

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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Loan Closings Section
Department of Housing and
Community Development
P.O. Box 952054
Sacramento, CA 94252-2054

**DECLARATION OF RESTRICTIVE COVENANTS
FOR THE
DEVELOPMENT AND OPERATION OF AFFORDABLE HOUSING**

This Declaration of Restrictive Covenants for the Development and Operation of Affordable Housing (the “**Declaration**”) dated _____, 2023, for reference purposes only, by [Owner XXXXX, a California ...] the fee owner of the real property and owner of the housing development improvements (the “**Owner**” or “**Declarant**”), its successors, assigns and transferees, is hereby given to and on behalf of the HOUSING AUTHORITY OF THE CITY OF FRESNO, a California public body corporate and politic (the “**Authority**”).

RECITALS

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

1. The Authority and the California Department of Housing and Community Development (the “**Department**”) entered into that certain agreement [##### dated xxxx, 2020] (the “**Standard Agreement**”), under the Homekey Program (“**Homekey**”). Homekey was funded primarily by the state’s Coronavirus Relief Fund (“**CRF**”) with money received from the United States Treasury pursuant to the federal Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”) (Pub. L. No. 116-136) and is authorized by state Assembly Bill No. 83 (2019-2020 Reg. Sess.) adding section 50675.1.1 and 50675.1.2 to the Multifamily Housing Program (“**MHP**”) (Chapter 6.7 of Part 2 of Division 31 of the Health and Safety Code (commencing with Section 50675). Funding for operational expenses also

come from the state General Fund or through philanthropic partners. The primary objective of Homekey is to expand housing for persons experiencing homelessness or at risk of homelessness and impacted by COVID-19 (the “**Target Population**”) by providing access to interim and temporary housing which may ultimately be converted to permanent affordable housing.

2. Pursuant to the terms of the Standard Agreement, the Department agreed to provide the Authority with a grant under Homekey in an amount not to exceed [XXXXXXXXXXXXXXXXXX] (the “**Grant**”). The Standard Agreement requires the Authority to use the Grant to acquire, rehabilitate and operate a motel to serve as interim housing for those experiencing homelessness or at risk of homelessness and impacted by COVID-19 for a period of up to five years (the “**Interim Housing Project**”) on the Property. The Standard Agreement further contemplates that the Authority may ultimately convert the Interim Housing Project to permanent affordable housing at a later date and/or utilize a coordinated exit strategy adopted by the Continuum of Care as defined by the United States Department of Housing and Urban Development at Section 578.3 of Title 24 of the Code of Federal Regulations to support transition of Target Population residents into other permanent housing (the “**Permanent Housing Project**”). In connection with the conversion to the Permanent Housing Project, the Standard Agreement requires the recordation of an affordability covenant restricting the Property for a period of fifty-five (55) years. The Authority and the Owner are satisfying such requirement by executing and recording this Declaration.

3. The Authority also agreed to house a portion of the Target Population at the housing project known as [Project Name XXXXX] located at the Property. For purposes of this Declaration, the [Project Name XXXX] project located at the Property is also referred to as the “Permanent Housing Project.” The Authority has assigned its interest in the Property to Owner. Owner will own and operate the Permanent Housing Project.

4. To ensure the operation of the Permanent Housing Project, and as consideration for the Homekey Grant, the Owner agreed to encumber its interests and enter into this Declaration, to restrict the development, use and occupancy of the Permanent Housing Project.

5. The terms “Owner” or “Declarant” as used in this Declaration shall include all successors, assigns and transferees of any or all of the interests of the Owner in the Property and the Project.

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

COVENANTS

1. Rehabilitation, Operation and Maintenance of the Permanent Housing Project. Owner, for itself and for any successors-in-interest to and transferees or assigns of the Property, hereby declares and covenants that the Property is restricted to the development and use of the Permanent Housing Project and uses ancillary to such housing and other uses as may be reasonably approved by the Department in its sole discretion. The Permanent Housing Project shall be comprised of, at a minimum, the number and size of units, have such occupancy and affordability restrictions and such other characteristics as are described in **Exhibit B, "Permanent Housing Project,"** attached hereto and incorporated herein by this reference.

2. Repair and Maintenance of the Property and other Building or Improvements on the Property. Owner agrees:

- a. To keep the Property in a decent, safe, sanitary, rentable, tenantable condition and repair, and permit no waste thereof;
- b. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable;
- c. It may construct any buildings or improvements on the Property contemplated as part of the Permanent Housing Project or add to, remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property as part of, or maintenance and repair of, the Permanent Housing Project; and
- d. To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property.

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

- a. Except with the Authority's prior written approval, Owner shall not make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer in any other form of the Property or the Permanent Housing Project or of any of their interest in either of them.
- b. The Authority may grant its approval for a sale, transfer, demolition or conveyance of the Property or the Permanent Housing Project subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the Property or the Permanent Housing Project or to ensure compliance with Homekey Requirements.

4. Charges; Liens. Declarant, based on its interests and obligations to the Property and the Permanent Housing Project, shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property or to the Permanent Housing Project, if any, by Declarant making payment, when due or prior to delinquency, directly to the payee thereof. Notwithstanding the provisions contained in this Section, Declarant represents that the Permanent Housing Project is exempt from property taxation. Declarant shall promptly furnish to Authority all notices of amounts due under this paragraph, and in the event Declarant shall make payment directly, Declarant shall promptly furnish to Department receipts evidencing such payments. Declarant shall pay when due all encumbrances, charges, and liens, on the Property or to the Permanent Housing Project, any portion thereof and payments on notes or other obligations secured by an interest in the Property or Permanent Housing Project, any portion thereof, with interest in accordance with the terms thereof. Declarant shall have the right to contest in good faith any claim or lien, or payment due thereunder, provided that Declarant does so diligently and without prejudice to Department.

5. Hazard and Liability Insurance and Condemnation.

- a. The Declarant shall at all times keep the Property and the Permanent Housing Project insured against loss by fire and such other hazards, casualties, liabilities and contingencies, and in such amounts and for such periods as required by the Authority. All insurance policies and renewals thereof shall be issued by a carrier and in form acceptable to the Authority.
- b. In the event of any fire or other casualty to the Property or the Permanent Housing Project or eminent domain proceedings resulting in condemnation of the Property or the Permanent Housing Project or any part thereof, Declarant shall have the right to rebuild the Property or the Permanent Housing Project, and to use all available insurance or condemnation proceeds therefore. If the casualty or condemnation affects only part of the Property or Permanent Housing Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding.

6. Covenants Run with the Land. The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land. Owner expressly acknowledges and agrees that the Covenants are reasonable restraints on Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint on alienation. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such

covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument.

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

8. **Term of Declaration.** The Covenants in this Declaration shall be binding, effective and enforceable commencing upon the execution of this Declaration and shall continue in full force and effect for a period of not less than fifty-five (55) years after a certificate of occupancy or its equivalent has been issued for the Permanent Housing Project by the local jurisdiction or, if no such certificate is issued, from the date of initial occupancy of the Permanent Housing Project.

a. **Default.** Any default under the Standard Agreement, amendments thereto and all other agreements related to disbursement of the Grant (collectively, with this Declaration, the “Grant Documents”) shall also be a default under this Declaration.

11. **Third Party Beneficiary.** Department will be considered a third party beneficiary under this Declaration and shall have such rights and remedies to enforce the Program requirements as may be available to third party beneficiaries under the law.

12. **Remedies.** The Authority and its successors and assigns may use any or all of the following provisions in the event of a default or breach of this Declaration. The failure by the Authority to exercise any specific right or remedy shall not preclude the Authority from exercising any other right or remedy, or from maintaining any action to which it may otherwise be entitled at law or in equity:

a. **Injunctive Relief.** The Authority shall be entitled to petition the court for injunctive relief to preserve the Authority’s interests in the Property and its rights under this Declaration. Such injunctive relief may include, but is not limited to, an order of the court restraining any development of the Property inconsistent with the Covenants made herein.

b. **Legal Actions.** In addition to any other rights and remedies, any party may institute a legal action to require the cure of any breach or default of the Covenants contained in this Declaration and to recover damages for any breach or default, or to obtain any other remedy consistent with the purpose of this Declaration. In any action seeking enforcement or interpretation of any of the terms or provisions of this Declaration, the prevailing party shall be awarded, in addition to damages, injunctive relief, or other relief, its reasonable costs and attorneys’ fees.

13. **Authority Review and Inspection.**

- a. At any time during the term of this Declaration, the Authority or its designee may enter and inspect the Property and inspect all accounting records of the Owner pertaining to the activities funded by the Grant, including the acquisition, rehabilitation or operation of the Permanent Housing Project. Upon request by the Authority, the Owner shall notify occupants of upcoming inspections of their units in accordance with state law.
- b. At the Authority's request, the Owner shall provide, at Owner's expense, a special audit of the projects funded by the Grant certified by an independent certified public accountant. The Authority may also perform or cause to be performed audits of any and all phases of the Owner's activities related to the Grant.
- c. The Authority may request any other information that it deems necessary to monitor compliance with the Covenants and other requirements set forth in this Declaration and the Standard Agreement. The Owner shall provide such information within fourteen (14) days from the Authority's written request for such information.

13. Declarant's Representations. Declarant represents and warrants to the Authority that: (1) Owner has sufficient interest in the Property to own, repair, and operate the Permanent Housing Project in accordance with this Declaration (2) to Declarant's actual knowledge and belief, there are no agreements, contracts, covenants, conditions or exclusions to which Owner (or its predecessor in interest) is a party which would, if enforced, prohibit or restrict the use of the Property in accordance with the terms of this Declaration, (3) Owner has the full right and authority to enter into this Declaration, (4) this Declaration constitutes a valid and legally binding obligation on Declarant, enforceable in accordance with its terms, and (5) Declarant is duly organized and authorized to do business in the State of California.

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

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

***Declarant's signatures follow on page 8 of this Restrictive Covenant.
The remainder of this page is intentionally left blank.***

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

OWNER:

[OWNER NAME, , a California ...]

By: _____

[Name]

[Title]

Address:

[Number/Street]

[City, State, Zip]

All signatures must be acknowledged.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, 2023, before me, _____, a Notary Public, personally appeared [Name ...], who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT “B”

PERMANENT HOUSING PROJECT

| | | | |
|--------------------------------------------------------------------|-------------------|-----------------------------------------------------------|------------------------------------------------------------|
| [Project Name and Address] Fresno County | | Portion APN: [xxxxxxxxxx] | |
| Enter the number of doors by bedroom size and income level. | | | |
| # of Bedrooms | # of Units | # of HK Restricted Permanent Housing Units | Income Limit for HK Restricted Units (% of AMI) |
| 1 | | | 30% AMI |
| 2 | | | 30% AMI |
| 3 | | | 30% AMI |
| 4 | | | 30% AMI |
| Total | | | |