, or as otherwise amended by Operator and City.

**"Applicable Laws"** means all applicable present or future federal, state, local and administrative laws, rules, regulations, codes, orders and requirements.

**"Assisted Units"** means the residential units at the Project.

**"City"** means the City of San Leandro.

**"City Regulatory Agreement"** means the Regulatory Agreement and Declaration of Restrictive Covenants entered into by the Parties.

**"Effective Date"** means the Initial Occupancy Date.

**"Fiscal Year"** shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.

**"Grant Amount"** is defined in Section 4.1.

**"Grant Funds"** shall mean any and all funds allocated or disbursed to Operator under this Agreement.

**"Ground Lease"** is defined in Recital A.

**"HCD"** means the State of California Housing and Community Development Department.

**"Homekey"** means the HCD Project Homekey Program.

**"Homekey Agreement"** means the Standard Agreement that City and Operator have entered into, or will enter into, with HCD which sets forth the requirements imposed in connection with the Homekey Grant.

**"Initial Occupancy Date"** shall be the date when the first Assisted Unit is occupied by a Resident.

**"Operating Costs"** means the following costs: (a) all charges incurred in the operation of the Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement, the Ground Lease, the Regulatory Agreement and the Homekey Agreement; (b) salaries, wages and any other compensation due and payable to the employees or agents of Operator employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (c) the asset management fees; (d) all other expenses actually incurred to cover the operation of the Project to the standards required under this Agreement, the Ground Lease, the Regulatory Agreement and the Homekey Agreement, including maintenance and repairs, and property management fees and supportive services costs and fees; (e) required deposits to the Replacement Reserve Account, Operating Reserve Account, and any other required reserve account, and (f) any extraordinary expenses arising from the ownership or operation of the Project approved in advance and in writing by City.

**"Operating Reserve Account"** means the interest-bearing operating reserve depository account.

**"Project"** is defined in Recital B.

**"Project Income"** means all income and receipts in any form received by Operator from the operation, use or ownership of the Project, including without limitation charitable donations and other governmental grants and funds, calculated on an accrual basis.

**"Project Operating Account"** means a checking account maintained by Operator, which shall be held in a bank or savings and loan institution acceptable to City as a segregated account insured by the Federal Deposit Insurance Corporation or other comparable federal insurance program.

**"Property"** shall mean the real property described on the attached Exhibit A.

**"Resident"** shall mean a Homekey qualifying resident who occupies and resides in an Assisted Unit.

**"Shortfall"** means the amount, if any, by which the Operating Costs for any Fiscal Year during the Term exceed the Project Income obtained from the Assisted Units for such Fiscal Year.

**"Subsidy Payment"** means a payment made by City to Operator pursuant to the terms of this Agreement, which shall be made in the manner and in the amount specified in Article 4 below.

## **ARTICLE 2 TERM**

The term of this Agreement (the **"Term"**) shall commence on the Effective Date and shall terminate on the fifth (5th) anniversary of the date of the City's issuance of a Certificate of Occupancy for the Project, unless earlier terminated in accordance with the terms herein.

## **ARTICLE 3 PERFORMANCE OF GRANT OBLIGATIONS**

**3.1 Operation of Project.** Commencing on the Initial Occupancy Date, Operator shall operate, manage and maintain the Project in accordance with the Ground Lease, Regulatory Agreement and Homekey Agreement.

**3.2 Operating Reserve Account.** Operator shall maintain an Operating Reserve Account at all times during the Term. In addition, if the Subsidy Payment made to Operator for a Calendar Year exceeds the certified Shortfall for such Calendar Year, as determined pursuant to the reports delivered under Article 5, Operator shall deposit such excess amount in the Operating Reserve Account. If the Shortfall for a Calendar Year exceeds the Subsidy Payment made to Operator for such Calendar Year, Operator shall first use Operating Reserve Account funds, to the extent available, to fund Operating Costs that comprise such excess Shortfall.

**3.3 Annual Operating Budget.** The Annual Operating Budget attached hereto as Exhibit B sets forth Operator's anticipated Operating Costs, Project Income and Shortfall for the Term of the Agreement. The Parties expect to refine the Annual Operating Budget following commencement of rehabilitation of the Project and will amend Exhibit B to reflect the updated costs, if any. Operator shall pay Operating Costs in conformity with the approved Annual Operating Budget. City's prior written consent shall not be required before Operator can spend funds on Operating Costs that differ in amount from the amounts in the Annual Operating Budget, so long as Operator satisfies all other terms and conditions set forth herein.

Operator can submit requests to change the amount of the Annual Operating Budget and corresponding Subsidy Payment for any year during the term by supplying a written proposal to City. Such proposals should include a variance analysis that includes a quantitative assessment of the difference between projected annual income and expenses and actual annual income and expenses, and explanations for the cause of any significant variances. City will approve or disapprove Operator's request for a change in the Annual Operating Budget within thirty (30) days of receipt of Operator's request. Any City disapproval of the Operator's request shall be in writing and with sufficient specificity regarding the basis of the City's disapproval.

#### **ARTICLE 4 USE AND DISBURSEMENT OF GRANT FUNDS**

**4.1 Grant Funds; Disbursement of Subsidy Payments.** For every Fiscal Year during the Term, provided that Operator is in compliance with all of the conditions for receipt of a Subsidy Payment, City shall deliver the Subsidy Payment for such Fiscal Year to Operator on or before the commencement of the applicable Fiscal Year. In no event shall the total amount of Grant Funds disbursed hereunder exceed Two Million Two Hundred Thousand Dollars (\$2,200,000) in any Fiscal Year of this Agreement, or a total of more than Nine Million Six Hundred Thousand Dollars (\$9,600,000) during the Term of this Agreement, subject to annual appropriations by City (the "**Grant Amount**"). Subject to Operator's performance of its obligations under this Agreement and City's receipt of sufficient funds, the Grant Funds shall be disbursed through Subsidy Payments. The amount of each Subsidy Payment shall be based upon the City's annual review and approval of the applicable Annual Operating Budget. The City shall reduce the subsequent Subsidy Payments by the amount of any prior Subsidy funds contributed to the Operating Reserve Account

**4.2 Reserved.**

**4.3 Use of Grant Funds.** Operator shall use the Grant Funds only for Operating Costs and for no other purpose. Operator shall expend the Grant Funds in accordance with the Annual Operating Budget.

**4.4 Conditions Precedent to Payment of Subsidy Payments.** Operator shall fully satisfy each of the following conditions prior to delivery of each Subsidy Payment:

- (a) A Certificate of Occupancy for the Project.



(b) Operator shall be in compliance with all of its obligations under the Ground Lease.

(c) No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, shall exist and remain uncured as of the date of such Subsidy Payment is to be disbursed hereunder.

## **ARTICLE 5 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS**

**5.1 Regular Reports; Operating Statements.** Operator shall submit electronically with the City no later than one hundred eighty (180) days after the end of each Fiscal Year annual report forms (the "Annual Monitoring Report") that include audited financial statements including any management letters; an income and expense statement for the Project covering the applicable reporting period "Operating Statement"; a statement of balances, deposits and withdrawals from all accounts; and evidence of required insurance.

Such Annual Monitoring Report shall include a list of the Operating Costs paid by Operator during such applicable prior Fiscal Year and Operator's certifications that (a) the total Grant Funds received by Operator as of the end date of the applicable Fiscal Year have been used only to pay Operating Costs, (b) all of Operator's representations and warranties in this Agreement remain true and correct in all material respects as if made on the end date of such the applicable Fiscal Year, (c) there is no Event of Default by Operator as of the end date of the applicable Fiscal Year, and (d) the party signing the Annual Monitoring Report is an officer of Operator authorized to do so on Operator's behalf.

**5.2 Notification of Defaults or Changes in Circumstances.** Operator shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default.

**5.3 Financial Statements.** As set forth in Section 5.1, Operator shall deliver to City, no later than one hundred eighty (180) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a reputable accounting firm as accurately presenting the financial position of Operator, including any management letters supplied by the auditors.

**5.4 Books and Records.** Operator shall establish and maintain accurate files and records of all aspects of Operating Expenses and Project Income and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, Operator shall establish and maintain accurate financial books and accounting records relating to Operating Costs incurred and paid and Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. Operator shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any

final audit has been fully completed, whichever is later. Operator agrees to maintain and make available to City during regular business hours, accurate books and accounting records relating to the Project and the Residents. The State of California shall have the same rights conferred upon City by this Section. All financial reports must be prepared and maintained in accordance with GAAP as in effect at the time of performance.

**5.6 Inspection and Audit.** Operator shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Operator. Operator shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Operator has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 5.

**5.8 Project Monitoring Generally.** Operator understands and agrees that it will be monitored by the City from time to time to assure compliance with all terms and conditions in this Agreement and all Laws. Operator acknowledges that the City may also conduct periodic on-site inspections of the Project. Operator shall cooperate with the monitoring by the City and ensure full access to the Project and all information related to the Project as reasonably required by the City.

## **ARTICLE 6 MISCELLANEOUS**

**6.1 Consents.** City agrees not to unreasonably withhold or delay its consent to matters requiring City's consent hereunder unless the applicable provision of this Agreement permits City to exercise City's sole discretion with respect to a particular matter.

**6.2 Time of the Essence.** Time is of the essence in the performance of each of the Parties' respective obligations set forth in this Agreement.

**6.3 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

**6.4 Entire Agreement: Modifications.** This Agreement supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Property. This Agreement and the executed attachments thereto contain the sole and entire understanding between the parties with respect to the leasing of the Property. This Agreement shall not be modified or amended in any respect, except by written instrument specifically referencing such modification or amendment which is executed by or on behalf of the Parties in the same manner as this Agreement is executed.

**6.5 Governing Law.** This Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of the State of California without regard to conflict of law principles. Venue for any dispute hereunder shall be in Alameda County, California.

**6.6 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors, administrators, executors and permitted assigns. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

**6.7 Further Assurances.** From and after the date of this Agreement, City and Operator, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Agreement.

**6.8 Authority to Execute Agreement.** Each Party represents and warrants to the other Party that by proper action the person executing this Agreement on behalf of such Party has been duly authorized to execute and deliver this Agreement.

**6.9 Agreement Administration and Approvals.** The City Manager of the City of San Leandro, or his or her designee, shall be the person designated by City to administer this Agreement on behalf of City. The City Manager of the City of San Leandro shall have the authority to consent to any matter requiring City approval or consent as provided in this Agreement, and to perform and carry out any activities concerning this Agreement, including but not limited to, the execution of any additional agreements, addenda or amendments so long as such actions do not substantially affect the rights and obligations of City as specified herein.

**6.10 Captions.** All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Agreement, shall not supplement, limit or otherwise vary the text of this Agreement in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Agreement.

**6.11 Gender.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

**6.12 Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in

the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

**6.13 References.** All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Agreement. Unless otherwise specified in this Agreement, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like similar import, shall be deemed to refer to this Agreement as a whole, and not to any particular paragraph or subparagraph hereof.

**6.14 Cumulative.** Except as expressly limited by the terms of this Agreement, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

**6.15 Notices.** All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by certified mail, return receipt requested; by reputable commercial delivery service; or by hand delivery by a reputable courier or by electronic mail ("email"), to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable, provided, however, if any notice is given by email, such notice shall not be deemed delivered or given until a copy of such notice is either deposited in the mail or with a reputable commercial delivery service. By giving prior written notice thereof, any Party, from time to time, may change its address for notices under this Agreement.

To City: City of San Leandro  
835 E. 14th Street  
San Leandro, CA 94577  
Attention: City Manager

With copy to: Community Development Director and City Attorney

To Operator: Housing Consortium of the East Bay  
1204 Preservation Park Way, Suite 200  
Oakland, CA 94612  
Attention: Executive Director

**6.16 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

**6.17 Attorneys' Fees.** In any litigation or other action brought to enforce this Agreement or regarding a dispute over terms of the Agreement or the performance of a Party, the prevailing Party in such litigation or action shall be entitled to attorneys' fees and the costs of such litigation from the non-prevailing Party.

**6.18 No Third Party Beneficiaries.** Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder. Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Operator and City is and shall remain solely that of parties to a contract, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Operator (except as expressly provided in this Agreement) or to any third party with respect to the Project.

**6.19 No Personal Liability.** Notwithstanding anything contained in this Agreement to the contrary, the obligations of City under this Agreement (including any actual or alleged breach or default by City) do not constitute personal obligations of the individual officers or employees of City, and Operator shall not seek recourse against the individual officers or employees of City, or against any of their personal assets for satisfaction of any liability with respect to this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY:

CITY OF SAN LEANDRO  
a California charter city and municipal corporation

By: \_\_\_\_\_  
Frances M. Robustelli  
City Manager

ATTEST:

\_\_\_\_\_  
Kelly B. Clancy  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard D. Pio Roda  
City Attorney

OPERATOR:

HOUSING CONSORTIUM OF THE EAST BAY,  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Darin Lounds  
Executive Director

**EXHIBIT A**

**Legal Description**

[Attached]

DRAFT



**EXHIBIT "A"**  
Legal Description

For [APN/Parcel ID\(s\): 412-0001-004-01](#)

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LEANDRO, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF THE COUNTY ROAD LEADING FROM SAN LORENZO TO ROBERTS LANDING (ALSO KNOWN AS LEWELLING BOULEVARD, MAIN STREET AND COUNTY ROAD NO. 558), AT THE POINT OF INTERSECTION THEREOF, WITH THE LINE DIVIDING LAND FORMERLY OWNED BY E.T. CRANE FROM LAND FORMERLY OWNED BY J.B. MARLIN; RUNNING THENCE NORTH 89° 42' EAST ALONG SAID NORTHERLY LINE OF SAID ROAD, A DISTANCE OF 100 FEET; RUNNING THENCE NORTH 0° 18' WEST, A DISTANCE OF 300 FEET; RUNNING THENCE SOUTH 89° 42' WEST, A DISTANCE OF 100 FEET TO SAID DIVIDING LINE AND RUNNING THENCE SOUTHERLY ALONG SAID DIVIDING LINE, A DISTANCE OF 300 FEET TO THE POINT OF BEGINNING.

DRAFT

**EXHIBIT B**

**Annual Operating Budget**

[Attached]

DRAFT

Expenses	Organization	Program	"Start Up" FY23-24	Year 1 FY24-25	Year 2 FY25-26	Year 3 FY26-27	Year 4 FY27-28	Year 5 FY28-29
<b>Supportive Services Staffing</b>								
Executive Director	Building Futures	Both Programs	\$25,500	\$0	\$0	\$0	\$0	\$0
Finance / Operation Director	Building Futures	Both Programs	\$70,000	\$0	\$0	\$0	\$0	\$0
Director of Emergency Services	Building Futures	Both Programs	\$54,080	\$0	\$0	\$0	\$0	\$0
Shelter Case Managers 2 FTE	Building Futures	Shelter Only	\$0	\$130,000	\$130,000	\$130,000	\$130,000	\$130,000
Resident Advocates 6.5 FTE	Building Futures	Shelter Only	\$0	\$297,440	\$297,440	\$297,440	\$297,440	\$297,440
Day Site Coordinator 1 FTE	Building Futures	Drop-in Only	\$0	\$54,080	\$54,080	\$54,080	\$54,080	\$54,080
Navigation Center Case Manager 1 FTE	Building Futures	Drop-in Only	\$0	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000
Resident Advocates 3 FTE	Building Futures	Drop-in Only	\$0	\$142,771	\$142,771	\$142,771	\$142,771	\$142,771
Outreach Workers 3 FTE	Building Futures	Drop-in Only	\$0	\$0	\$0	\$0	\$0	\$0
PROGRAM MANAGER 0.3 FTE	Building Futures	Both Programs	\$0	\$25,500	\$25,500	\$25,500	\$25,500	\$25,500
SITE SUPERVISOR 1 FTE	Building Futures	Both Programs	\$0	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000
Intersite Coordinator 1 FTE	Building Futures	Both Programs	\$0	\$0	\$0	\$0	\$0	\$0
Data and Reporting Coordinator 0.2 FTE	Building Futures	Both Programs	\$0	\$13,000	\$13,000	\$13,000	\$13,000	\$13,000
Subtotal			\$149,580	\$797,791	\$797,791	\$797,791	\$797,791	\$797,791
Fringe Benefits @ 25%			\$37,395	\$199,448	\$199,448	\$199,448	\$199,448	\$199,448
TOTAL SUPPORTIVE SERVICES STAFFING COSTS			\$186,975	\$997,239	\$997,239	\$997,239	\$997,239	\$997,239
<b>Operations Staffing</b>								
Facilities Manager 1 FTE	HCEB	Both Programs	\$0	\$60,000	\$60,000	\$60,000	\$60,000	\$60,000
Maintenance Tech 1 FTE	HCEB	Both Programs	\$0	\$22,880	\$22,880	\$22,880	\$22,880	\$22,880
Subtotal			\$0	\$82,880	\$82,880	\$82,880	\$82,880	\$82,880
Fringe Benefits @ 25%			\$0	\$20,720	\$20,720	\$20,720	\$20,720	\$20,720
TOTAL SUPPORTIVE SERVICES STAFFING COSTS			\$0	\$103,600	\$103,600	\$103,600	\$103,600	\$103,600
<b>TOTAL STAFFING</b>								
TOTAL STAFFING COSTS			\$186,975	\$1,100,839	\$1,100,839	\$1,100,839	\$1,100,839	\$1,100,839
<b>Utilities Expenses</b>								
Utilities (gas, electric, water)	HCEB	Both Programs	\$0	\$86,202	\$86,202	\$86,202	\$86,202	\$86,202
Garbage and Trash Removal	HCEB	Both Programs	\$0	\$0	\$0	\$0	\$0	\$0
Tech / Internet	HCEB	Both Programs	\$40,000.00	\$27,350	\$27,350	\$27,350	\$27,350	\$27,350
Sewage			\$0	\$0	\$0	\$0	\$0	\$0
Subtotal			\$40,000	\$113,552	\$113,552	\$113,552	\$113,552	\$113,552
<b>Operating and Maintenance Expenses</b>								
Management fee	HCEB	Both Programs	\$0	\$29,700.00	\$29,700	\$29,700	\$29,700	\$29,700
Janitorial	HCEB	Both Programs	\$0	\$28,000.00	\$28,000	\$28,000	\$28,000	\$28,000
Operating Supplies	HCEB	Both Programs	\$0	\$17,073.66	\$17,074	\$17,074	\$17,074	\$17,074
Allowance for maintenance contracts and materials	HCEB	Both Programs	\$0	\$18,289.34	\$18,289	\$18,289	\$18,289	\$18,289
Security contract allowance	HCEB	Both Programs	\$0	\$3,500.00	\$3,500	\$3,500	\$3,500	\$3,500
Subtotal			\$0	\$96,563	\$96,563	\$96,563	\$96,563	\$96,563
<b>Other Supportive Services Expenses</b>								
Printing/Copying	Building Futures	Both Programs	\$0	\$5,000.00	\$5,000	\$5,000	\$5,000	\$5,000
Equipment Rental	Building Futures	Both Programs	\$0	\$5,000.00	\$5,000	\$5,000	\$5,000	\$5,000
Program & office Supplies/Cleaning Supplies/PPE	Building Futures	Both Programs	\$0	\$45,000.00	\$45,000	\$45,000	\$45,000	\$45,000
Staff Cell Phones 3 staff	Building Futures	Both Programs	\$0	\$3,940.00	\$3,940	\$3,940	\$3,940	\$3,940
Vehicle cost	Building Futures	Drop-in Only	\$0	\$5,000.00	\$5,000	\$5,000	\$5,000	\$5,000
Professional Consultant-Resources for clients	Building Futures	Both Programs	\$0	\$55,000.00	\$55,000	\$55,000	\$55,000	\$55,000
Liability Insurance	Building Futures	Both Programs	\$0.00	\$3,000.00	\$3,000	\$3,000	\$3,000	\$3,000
Furniture Staff reception desk/chair/storage units	Building Futures	Drop-in Only	\$38,000.00	\$0.00	\$0	\$0	\$0	\$0
Furniture Clients reception area/Sofa/Chairs/Large	Building Futures	Drop-in Only	\$43,000.00	\$0.00	\$0	\$0	\$0	\$0
Cafeteria/Kitchen Furniture	Building Futures	Drop-in Only	\$20,000.00	\$0.00	\$0	\$0	\$0	\$0
Shelter furniture/client basis needs	Building Futures	Shelter Only	\$0	\$31,900.00	\$31,900	\$31,900	\$31,900	\$31,900
Activity supplies	Building Futures	Drop-in Only	\$0	\$15,000.00	\$15,000	\$15,000	\$15,000	\$15,000
Drop-in Food - Lunch only / Mon - Fri / \$6 per meal / 50	Building Futures	Both	\$0	\$78,214.29	\$78,214	\$78,214	\$78,214	\$78,214
Shelter Food - 3 meals per day / \$6 per meal / 32 people	Building Futures	Shelter Only	\$0	\$210,240.00	\$210,240	\$210,240	\$210,240	\$210,240
Misc Contingency	Building Futures	Both	\$20,000.00	\$17,500.00	\$17,500	\$17,500	\$17,500	\$17,500
Towel service for showers	Building Futures	Drop-in Only	\$0	\$14,793.48	\$14,793	\$14,793	\$14,793	\$14,793
Linen service	Building Futures	Shelter Only	\$0	\$12,000.00	\$12,000	\$12,000	\$12,000	\$12,000
Subtotal			\$121,000	\$501,588	\$501,588	\$501,588	\$501,588	\$501,588
<b>TOTAL OPERATING AND SERVICES</b>								
TOTAL OPERATING AND SERVICES COSTS			\$161,000	\$711,703	\$711,703	\$711,703	\$711,703	\$711,703
<b>Staffing Costs</b>								
Staffing Costs			\$186,975	\$1,100,839	\$1,100,839	\$1,100,839	\$1,100,839	\$1,100,839
<b>Services and Operating Costs</b>								
Services and Operating Costs			\$161,000	\$711,703	\$711,703	\$711,703	\$711,703	\$711,703
Total Costs			\$347,975	\$1,812,542	\$1,812,542	\$1,812,542	\$1,812,542	\$1,812,542
<b>Building Futures Costs</b>								
Building Futures Costs			\$307,975	\$1,498,827	\$1,498,827	\$1,498,827	\$1,498,827	\$1,498,827
HCEB Costs			\$40,000	\$313,715	\$313,715	\$313,715	\$313,715	\$313,715
Total Costs			\$347,975	\$1,812,542	\$1,812,542	\$1,812,542	\$1,812,542	\$1,812,542
Total Costs (with 1% annual inflation)			\$347,975	\$1,812,542	\$1,830,667	\$1,848,974	\$1,867,464	\$1,886,138