

DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION
AND
WEST COUNTY COMMUNITY SERVICES.

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DISPOSITION AND DEVELOPMENT AGREEMENT

This Disposition and Development Agreement (“Agreement”) is entered into as of _____, 2024 (“Effective Date”) by and between the SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION, a public body, corporate and politic (the “Commission”) and WEST COUNTY COMMUNITY SERVICES, a California nonprofit public benefit corporation (the “Developer” and as further defined in Section 1.4 below). The Commission and the Developer (sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties”) hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to facilitate the development of certain property (the “Site”) situated within Guerneville in the unincorporated County of Sonoma. The development shall consist of not less than twenty-one (21) permanent supportive housing units, with all of the units restricted for rental and occupancy by “Eligible Tenants” (as defined in Section 1.4 below), an additional unrestricted Manager’s Unit, a separate community/navigation center, a Peer Mental Health Center, and related improvements (collectively the “Project”).

The Commission financial assistance, in the form of a grant of Homekey, Measure O, and Emergency Rental Assistance Program (ERAP) funding, as well as Developer financing in the form of Community Development Block Grant (CV) and Permanent Local Housing Allocation (PLHA) loans, shall be utilized to effectuate a portion of the Commission’s overall affordable housing program. The conveyance to Developer of the Site and the Developer’s development thereon of permanent supportive housing project and subsequent occupancy thereof by persons of limited incomes, all as provided in this Agreement, are in the vital and best interests of the Commission and the health, safety and welfare of Sonoma County residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Project has been undertaken.

1.2 The Site

The “Site” is currently owned by the Commission and consists of that certain real property located at 18100 Highway 116, Guerneville, CA 95446. (Assessor Parcel Nos. 72-220-026, 072-220-027 and 072-220-029). The Site is currently zoned as Neighborhood Commercial (C1) as to APN 072-220-026 and Rural Residential (RR) as to APNs 072-220-027 and 072-220-029 under the Sonoma County zoning ordinance. The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

1.3 Parties to the Agreement

A. The Commission

The Commission is a public body, corporate and politic, exercising governmental functions and powers pursuant to Health and Safety Section 34110 *et seq.* The principal office of the Commission is located at 1440 Guerneville Road, Santa Rosa, CA 95403, or such other address as Commission shall hereafter designate in writing to Developer.

B. The Developer

The Developer is West County Community Services, a California nonprofit public benefit corporation. The mailing address of the Developer for purposes of this Agreement is P.O. Box 325, Guerneville, CA 95446 or such other address as Developer shall hereafter designate in writing to Commission.

By executing this Agreement, each person signing on behalf of the Developer warrants and represents to the Commission that the Developer has the full power and authority to enter into this Agreement, that all authorizations required to make this Agreement binding upon the Developer have been obtained, and that the person or persons executing this Agreement on behalf of the Developer are fully authorized to do so.

Whenever the term “Developer” is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

1.4 Definitions

“Affordable Rent” means the following amount, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis: a monthly rent that does not exceed one-twelfth of thirty percent (30%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“AMI” means the median income for Sonoma County, California, adjusted for Actual Household Size, as determined by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by HCD in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“Annual Financial Statement” means the financial statements prepared by Developer for each calendar year, including a balance sheet, income statement, statement of retained earnings, statement of cash flow, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied, as audited by an independent certified public accountant.

“County” means the County of Sonoma, a political subdivision of the State of California. The County is not a party to this Agreement and shall have no obligations hereunder.

“Close of Escrow” or “Closing Date” shall have the meaning ascribed in Section 2.3 of the Purchase and Sale Agreement.

“Commission Affordable Housing Regulatory Agreement” or “AHRA” means a Regulatory Agreement and Declaration of Covenants and Restrictions, to be recorded as a covenant against the Site, substantially in the form attached hereto and incorporated herein as Attachment No. 8.

“Commission Title Policy” means the ALTA Lender’s Policy of Title Insurance that the Commission shall obtain from the Title Company, covering the Site, showing title vested in Developer, and insuring the validity and priority of, respectively, the Grant Deed, Purchase and Sale Agreement, AHRA, Memorandum of Disposition and Development Agreement, and Notice of Affordability Restrictions, subject only to the exceptions authorized by this Agreement.

“Commission’s Conditions to Closing” means the conditions set forth in Section 2.3.A of the Purchase and Sale Agreement, which must be satisfied, or waived by the Commission in its sole and absolute discretion, on or before the Outside Closing Date.

“Days” means calendar days and the statement of any time period herein shall be calendar days, and not business days, unless otherwise specified.

“Developer” means, West County Community Services, a California nonprofit public benefit corporation, or a limited partnership formed by Developer, in which Developer or an affiliate of Developer retains a general partner interest, and which assumes all Project assets and liabilities from Developer.

“Developer Fee” means funds paid to the Developer as compensation for developing the Project, as specified in Section 3.1 of the Agreement.

“Developer’s Conditions to Closing” shall have the meaning ascribed in Section 2.3.B of the Purchase and Sale Agreement.

“Developer Title Policy” shall have the meaning ascribed in Section 2.5 hereof.

“Effective Date” means the date this Agreement is executed on behalf of Commission and Developer, whichever is later, which date shall be inserted in the preamble of this Agreement.

“Eligible Tenant” means a household which qualifies as an Extremely Low Income Household, with household members that meet the requirements set forth in the HCD Standard Agreement, HCD Regulatory Agreement, and AHRA.

“Environmental Response Actions” means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with Phase I environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by the Developer.

“Environmental Response Costs” means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

“ERNA” means the Exclusive Right to Negotiate Agreement entered into between the Commission and Developer, dated as of March 7, 2023.

“Escrow” is defined in Section 2.1.A of the Purchase and Sale Agreement.

“Escrow Agent” means Fidelity National Title Company.

“Evidence of Financial Capability” means evidence that the Developer has, or will have, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. The Evidence of Financial Capability shall be submitted by the Developer to the Executive Director within the time set forth in the Schedule of Performance and shall include all of the requirements set forth in Section 4.8 of this Agreement.

“Executive Director” means the individual duly appointed to the position of Executive Director of the Commission, or his or her authorized designee. Whenever an administrative action is required by the Commission to implement the terms of this Agreement, the Commission’s Executive Director, or his or her authorized designee, shall have authority to act on behalf of the Commission, except with respect to matters reserved for the Commission Board’s determination.

“Extremely Low Income Household” means a household at or below 30% of AMI as set forth in the California Health and Safety Code Section 50106 as in effect as of the date of the Commission’s Affordable Housing Rental Agreement.

“Financing Plan” means the Developer’s plan for financing the development of the Project, which is attached hereto and incorporated herein as Attachment No. 4. Developer may only make material revisions to the Financing Plan with the Commission’s prior written approval.

“Force Majeure Events” means strikes, acts of God, shortages of labor or materials, enemy action, riot, civil commotion or unrest, fire, earthquake, casualty, pandemic or other events beyond the reasonable control of a party.

“Funding Approval Request” means a request submitted by Developer to Commission for the approval of expenditure of Project Funds for the construction of the Project, as more fully described by Section 3.5.

“Governmental Requirements” means all present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Site is located, and any other state, county, city, political subdivision, agency, Commission, instrumentality or other entity exercising jurisdiction over the Site.

“Grant Deed” shall mean the deed by which Developer obtains fee simple title to the Site, substantially in the form attached hereto and incorporated herein as Attachment No. 6 (“Grant Deed”).

“Hazardous Materials” means any substance, material or waste which is (1) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of California law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (7) defined as a “hazardous substance” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) or its implementing regulations; (8) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601); or (9) determined by a California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Notwithstanding the foregoing, “Hazardous Materials” shall not include such products in quantities as are customarily used in the construction, maintenance, rehabilitation, management, operation and residence of residential developments or associated buildings and grounds, or typically used in residential activities in a manner typical of other comparable residential developments, or substances commonly ingested by a significant population living within the community, including without limitation alcoholic beverages, aspirin, tobacco and saccharine.

“HCD” shall mean the California Department of Housing and Community Development.

“HCD Standard Agreement” or “Standard Agreement” shall mean the contractual agreement between HCD and the project sponsor(s), substantially in the form attached hereto and incorporated herein as Attachment No. 9. This document and attachments define the terms and conditions of the contractual agreement and roles and responsibilities of HCD and the project Sponsor(s), and the requirements placed upon the project for the term of the agreement.

“HCD Regulatory Agreement” shall mean the contractual agreement between HCD and the project sponsor(s), recorded on 12/28/2023 as Document Number 2023062947, O.R. County of Sonoma, incorporated herein as Attachment No. 10.

“Homekey” shall mean round 2 of the California Department Housing and Community Development Homekey program.

“Indemnitees” shall mean collectively, the Commission, the County of Sonoma, and their respective elected and appointed officers, directors, officials, employees, members, agents, consultants, contractors, and representatives.

“Management Agent” means a management agent retained by the Developer and approved by the Commission in accordance with the provisions of Section 5.2 of this Agreement and the AHRA.

“Management Unit” means the one (1) Unit in the Project that may be occupied by on-site management and staff. The Management Unit shall not be restricted.

“Memorandum” means a Memorandum of Disposition and Development Agreement, substantially in the form attached hereto and incorporated herein as Attachment No. 13, which is required to be recorded against the Site at the Close of Escrow.

“Notice of Affordability Restrictions” means a Notice of Affordability Restrictions on Transfer of Site, substantially in the form attached hereto and incorporated herein as Attachment No. 12, which is required to be recorded against the Site at the Close of Escrow.

“Phase 1” means the Phase I Environmental Site Assessment conducted by an environmental consultant.

“Project” means the construction on the Site of a permanent supportive housing development with not less than twenty-one (21) Units restricted to Extremely Low Income Households, including eight (8) Units restricted to chronically homeless individuals, three (3) ground floor Units accessible to mobility impaired individuals, three (3) Units accessible to hearing or visually impaired individuals, and related interior and exterior improvements, including, but not limited to, an additional manager’s unit accessible to mobility impaired individuals, a community/navigation center, and a Peer Mental Health Center. The Project is more particularly described in the Scope of Development.

“Project Budget” means that certain budget attached hereto and incorporated herein as Attachment No. 14, which budget may not be materially changed prior to Closing without the prior approval of the Commission Executive Director as described in Section 3.3 (a material change is one or more change(s) that cause the total Project cost to exceed the total funding amount shown in Attachment No. 14).

“Project Entitlements” shall have the meaning ascribed in Section 4.4 hereof.

“Project Funds” means all funding described by the Financing Plan (Attachment No. 4), the Project Budget (Attachment No. 14), or Section 3 of this Agreement.

“Project Pro forma” means the financial information attached hereto and incorporated herein as Attachment No. 15, which is Developer’s best estimate of the costs to develop the Project and costs of ongoing operations based on the information available to Developer as of the Effective Date. The Project Pro forma shall not undergo material change without the prior approval of Commission’s Executive Director, which approval shall not be unreasonably withheld (a material change is one or more change(s) that causes the difference between the “Annual Project Revenue” and “Operating Expenses” on Project Pro forma to increase or decrease by a cumulative amount of ten percent (10%) or more from what is shown in Attachment No. 15).

“Purchase and Sale Agreement” shall have the meaning ascribed in Section 2.1 hereof, and is attached hereto and incorporated herein as Attachment No. 7.

“Purchase Price” means the price Developer pays to Commission for conveyance of the Site, in accordance with Section 2.1 of the Purchase and Sale Agreement, attached hereto and incorporated herein as Attachment No. 7.

“Schedule of Performance” means that certain Schedule attached hereto and incorporated herein as Attachment No. 5. The Schedule of Performance shall be periodically updated by the Developer, subject to the reasonable approval of the Commission, to account for changes in circumstances surrounding the development of the Project.

“Scope of Development” means that certain Scope of Development attached hereto and incorporated herein as Attachment No. 3, which describes the scope of the permanent supportive housing development to be constructed by Developer pursuant to the terms and conditions of this Agreement.

“Site” shall have the meaning ascribed in Section 1.2 hereof and is the real property located at 18100 Highway 116, Guerneville, CA 95446. (Assessor Parcel Nos. 072-220-026, 072-220-027 and 072-220-029). The Site is depicted on the Site Map, which is attached hereto and incorporated herein as Attachment No. 1. The legal description of the Site is set forth on Attachment No. 2, which is attached hereto and incorporated herein by this reference.

“Supportive Services Plan” means the plan describing the provision of supportive services to eligible tenants that is submitted to HCD for review and approval consistent with the Homekey Program Requirements and the HCD Standard Agreement.

“Term” means the term of this Agreement, which shall consist of the period commencing on the date of execution of this Agreement and continuing until the initial occupancy of the Units, estimated to be December 30, 2024.

“Title Company” means Fidelity National Title Company.

“Unit” and “Units” means each of the twenty-one (21) permanent supportive housing units developed as part of the Project.

1.5 Prohibition Against Change in Ownership, Management and Control of Developer and Prohibition Against Transfer of the Site

The qualifications and identity of the Developer are of particular interest to the Commission. It is because of these qualifications and identity that the Commission has entered into this Agreement with the Developer. Consequently, except as otherwise provided for herein, no person, whether a voluntary or involuntary successor of Developer, shall acquire any rights or powers under this Agreement nor shall the Developer assign all or any part of this Agreement, the Site, the HCD Standard Agreement, HCD Regulatory Agreement, or the AHRA without the prior written approval of the Commission. A voluntary or involuntary sale or transfer of any interest in the Developer or the Site during the term of this Agreement shall be deemed to constitute an assignment or transfer for the purposes of this Section 1.5, and the written approval of the Commission and HCD shall be required prior to effecting such an assignment or transfer. During the term of this Agreement and the HCD Standard Agreement the Developer shall not, except as permitted by this Agreement, assign or attempt to assign this Agreement or any rights or duties herein, nor make any total or partial sale, transfer, conveyance, or assignment of the whole or any part of the Site or any of the improvements thereon, nor take any action that results in a change in the ownership or with respect to the identity of the parties in control of the Developer, without the prior written approval of the Commission and HCD.

Notwithstanding any other provision of this Agreement to the contrary, Commission approval of an assignment or transfer of this Agreement or transfer of the Site or Project, or any part thereof or interest therein shall not be required in connection with any of the following:

(a) the conveyance or dedication of any portion of the Site to the County of Sonoma, or other appropriate governmental entity, including public utilities, where the granting of such easements permits or facilitates the development of the Project on the Site;

(b) the mortgage, deed of trust, sale and leaseback, or other form of conveyance required for any reasonable method of financing or refinancing the development of the Project on the Site that is set forth in the Financing Plan (including the refinancing of any loan contemplated therein) or has otherwise been approved, in writing, by the Executive Director;

Notwithstanding anything in this Section 1.5 to the contrary, in the absence of specific written agreement by Commission, no transfer or assignment by Developer or any successor in interest to Developer, whether or not requiring the approval by Commission, shall be deemed to relieve Developer or any successor party from the obligation to timely

complete development of the Project, and no transfer or assignment by Developer or any successor in interest to Developer shall be effective unless and until the transferor and transferee execute and deliver to Commission an Assignment Agreement in a form and with content reasonably acceptable to Commission's legal counsel.

This Section 1.5 shall not be applicable to the leasing of individual Units to Eligible Tenants (including the leasing of the Management Unit to employees of the Management Agent) made in accordance with this Agreement, the HCD Regulatory Agreement, and the HCD Standard Agreement and no assignment shall be required in connection therewith.

1.6 Representations by the Developer

The Developer represents and warrants to the Commission as follows:

i. The Developer is a corporation in good standing under the laws of the State of California and has duly authorized, executed and delivered this Agreement and any and all other agreements and documents required to be executed and delivered by the Developer in order to carry out, give effect to, and consummate the transactions contemplated by this Agreement. This Agreement is enforceable against the Developer in accordance with its terms.

ii. The Developer does not have any contingent obligations or contractual agreements which will materially adversely affect the ability of the Developer to carry out its obligations hereunder.

iii. There are no pending or, so far as is known to the Developer, threatened, legal proceedings to which the Developer is or may be made a party to or to which it or any of its property is or may become subject, which have not been fully disclosed in the material submitted to the Commission, which will materially adversely affect the ability of the Developer to carry out its obligations hereunder.

iv. There is no action or proceeding pending or, to the Developer's best knowledge, threatened, looking toward the dissolution or liquidation of the Developer and there is no action or proceeding pending or, to the Developer's best knowledge, threatened, by or against the Developer which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of the Developer to carry out its obligations hereunder.

v. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Developer is bound.

vi. The execution and delivery of this Agreement and all other documents to be executed by Developer pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Developer.

vii. No representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to Commission pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

viii. All financial information delivered to Commission, including, without limitation, information relating to the financial condition of Developer and the Project, accurately represents such financial condition and has been prepared in accordance with accepted accounting principles consistently applied, unless otherwise noted in such information. Developer shall notify Commission in writing of any material changes to such information delivered to the Commission.

ix. The Developer has or is expected to have sufficient financial and other resources to perform its obligations under this Agreement.

Each of the foregoing items i to ix, inclusive, shall be deemed to be an ongoing representation and warranty and shall survive the Close of Escrow for the Site. The Developer shall advise the Commission in writing if there is any material change pertaining to any matters set forth or referenced in the foregoing items i to ix, inclusive.

1.7 Representations by the Commission

The Commission represents and warrants to Developer as follows:

i. Commission is a public body, corporate and politic, which is authorized to transact business pursuant to Health and Safety Code Section 34143. Commission has full right, power and lawful authority to transfer the Site as provided herein and the execution, performance, and delivery of this Agreement by Commission has been fully authorized by all requisite actions on the part of Commission. The parties who have executed this Agreement on behalf of Commission are authorized to bind Commission by their signatures hereto.

ii. Commission does not have any contingent obligations or contractual agreements which will materially adversely affect the ability of Commission to carry out its obligations hereunder.

iii. There are no pending or, so far as is known to Commission, threatened, legal proceedings to which Commission is or may be made a party or to which it or any of its property is or may become subject, which will materially adversely affect the ability of Commission to carry out its obligations hereunder.

iv. There is no action or proceeding pending or, to Commission's knowledge, threatened, looking toward the dissolution or liquidation of Commission and there is no action or proceeding pending or, to Commission's knowledge, threatened by or against Commission which could affect the validity and enforceability of the terms of this Agreement, or adversely affect the ability of Commission to carry out its obligations hereunder.

v. To Commission's knowledge, the Site is not currently in violation of any law, ordinance, rule, regulation or requirement applicable to its use and operation.

vi. Commission is not the subject of a bankruptcy proceeding.

vii. To Commission's knowledge, no Hazardous Materials (as defined in Section 1.4) other than those identified in the Phase I, are now or have been released, used, or stored on or within any portion of the Site in violation of applicable laws or regulations governing the release, use, or storage of Hazardous Materials, and there has not been any federal, state, or local enforcement, clean-up, removal, remedial, or other governmental or regulatory actions instituted or completed affecting the Site.

viii. The execution and delivery of this Agreement and all other documents to be executed by Commission pursuant to this Agreement will not constitute or result in any default or event that with notice or the lapse of time, or both, would be a default, breach, or violation of any other agreement, instrument, or arrangement by which Commission is bound.

ix. The execution and delivery of this Agreement and all other documents to be executed by Commission pursuant to this Agreement and the consummation of the transactions contemplated herein will not violate any provision of or require any consent, authorization, or approval under any law or administrative regulation or any other order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Commission.

x. No representation, warranty, or covenant of Commission in this Agreement, or in any document or certificate furnished or to be furnished to Developer pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

As used in this Section 1.7, the term “knowledge” or “known” means the actual (not constructive or imputed) knowledge of the Commission Executive Director, without any investigation or inquiry or duty of investigation or inquiry.

2. CONVEYANCE OF THE SITE

2.1 Purchase and Sale Agreement

The Purchase and Sale Agreement, attached hereto and incorporated herein as Attachment No. 7, governs and controls the conveyance of the Site from the Commission to the Developer. The terms of the Purchase and Sale Agreement constitute the escrow instructions and include the Commission’s and Developer’s Conditions to Closing.

2.2 Representations by the Parties

Any representations made as part of this Agreement, including the Representations by the Developer as described in Section 1.6 herein and the Representations by the Commission as described in Section 1.7 herein, shall apply to the respective parties of the Purchase and Sale Agreement.

All representations and warranties by the respective parties contained herein, or made in writing pursuant to the Purchase and Sale Agreement, are intended to and shall remain true and correct as of the time of Closing, shall be deemed to be material, and shall survive the execution and delivery of this Agreement, the Purchase and Sale Agreement, and the delivery of the deed and transfer of title. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Developer or the Commission in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

3. FINANCING

As set forth in Sections 3.1-3.4 below and in the Financing Plan, Developer contemplates development of the Project thereon with a combination of funds from the remaining proceeds of the following: Five Million Two Hundred Nine Thousand Five Hundred Eighty Four Dollars (\$5,209,584.00) from HCD Homekey funds, Four Million Two Hundred Thousand Dollars (\$4,200,000.00) from County Measure O funds, and Nine Hundred Fifty Five Thousand Dollars (\$955,000.00) from Commission Emergency Rental Assistance Program ERA 2 funds (“ERAP”) funds. Developer shall utilize all of such funding exclusively for the development of the Project on the Site, and not for any other purpose.

3.1 Developer Fee

The Developer shall be entitled to a Developer Fee in an amount not exceeding Three Hundred Thousand Dollars (\$300,000.00) or such greater amount allowed by any

other funding source set forth in the Financing Plan if approved in writing by Commission. Except for the Developer Fee, no compensation from any source shall be received by or be payable to the Developer or any affiliate of the Developer in connection with the provision of development and construction management services for the construction of the Project. This Section 3.1 shall not prohibit an Affiliate of Developer from acting as the general contractor for the Project, subject to Commission approval.

3.2 Other Developer Financing for the Project

Developer contemplates development of the Project thereon with a combination of funds from the proceeds of the following :

- i. \$700,000.00 in a Permanent Local Housing Allocation (PLHA) loan to pay for capital expenditures associated with construction of the permanent supportive housing units.
- ii. \$694,934.00 in a Community Development Block Grant Cares Act (CV) loan to pay for capital expenditures associated with construction of the navigation center.

3.3 Project Budget; Project Pro Forma

The anticipated sources and uses of funds for the development of the Project are set forth in the Project Budget (Attachment No. 14). The financial projections for the Project are set forth in the Project Pro Forma (Attachment No. 15). Commission prepared the Project Budget based on preliminary information regarding construction costs, financing availability, and other matters and does not guarantee that Project can be developed in accordance therewith. Any amendments, change orders, or revisions to the Project Budget shall be subject to the Commission Executive Director's review and approval.

- i. Non-Material Change: Developer shall submit a request to Commission for any amendment to the Project Budget that does not increase the total Project Budget at least thirty (30) days prior to any expenditure of Project Funds or submission of a Funding Approval Request that requires such a change to the Project Budget. The Executive Director shall review and approve the amendment to the Project Budget within thirty (30) days of the submission of the request by Developer, which approval shall not be unreasonably withheld.
- ii. Material Change: Developer shall submit a request to Commission for any amendment to the Project Budget that exceeds the total amount of funding allocated to the Project at least ninety (90) days prior to any expenditure of Project Funds or submission of a Funding Approval Request that requires such a change to the Project

Budget. The Executive Director shall review the proposed change to the Project Budget and provide a recommendation to the Commission within thirty (30) days of the submission of the request by Developer. The Commission shall endeavor to hold a public meeting and provide a determination on the change to the Project Budget within ninety (90) days of the original request from the Developer.

3.4 Developer Submittals

Promptly upon Developer's receipt of a notification of an award of any of the financing described in the Financing Plan, Developer shall submit to the Commission copies of all of the correspondence and other documentation received in connection with the same.

Within five (5) days after the Effective Date, Developer shall provide to Commission a copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statements, which shall include a balance sheet, income statement, statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

3.5 Funding Approval Requests

Developer shall submit a Funding Approval Request to Commission prior to any expenditure of Project Funds during the construction of the Project. Upon submission of a Funding Approval Request, Commission shall review the expenditure for consistency with the Project Budget and provide a determination as to approval or rejection to Developer within seven (7) days of submission of the Funding Approval Request. Developer shall not expend any Project Funds without Commission's approval of a Funding Approval Request. Provided the proposed expenditure is consistent with the Project Budget and Project Scope of Development, Commission shall not unreasonably withhold, condition or delay its approval of the Funding Approval Request.

In the event that the Commission denies a Funding Approval Request submitted by Developer, Commission shall provide an explanation to Developer for the reason the Funding Approval Request was denied and potential options for expenditures that the Commission could approve. Developer shall be independently responsible for, and not utilize Project Funds to pay for, any expenditures made by Developer for which the Funding Approval Request has been denied by Commission. Developer's expenditures of Project Funds for which the Funding Approval Request has been denied shall be excluded from Commission's indemnification obligations of Developer relating to project cost

overruns pursuant to Section 4.9 of this Agreement.

4. DEVELOPMENT OF THE SITE

4.1 Scope of Development

The Project will be comprised of the construction of a permanent supportive housing development with not less than twenty-one (21) Units restricted to Extremely Low Income Households, including eight (8) Units restricted to chronically homeless individuals, three (3) ground floor Units accessible to mobility impaired individuals, three (3) Units accessible to hearing or visually impaired individuals, with two (2) of the accessible units restricted to persons with disabilities, and related interior and exterior improvements, including, but not limited to, an additional manager's unit accessible to mobility impaired individuals. Separate from the residential portion of the Project is a community/navigation center, and a Peer Mental Health Center. The Project shall include all of the on-site private improvements necessary for the development and all public improvements required pursuant to the conditions of approval issued with the Project Entitlements issued by the County, and shall be in accordance with all approved plans and permits, all as set forth in this Agreement and in the Scope of Development.

4.2 Plans, Drawings, and Related Documents

Commission has initiated the permitting and entitlement process with the County of Sonoma. Developer will work closely with the Commission to ensure the planning, approvals and design are to Developer's and overall Project Homekey standards for permanent supportive housing. After the close of escrow and transfer of the Site to the Developer, the Commission shall assign all pending permit applications or approved Project Entitlements (as defined in Section 4.4), and provide all plans, drawings, and related documents to the Developer. Developer will then continue to pursue any pending permits or entitlements through approval by the County and completion of the Project including rehabilitation and construction of structures through to certificate of occupancy.

By the time set forth for the applicable items in the Schedule of Performance, Developer shall have made all best efforts to obtain the County's approval of all plans, drawings, and documents for the Project in conformance with all requirements of the County. The Site shall be developed as established in this Agreement and the aforementioned documents, except as changes may be mutually agreed upon between the Developer and the Commission; provided that any changes shall be consistent with the material terms of this Agreement. During the preparation of all drawings and plans, staff of the Commission and the Developer shall hold regular progress meetings to coordinate the preparation of, submission to, and review of drawings, plans and related documents by the County. The staff of the Commission and the Developer shall communicate and consult

informally as frequently as is necessary to ensure that the formal submittal of any documents to the County can receive prompt consideration.

Developer acknowledges that execution of this Agreement by the Commission does not constitute approval by the County of any of the required permits or applications, and the County retains unfettered discretion in the processing of the same.

4.3 Review and Approval of Plans, Drawings, and Related Documents

The Commission and Developer shall have the right to review all plans and drawings which may be required by the County with respect to any permits and entitlements which are required to be obtained to develop the Project, including any changes therein.

If the Developer desires to make any substantial changes in the construction plans for the Project after the submission of permit applications by the Commission or approval thereof by the County, the Developer shall submit the proposed changes to the County for their approval. Commission shall not be responsible for the submission of changes in the construction plans after submission of a permit application or approval by the County.

4.4 Project Entitlements

If Commission has not already obtained approval of any Project Entitlement from the County prior to transfer of title to the Developer, Developer shall (i) obtain from the County approval for all plans, drawings, and related documents required for the Project, (ii) obtain from the County all permits and entitlements necessary for the Project as required in this Agreement, by applicable State law, by County code, and all other applicable law, including but not limited to, Environmental Review, a Parking Exception (if applicable), Site Design, Architectural Review, any conditional use permit, any zone change, any variance, any lot merger, and any vacation of public rights of way, the approval of which by the County of Sonoma is subject to the County's legislative discretion; and (iii) obtain from Sonoma County Local Agency Formation Commission (LAFCO) approval of the petition for annexation of the Site into the Russian River County Sanitation District (all of the foregoing (i) – (iii), the “Project Entitlements”). Commission agrees to fully cooperate and support Developer's pursuit of Project Entitlements after the close of escrow, subject to Commission's exercise of its legislative discretion, and without any representation, warranty, or guaranty by Commission that the County or LAFCO will issue, or will issue with conditions, any Project Entitlement. Without limiting the generality of the foregoing, Commission shall review all submittals in a timely manner and shall provide all information, in Commission's possession or control that the County or Developer may reasonably request in writing in connection with the Project Entitlements or the pursuit thereof.

4.5 Cost of Development

All costs for constructing the Project incurred following close of escrow, including but not limited to all development and building fees, broker's fees and commissions, site remediation (if any), grading and preparation costs, off-site and on-site construction and improvement costs shall be borne exclusively by the Developer. The Developer shall also bear all costs related to discharging the duties of the Developer set forth in this Agreement.

4.6 Construction Schedule

The Developer shall commence and complete construction of the Project by the respective times established therefor in the Schedule of Performance in Attachment No. 5.

4.7 Construction Financing

As a condition precedent to Developer's obligation to close escrow, Commission shall provide evidence reasonably satisfactory to the Developer that Commission has provided to Developer, or will provide to Developer, the financial assistance necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial assistance shall include an executed copy of the AHRA (Attachment No. 8) demonstrating the commitment of the Commission to provide to Developer and Developer to utilize the remaining balance of Five Million Two Hundred Nine Thousand Five Hundred Eighty Four Dollars (\$5,209,584.00) HCD Homekey funds, the full sum of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) from County Measure O funds, and the full sum of Nine Hundred Fifty Five Thousand Dollars (\$955,000.00) from ERAP funds to support construction of the Project and convert the Site to use as Permanent Supportive Housing, as described in the Financing Plan. Commission shall also provide copies of executed letters of commitment or preliminary reservations or awards (if final commitment letters are not yet available) from any funding sources described by the Financing Plan in an amount, along with the sums stated above, sufficient, collectively, to complete construction of the Project.

4.8 Evidence of Financial Capability

Within the time set forth in the Schedule of Performance, and as a condition precedent to Commission's obligation to transfer the Site to Developer, Developer shall submit to the Executive Director evidence reasonably satisfactory to the Executive Director that Developer has, or will have, prior to the Close of Escrow, the financial capability necessary for the development of the Project on the Site pursuant to this Agreement. Such evidence of financial capability (collectively, the "Evidence of Financial Capability") shall include all of the following:

- i. A copy of Developer's most recently prepared Annual Financial Statement, and a copy of Developer's most recent internally prepared, unaudited financial statement, which shall include a balance sheet, income statement,

statement of retained earnings, statement of cash flows, and footnotes thereto, prepared in accordance with generally accepted accounting principles consistently applied.

- ii. A copy of a fee-based construction contract or guaranteed maximum price construction contract between Developer and its general contractor for all of the improvements required to be constructed by Developer hereunder, certified by Developer to be a true and correct copy thereof; and

The Executive Director shall complete his or her review of and approve or disapprove Developer's Evidence of Financial Capability within the time set forth in the Schedule of Performance. If the Executive Director shall disapprove such Evidence of Financing, he or she shall do so by written notice to Developer stating the reasons for such disapproval. In such event, Developer shall promptly resubmit its Evidence of Financing not less than thirty (30) days after receipt of the Executive Director's disapproval, the Executive Director shall reconsider such resubmittal within the same number of days allowed for the initial submittal, and the deadlines in the Schedule of Performance shall be extended accordingly.

4.9 Indemnity Requirements

The Developer shall indemnify, defend, and hold harmless the Indemnitees from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including expert witness fees, attorneys' fees, and costs), which may be caused by any of the Developer's activities under this Agreement except to the extent caused by the negligence or willful misconduct of any of the Indemnitees.

Commission shall defend, (by counsel reasonably satisfactory to Developer), indemnify, and hold Developer harmless from any and all liability, loss, damages, or claim, excluding consequential damages, arising out of (a) project cost overruns above the Project Budget incurred or reasonably anticipated to occur and which are necessary to complete project construction in accordance with the Scope of Development described in Attachment No. 3 and (b) the presence of any Hazardous Materials or "Hazardous Materials Contamination" at, on, in, beneath or from the Site excluding those which are subject to Developer's indemnity obligations described in Section 5.7 below or Section 2.8.F of the Purchase and Sale Agreement.

4.10 Insurance Requirements

General. Commencing on the Effective Date hereof and ending on the expiration date of the AHRA, Developer shall procure and maintain, at its sole cost and expense, except as may be otherwise provided under the terms of the insurance reserve account described in Section 6.11 of the AHRA, in a form and content satisfactory to the Executive Director, policies of insurance in conformance with the Commission's requirements set forth in Attachment No. 11.

4.11 County and Other Governmental Commission Permits

Developer shall, subject to Section 4.4, at its own expense, secure or cause to be secured any and all permits or Project Entitlements which may be required by the County or any other governmental agent affected by construction, development or work of improvement upon the Site, or in connection with any offsite improvement. Developer shall be obligated to pay all necessary fees and to timely submit to the County final drawings with final corrections to obtain building permits; the Commission will, without obligation to incur liability or expense therefor, use reasonable efforts to assist Developer in obtaining issuance of building permits and certificates of occupancy for construction that meet the requirements of the Sonoma County Code. All costs related to Project Entitlements expended by Commission prior to the Close of Escrow shall be borne by Commission and shall not become the responsibility of Developer.

4.12 Maintenance During Construction

Developer shall, prior to completion of construction, maintain all portions of the Site undergoing construction in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards.

4.13 Construction Reporting

Developer, or its designee, shall submit regular construction progress reports to Commission no less frequently than every 30 days in a form agreed upon by Commission

and Developer. Construction progress reports shall include, at a minimum, the following elements:

- i. Updates to construction schedule and any foreseeable schedule changes;
- ii. Summary of work progression, any upcoming issues or challenges, discoveries of any Project or Site conditions that affect construction, and any potential changes to construction plans or the Scope of Development;
- iii. Summary of delays or issues causing delays;
- iv. Summary of environmental monitoring and implementation of mitigation measure;
- v. Cost overruns or savings, including any foreseeable changes to the Project Budget;
- vi. Summary of public engagement, complaints, compliments, or opposition;
- vii. Summary of communications with the District 5 Supervisor's Office and County Departments other than the Commission.

4.14 Rights of Access

For purpose of assuring compliance with this Agreement, officers, directors, members, employees, representatives, and agents of the Commission shall have the right of access to the Site without charges or fees, at normal business hours and upon reasonably advanced written notice to Developer, during the Term of this Agreement for the purposes of this Agreement, including, but not limited to, (i) the inspection of the work being performed in constructing the Project, so long as they comply with all safety rules, and (ii) following completion of construction, to inspect the ongoing operation and management of the Project to determine the same is in conformance with the requirements of this Agreement and the AHRA. The Commission shall not cause any delay in the construction or operation of the Project by its entry pursuant to this Section 4.14 and shall at all times comply with all applicable laws, rules and regulations, including, without limitation, any such laws, rules and regulations relating to tenant's rights. The Developer acknowledges that the Commission is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the Commission therefor. Any inspection by the Commission during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement, the HCD Regulatory Agreement, the HCD Standard Agreement, and applicable environmental conditions and mitigation measures and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of its general

contractor, subcontractors, and material suppliers. Notwithstanding any provision of this Agreement to the contrary, Developer shall not bear any liability to the Indemnitees for injury to any Commission agent, employee, or representative occurring during the exercise of the Commission's right of entry pursuant to this Section 4.14, unless caused by the negligence or willful misconduct of the Developer.

4.15 Compliance with Local, State and Federal Laws

The Developer shall carry out, and shall ensure that its contracts and subcontractors carry out the Project in conformity with all applicable federal, state, and local laws, ordinances, regulations, and rules, including but not limited to the Americans With Disabilities Act (42 U.S.C. Section 12101, *et seq.*), California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, the Unruh Civil Rights Act (California Civil Code Section 51, *et seq.*), and all applicable state and local labor and wage laws now in force or that may be enacted hereafter.

4.16 Labor and Wage Standards

The Developer shall perform under this Agreement and carry out its performance under this Agreement, including without limitation the construction of the Project, in conformity with all applicable federal, state, and local labor and wage standards, including, without limitation, Davis Bacon prevailing wage requirements pertaining to Project Based Vouchers, HCD Homekey requirements, and all applicable federal and state labor and wage standards, as to the Site, provided, however, Developer and its contractors, successors, assigns, transferees, and lessees are not waiving their rights to contest any such laws, rules or standards.

Developer expressly acknowledges and agrees that this Agreement is subject to the provisions of the County of Sonoma Living Wage Ordinance (Article XXVI of Chapter 2 of the Sonoma County Code), requiring payment of a living wage to covered employees. Noncompliance during the term of the AHRA will be considered a material breach and may result in termination of the AHRA or pursuit of other legal or administrative remedies.

Developer acknowledges that the provision of the Homekey, ERAP, and Measure O funds, in combination with any other public funding Developer may obtain to develop the Project, constitutes financial assistance that may cause the Project to be a "public work" as defined in California Labor Code Section 1720(a) and (b). Nothing in this Agreement constitutes a representation or warranty by the Commission that the Project is not subject to Labor Code Section 1720(a), and all applicable statutory and regulatory provisions related thereto. If required by applicable law, the Developer must pay, and shall cause the contractor and subcontractors, to pay prevailing wages in the construction of the Project as required by Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.* If required by applicable law, the Developer must, and shall cause the contractor and subcontractors, to comply with all other applicable provisions of Labor Code Section 1720 *et seq.* and implementing regulations of the California Department of Industrial Relations.

The Developer expressly waives any right of reimbursement for any “increased costs” under Labor Code Section 1781 with respect to the Project. The Developer shall indemnify, protect, defend and hold harmless the Indemnitees, with counsel reasonably acceptable to the Commission, from and against any and all loss, liability, damage, claim, fines, penalties, cost, expense and/or “increased costs” (including reasonable attorneys’ fees, court and litigation costs, and fees of expert witnesses) arising out of the failure or alleged failure of any person or entity (including a Developer, its contractors and subcontractors) to pay prevailing wages pursuant to California Labor Code, Division 2, Part 7, Chapter 1, commencing with Section 1720 *et seq.*, and the implementing regulations of the California Department of Industrial Relations, in connection with Project. The indemnification provided herein survives the Term or termination of this Agreement.

4.17 Anti-Discrimination

Pursuant to Section 33435 and 33050 of the California Community Redevelopment Law, the Developer for itself and its successors and assigns, agrees, that in the construction of the Project on the Site or other performance under this Agreement, the Developer shall not discriminate against any employee or applicant for employment on 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.

4.18 Taxes and Assessments

After the conveyance of title by Commission to Developer or its assignee, the Developer shall pay prior to delinquency all real estate taxes and assessments on the Site for any period subsequent to the conveyance of title and possession, so long as the Developer retains any ownership interest therein. The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to any sale or transfer of all or any portions thereof. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto, and nothing herein shall limit the remedies to the Developer in respect thereto. Nothing in this Section 4.18 shall prohibit or in any way limit the Developer’s right to seek an abatement of real estate taxes pursuant to Section 214(g) of the California Revenue and Taxation Code or any other state, county or local ordinance allowing for the abatement of property tax for affordable housing developments.

4.19 Right of the Commission to Satisfy Other Liens on the Site After Title Passes

After the conveyance of title by Commission and prior to the completion of construction, and after the Developer has had written notice and has failed after a reasonable time, to challenge, cure, or satisfy any liens or encumbrances on the Site which are not otherwise permitted under this Agreement, the Commission shall have the right but

no obligation to satisfy any such liens or encumbrances and receive immediate reimbursement of the costs thereof from the Developer. Notwithstanding the above, the Developer shall have the right to contest the validity or amounts of any tax, assessment, or encumbrance available to the Developer in respect thereto.

4.20 Limitation on Encumbrances

Except as otherwise permitted by this Agreement, including but not limited to Section 1.5, Developer shall not mortgage the Site or any portion thereof or any interest therein, any other mortgages or conveyances for financing that encumber the Site or any portion thereof, without the prior written approval of the Executive Director, which approval shall not be unreasonably withheld or delayed.

4.21 Holder Not Obligated to Construct Improvements

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Grant Deed for the Site, the AHRA or the Purchase and Sale Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Sonoma County General Plan, any applicable specific plan, and applicable zoning, as the same may be amended from time to time.

4.22 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the Commission shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction or operation of the Project, the Commission shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the Commission therefor; provided, however, that the Commission shall have no liability to any such holder for failure by the Commission to provide notice to such holder. Each such holder shall (insofar as the rights of the Commission are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 4.22 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 4.22. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the

construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Commission by written agreement satisfactory to the Commission. The holder in that event must agree to complete, in the manner provided in this Agreement, the construction to which the lien or title of such holder relates and submit evidence satisfactory to the Commission that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the Commission, to a Release of Construction Covenants from the Commission.

4.23 Failure of Holder to Complete Improvements

In any case where thirty (30) days after an uncured default by the Developer in completion of construction under this Agreement, and the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Commission may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt. If the ownership of the Site has vested in the holder, the Commission, if it so desires, shall be entitled to a conveyance of the Site from the holder to the Commission upon payment to the holder of an amount equal to the sum of the following:

1. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
2. All expenses with respect to foreclosure, including reasonable attorneys' fees and trustee's fees;
3. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
4. The costs of any authorized improvements made by such holder; and
5. An amount equivalent to the interest that would have accrued on the aggregate of the amounts in Subparagraphs 1-4 had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Commission.

4.24 Right of Commission to Cure Mortgage, Deed of Trust or Other Security Interest Default.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site prior to the completion of the Project, and

the holder has not exercised its option to complete the construction, the Commission may cure the default prior to completion of any foreclosure. In such event, the Commission shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the Commission in curing the default. The Commission shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to develop the Site as authorized herein.

5. USE OF THE SITE

5.1 Permanent Supportive Housing

Developer hereby covenants and agrees, for itself and its successors and assigns, to use and maintain the Site during the term of the AHRA only as a permanent supportive housing with not less than twenty-one (21) Units restricted to Extremely Low Income Households, including eight (8) Units restricted to chronically homeless individuals, three (3) ground floor Units accessible to mobility impaired individuals, three (3) Units accessible to hearing or visually impaired individuals, and related interior and exterior improvements including, but not limited to, an additional manager's unit accessible to mobility impaired individuals, a community/navigation center, and a Peer Mental Health Center, in accordance with the Standard Agreement executed between the HCD, Commission, and Developer.

Developer shall operate the Project in compliance with the Standard Agreement, the HCD Regulatory Agreement, AHRA, and all applicable regulatory agreements, including the 55-year restrictive covenant that restricts the use, operation, occupancy, and affordability of the Project, which Commission shall record against the Site in compliance with the Standard Agreement. Commission shall obtain the HCD's express written approval of such covenant prior to the Commission's recordation of the same. Unless otherwise authorized by the prior and express written approval of the HCD, the covenant shall be recorded as a lien against the Project in first position, and shall remain in first position over all other Project agreements, covenants, or other matters of record on the real property for the period of affordability required by the Program.

5.2 Management Agreement and Procedures

No less than 90 days prior to the date of initial occupancy described in the Schedule of Performance, the Developer shall submit to the Commission for approval the proposed management agreement with the Management Agent and written guidelines or procedures for tenant selection, operation and management of the Project, implementation of the income certification, and reporting requirements of the AHRA and the Standard Agreement. Commission shall review and approve, conditionally approve, or deny any proposed management agreement within fifteen (15) days after submittal. Any written disapproval shall specify the reasons for such disapproval. In the event the Commission disapproves of the written guidelines, the Developer shall thereafter submit revised

guidelines and procedures to the Commission, and the same timelines and procedures for approval or disapproval shall apply to the revised guidelines and procedures as set forth above for the original submission. The Commission hereby approves West County Community Services as the initial Management Agent.

5.3 Nondiscrimination

Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person, or group of persons on any basis listed in California Government Code Section 12955(a), as defined in Government Code Section 12925 *et seq.* and Section 12955 *et seq.*, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Developer, or any person claiming under or through him or her, 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 of the Site, or any part thereof. The foregoing covenants shall run with the land.

Developer agrees for itself and any successor in interest that Developer shall refrain from restricting the rental, sale, or lease of any portion of the Site, or contracts relating to the Site, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, 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 premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

B. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: “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 leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sublessees, subtenants, or vendees in the premises herein leased. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.”

C. In contracts pertaining to the realty: “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 premises which are the subject of this agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any 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 the premises herein conveyed. With respect to familial status, this covenant shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code, nor shall it be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this covenant. The foregoing covenants shall run with the land.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Commission, its successors and assigns, and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination shall remain in effect in perpetuity. The Commission agrees that the provisions of this Section 5.3 shall not prevent the application of a preference for applicants living or working in the County of Sonoma to the extent such a preference does not violate federal or state fair housing statutes and regulations.

5.4 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction

The Commission is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Commission, without regard to whether the Commission has been, remains or is an owner of any land or interest therein in the Site or in the Project Area. The Commission shall have the right, if this Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other property proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

5.5 Maintenance of the Site

The Developer shall maintain the Project on the Site in conformity with the Sonoma County Code and the requirements of the AHRA and HCD Standard Agreement, and shall keep the Site free from any graffiti and from any accumulation of debris or waste materials.

5.6 Duty to Prevent Hazardous Materials Contamination

Developer shall take all reasonable precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer 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 Sonoma County, California as respects the disclosure, storage, use, removal, and disposal of Hazardous Materials in, on, under or about the Site.

5.7 Obligation of Developer to Remediate Premises

Notwithstanding the obligation of Developer to indemnify Commission and its officers, officials, members, employees, agents, and representatives pursuant to Section 2.8.F of the Purchase and Sale Agreement, Developer 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 Governmental Requirements, and (ii) all actions necessary to make full economic use of the Site for the purposes contemplated by this Agreement and the HCD Standard Agreement, which requirements or necessity arise from the presence upon, about or beneath the Site, prior to Commission's conduct of a foreclosure sale or acceptance of a deed in lieu thereof, of any Hazardous Materials or "Hazardous Materials Contamination" for which Developer, or its agents, employees, contractors, consultants, invitees, or licensees have released or caused to be released. Such actions shall include, but not be limited to, the investigation of the environmental condition

of the Site, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. As used in this Agreement, the term “Hazardous Materials Contamination” means the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Site by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time emanating from the Site.

5.8 Environmental Inquiries

Developer, when it has received any notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, or cease and desist orders related to Hazardous Materials or Hazardous Material Contamination, or when Developer is required to report to any governmental agency any violation or potential violation of any Governmental Requirement pertaining to Hazardous Materials or Hazardous Material Contamination, shall concurrently notify Commission’s Executive Director, and provide to him/her a copy or copies of the environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, the notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Developer shall report to the Executive Director, as soon as possible after each incident, any unusual, potentially important incidents.

In the event of a responsible release of any Hazardous Materials into the environment, Developer shall, as soon as possible after it becomes aware of the release, furnish to the Executive Director 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 Executive Director, Developer shall furnish to the Executive Director a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site 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.

5.9 Annual Compliance Reports and Financial Statements

Upon transfer of the Site to the Developer, Developer shall provide to Commission an initial compliance report pertaining to all Homekey Program Requirements, the Standard Agreement, and this Agreement. Thereafter, Developer shall provide to Commission an annual compliance report each year on the anniversary of the Close of Escrow. Annual compliance reports shall include verification of tenant qualifications and a summary of services provided pursuant to the Homekey Program Requirements and Supportive Services Plan.

Developer shall provide to Commission an Annual Financial Statement, as defined herein, each year on the anniversary of the Close of Escrow. At all times during the Term

of this Agreement, Developer shall disclose to Commission any audit of Developer's finances required by any government agency.

6. DEFAULTS AND REMEDIES

6.1 Defaults – General

Subject to the extensions of time set forth in Section 7.3, failure or delay by either party to perform any term or provision of this Agreement, or comply with any provision of the HCD Regulatory Agreement, HCD Standard Agreement or Homekey Program Requirements, constitutes a default under this Agreement. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default (or within such other period as is set forth herein), the non-defaulting party shall be entitled to pursue whatever remedies to which such party is entitled under this Agreement.

6.2 Legal Actions

A. **Specific Performance.** The non-defaulting party, upon expiration of applicable notice and cure periods, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, Developer specifically acknowledges that Commission is entering into this Agreement for the purpose of assisting in the redevelopment of the Site and the provision of permanent supportive housing and not for the purpose of enabling Developer to speculate in land. In no event shall Developer be entitled to consequential damages from Commission, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

B. **Institution of Legal Actions; Attorney's Fees.** Any legal actions must be instituted in the Superior Court of the County of Sonoma, State of California, or in the Federal District Court in the Northern District of California. In the event of any litigation between the parties hereto, the prevailing party shall be entitled to receive, in addition to the relief granted, its reasonable attorney's fees and costs and such other costs incurred in investigating the action and prosecuting the same, including costs for expert witnesses, costs on appeal, and for discovery.

C. **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

D. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Commission, service of process on the Commission shall be made by personal service upon the Executive Director or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Commission against the Developer, service of process on the Developer shall be made by personal service upon any officer or director of the Developer and shall be valid whether made within or without the State of California or in such other manner as may be provided by law.

6.3 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

6.4 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.5 Termination

A. Termination by the Developer. Developer shall have the right to terminate this Agreement in the event that prior to the Close of Escrow:

a. Commission is in material default of this Agreement, and any such failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after written demand by the Developer; or

b. the Commission fails to satisfy any or all of Developer's Conditions to Close by the time established therefor in the Schedule of Performance; then, at the option of the Developer, upon written notice thereof to the Commission, all provisions of this Agreement shall terminate and be of no further force and effect. Thereafter, except as provided in the next sentence, neither the Commission nor the Developer shall have any further rights against or liability to the other with respect to this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened

hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

B. Termination by the Commission. The Commission shall have the right to terminate this Agreement in the event that prior to the beginning of construction of the Project:

a. The Developer does not submit certificates of insurance, Evidence of Financing, or any other submittals as required by this Agreement, in the manner and by the dates respectively provided in this Agreement or the Schedule of Performance therefor; or

b. The Developer fails, prior to close of escrow, to satisfy any or all of Commission's Conditions to Close; or

c. Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the Commission in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the Commission; then, at the option of the Commission, upon such written notice thereof to the Developer as may be set forth above, this Agreement shall be terminated. Thereafter, except as provided in the next sentence, neither party shall have any further rights or liability against the other under this Agreement. Nothing in this section shall be construed as (i) releasing any party from liability for any default of its obligations hereunder or breach of its representations and warranties under this Agreement occurring prior to the termination of this Agreement and/or the Escrow to be opened hereunder, or (ii) releasing the Developer from its indemnifications obligations hereunder, all of which shall survive termination of this Agreement.

The Commission shall have the further right to terminate this Agreement in the event that at any time during the Term of this Agreement:

d. The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or

e. There is a change in the ownership of the Developer in violation of the provisions of Section 1.5 hereof; or

f. The Developer is in material default hereof, and such default or failure is not cured within thirty (30) days, or for those defaults which cannot reasonably be cured within thirty (30) days, commenced to be cured within said thirty (30) day period and thereafter diligently prosecuted to completion, after the date of written demand therefor by the Commission; or

g. A court having jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for the Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of their properties, or (4) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (1) to (4), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Site, in which event such lesser time period will apply under this subsection (f) as well; or prior to sooner sale pursuant to such sequestration, attachment, or execution. The occurrence of any decree or order in this subsection shall act to accelerate automatically, without the need for any action by the Commission; or

h. The Developer shall have voluntarily suspended its business or, if the Developer is a partnership, the partnership shall have been dissolved or terminated.

6.6 Commission's Discretionary Right of Reverter

In addition to any other rights and remedies available to Commission hereunder, Commission shall be entitled, in its sole and absolute discretion, to reenter and take possession of the Site, subject to all liens and other matters of record, with all of the improvements thereon, from Developer in the event that prior to the date of initial occupancy, as described in the Schedule of Performance, (i) Developer fails to commence construction of the Project within certain specified timeframes as set forth in the Purchase and Sale Agreement, or (ii) after commencement of construction, Developer fails to continuously proceed with, and complete construction of the Project, or (iii) Developer transfers or suffers an involuntary transfer of the Site, or a portion thereof, in violation of the terms hereof. Said rights shall be as set forth in the Grant Deed pursuant to which Commission shall convey the Site to Developer.

6.7 Automatic Reversion upon Exhaustion of Insurance Reserve.

Prior to December 31, 2038, title to the Site shall automatically revert to the Commission in the event that: (i) the balance of the insurance reserve account established pursuant to Section 6.11 of the AHRA (Attachment No. 8) is completely exhausted, or (ii) fire and/or property insurance coverage is unavailable to Developer at any cost. The terms of such reversion shall be as set forth in the Grant Deed pursuant to which Commission

shall convey the Site to Developer.

7. GENERAL PROVISIONS

7.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between the Commission and the Developer shall be sufficiently given if (i) delivered by hand, (ii) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (iii) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the Commission and the Developer at the addresses specified in Section 1.3.A and 1.3.B, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1.

Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

Copies of any such written notice, demand, or communication shall also be sent to the following entities:

If notice is sent to Commission, then to:	Sonoma County Community Development Commission 1440 Guerneville Rd. Santa Rosa, CA, 95403 Attn: Executive Director
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And to:

Office of County Counsel
575 Administration Drive #105A
Santa Rosa, CA 95403
Attn: Ethan Pawson

If notice is sent to Developer, then to:	West County Community Services 16390 Main St. Guerneville, CA 95446
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7.2 Conflicts of Interest

No member, officer, official, or employee of the Commission shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal

interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

7.3 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor; subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the County of Sonoma, or the Commission, or any other public or governmental agency or entity (except that the acts or failures to act of the Commission shall not excuse performance by the Commission); or any other causes beyond the control or without the default of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and 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 after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Commission and Developer.

Notwithstanding the foregoing portion of this Section 7.3, the Developer is not entitled pursuant to this Section 7.3 to an extension of time to perform because of past, present, or future difficulty in obtaining suitable construction financing for the development of the Site, or because of economic or market conditions.

7.4 Provision Not Merged with Deeds

None of the provisions of this Agreement are intended to or shall be merged by any grant deed transferring title to any real property which is the subject of this Agreement from Commission to Developer or any successor in interest, and any such grant deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

7.5 Non-Liability of Officials and Employees of the Commission

No member, official or employee of the Commission shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or the County or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

7.6 Parties Not Co-Venturers

Nothing in this Agreement is intended to or does establish the Commission and the Developer as partners, co-venturers, or principal and agent with one another.

7.7 Warranties

Except as otherwise set forth herein, the Commission expresses no warranty or representation to the Developer as to fitness or condition of the Site for the building or construction to be conducted thereon.

7.8 Interpretation; Entire Agreement, Waivers; Attachments

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 either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Commission and the Developer, and all amendments hereto must be in writing by the appropriate authorities of the Commission and the Developer. Except as otherwise expressly provided, in any circumstance where under this Agreement either party is required to approve or disapprove any matter, approval shall not be unreasonably withheld, conditioned or delayed.

The exhibits and attachments to this Agreement are incorporated herein and made a part hereof. In the event of any inconsistency or conflict between the provisions of this Agreement and any exhibit or attachment here to, the provisions of this Agreement shall prevail.

7.9 Time of Essence

Time is of the essence in the performance of this Agreement.

7.10 No Brokers

Each party represents to the other party that it has not had any contact or dealings regarding the Site, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee. If any broker or finder makes a claim for a commission or finder's fee based upon a contact, dealings, or communications, the party through whom the broker or finder makes this claim shall indemnify, defend with counsel of the

indemnified party's choice, and hold the indemnified party harmless from all expense, loss, damage and claims, including the indemnified party's attorneys' fees, arising out of the broker's or finder's claim. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

7.11 Maintenance of Books and Records

Developer shall prepare and maintain all books, records, and reports necessary to substantiate Developer's compliance with the terms of this Agreement.

7.12 Right to Inspect

Commission shall have the right, upon not less than three (3) business days' prior notice, at all reasonable times during business hours, to inspect the books and records of the Developer pertinent to its performance under this Agreement. Said right of inspection shall not extend to documents privileged under attorney-client or other such privileges.

7.13 Binding Effect of Agreement

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns. The Site and the successors in interest, owner or owners thereof, and all of the tenants, lessees, sublessees, and occupants of such Site shall be subject to the provisions of this Agreement. Each and every contract, deed, or other instrument hereafter executed recorded against or conveying the Site shall be held conclusively to have been executed, delivered, and accepted subject to the terms and provisions hereof, regardless of whether such terms and provisions are set forth in such contract, deed, or other instrument, unless the Commission expressly releases the Site from the requirements of this Agreement.

7.14 Severability

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.15 Counterparts

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by all the parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

7.16 Amendments to this Agreement

The Developer and the Commission agree to mutually consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. The Commission's Executive Director shall have the authority to approve, on behalf of the Commission, amendments to this Agreement that would not substantially alter the basic business terms or substantially increase the cost or risk of this Agreement to the Commission. All other amendments shall require the action of the Commission Board. All amendments, including those authorized to be approved by the Commission's Executive Director, shall be in writing and shall be signed by authorized representatives of Commission and Developer. The Commission's Executive Director shall have the authority, on behalf of the Commission, to approve extensions of time in Developer's performance under this Agreement, including, but not limited to, times of performance set forth in the Schedule of Performance, except however that Enforced Delays pursuant to Section 7.3 shall not be subject to the approval of the Commission's Executive Director.

IN WITNESS WHEREOF, the Commission and the Developer have signed this Agreement on the respective dates set forth below.

SONOMA COUNTY COMMUNITY
DEVELOPMENT COMMISSION,
a public body corporate and politic

Dated: _____, 2024

By: _____

Michelle Whitman

Its: Executive Director

APPROVED AS TO FORM:

Ethan Pawson

Attorney for the Sonoma County Community
Development Commission

WEST COUNTY COMMUNITY
SERVICES, a California nonprofit public
benefit corporation

Dated: _____, 2024

By: _____

Tim Miller

Its: Executive Director