

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
24-070

SAP Number

Community Development and Housing Department

Department Contract Representative	<u>Carrie Harmon</u>
Telephone Number	<u>(909) 382-3983</u>
Contractor	<u>San Bernardino County</u>
Contractor Representative	<u>Evan Miles</u>
Telephone Number	<u>(909) 501-0618</u>
Contract Term	<u>January 1, 2022-January 1, 2032</u>
Original Contract Amount	<u>N/A</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>N/A</u>
Cost Center	<u>N/A</u>
Grant Number (if applicable)	<u>N/A</u>

Briefly describe the general nature of the contract: *The California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability for the Homekey Program. The County received a Homekey allocation under that certain Standard Agreement No. 20-HK-130 between the County and HCD and acquired specified real property located in San Bernardino County referenced as Original Pacific Village Campus. The County desires to expand the programming of activities conducted on the Original Pacific Village Campus (Campus) to assist homeless households and households at risk of homelessness. To accommodate the expanded program, the County has received HCD's approval to subdivide the Campus into the Homekey parcel and the remaining parcels. The recordation of an updated Regulatory Agreement on the Homekey parcel will be necessary to satisfy HCD's requirements as part of the process to subdivide the Campus.*

FOR COUNTY USE ONLY

Approved as to Legal Form Reviewed by: <u>Suzanne Bryant</u> Suzanne Bryant, Deputy County Counsel Date: <u>July 17, 2024</u>	Reviewed for Contract Compliance _____ Date: _____	Reviewed/Approved by Department _____ Date: _____
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[Insert Recorder's Cover Sheet]

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(County Homekey – Pacific Village)

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(County Homekey – Pacific Village Parcel)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is dated July __, 2024, and is made and recorded by San Bernardino County, a political subdivision of the State of California (the "County").

RECITALS

A. Capitalized terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. The Department of Housing and Community Development ("HCD") issued a Notice of Funding Availability ("NOFA") for the Homekey Program, established by California Health and Safety Code Section 50675.1.1 (the "Homekey Program"), on July 16, 2020. The NOFA incorporates by reference the MHP, as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from Coronavirus Relief Fund ("CRF") money received from the U.S. Department of the Treasury. The CRF was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136).

C. The County received a Homekey allocation under that certain Standard Agreement No. 20-HK-130 between the County and HCD dated November 24, 2020, as such may be amended (the "Standard Agreement"), and acquired specified real property located in the County of San Bernardino, State of California commonly referred to as the Original Pacific Village Campus.

D. In conformance with the Homekey Program requirements the County recorded that certain Regulatory Agreement and Declaration of Restrictive Covenants, dated as of January 11, 2022, recorded in the in the Official Records of San Bernardino County (the "Official Records") on January 13, 2022 as Instrument No. 2022-0017558 (the "Original Restrictive Covenant"), which requires the County provide 28 "doors" of Interim Housing (the "Improvements") on portions of the Original Pacific Village Campus, to assist Homeless Households and At Risk of Homelessness Households impacted by COVID-19 for a period of ten (10) years commencing on January 1, 2022.

E. With HCD's permission, the County subsequently subdivided the Original Pacific Village Campus and concurrently herewith recorded that certain Full Release of Homekey Regulatory Agreement (the "Full Release").

F. To continue to comply with the requirements of the Homekey Program, the County desires to record this Agreement against that certain real property in the City of San Bernardino, County of San Bernardino, as further described on the attached Exhibit A incorporated herein (the "Property" also referred to as the "Homekey Parcel"). This Agreement

requires the County to provide 28 "doors" of Interim Housing on the Property, to assist Homeless Households and At Risk of Homelessness Households impacted by COVID-19 for the remainder of the original period of ten (10) years or through January 1, 2032. The Property and Improvements are referred to in this Agreement as the "Development".

G. The Homekey Program was established during the COVID-19 Pandemic to assist Homeless Households and At Risk of Homelessness Households impacted by COVID-19. Through its July 16, 2020 Notice of Funding Availability, HCD considers Homeless Households and At Risk of Homeless Households to be inherently impacted by the COVID-19 Pandemic.

H. The County intends to continue to provide the Development as Interim Housing which the County will endeavor to convert to Permanent Housing. This Agreement is being recorded pursuant to HCD's requirement that the County record a ten (10) year use restriction ensuring that the County provides 28 "doors" of Interim Housing at the Development which shall be low barrier and culturally competent, and shall be focused on providing support for moving people out of crisis and into Permanent Housing as quickly as feasible. If and to the extent the County is able to secure sufficient financing to convert the Interim Housing provided at the Development to Permanent Housing, the County will amend and restate this Agreement to accommodate such conversion.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein by this reference, and the covenants and promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the County declares as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

When used in this Agreement, the following terms have the following meanings:

(a) "30% AMI Household" means a household whose Adjusted Income does not exceed 30% of Area Median Income.

(b) "Actual Household Size" means the actual number of persons in the applicable household.

(c) "Adjusted Income" means with respect to the household occupying a Unit, the income from all persons in the household including nonrelated individuals, calculated using the methods to calculate income adopted by HCD in accordance with the Homekey Program.

(d) "Area Median Income" means the median gross yearly income, adjusted for Actual Household Size as specified herein, in San Bernardino County, California as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County

shall provide other income determinations that are reasonably similar with respect to methods of calculation to those previously published by HUD.

(e) "At Risk of Homelessness Household" means a household that is at risk of homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation. The definition of At Risk of Homeless Households under 24 CFR 578.3 (attached hereto as Exhibit B) includes limited requirements that an individual or family also qualify as a 30% AMI Household.

(f) "Homeless Household" means housing for individuals and families who are experiencing homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation.

(g) "HUD" means the United States Department of Housing and Urban Development.

(h) "Interim Housing" means a facility that is primarily intended to provide temporary shelter or lodging for individuals and families who are experiencing homelessness or who are at risk of homelessness, as defined in Section 578.3 of Title 24 of the Code of Federal Regulation, and who are impacted by the COVID-19 pandemic, where the participant is not required to pay more than 30 percent (30%) of the participant's income toward the cost of housing and which does not require occupants to sign leases or occupancy agreements.

(i) "Permanent Housing" means housing, dwellings, or other living accommodations where the landlord does not limit the tenant's length of stay or restrict the tenant's movements and where the tenant has a lease and is subject to the rights and responsibilities of tenancy under California Civil Code Section 1940.

(j) "Term" means the term of this Agreement which commenced as of January 1, 2022, and unless sooner terminated pursuant to the terms of this Agreement, ends ten (10) years thereafter.

(k) "Unit" or "Doors" means one or all of the twenty-eight (28) doors in the Development.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirements. During the Term, twenty-eight (28) Units in the Development will be occupied by, or, if vacant, made available for occupancy by, At Risk of Homelessness Households or Homeless Households. The Units currently include three (3) doors in a single family home, three (3) doors in a three-bedroom apartment, two (2) doors in a two-bedroom apartment, and 20 modular Units. The campus will be expanded, during which 28 Permanent Housing Units will be developed and constructed to replace the aforementioned Units. These occupancy requirements may be amended and restated in a manner required to make the conversion of the Units to Permanent Housing. Notwithstanding anything to the

contrary in this Agreement, it is contemplated that the County may hold, at its discretion, vacant any Units during the Term to facilitate the conversion of the Units to Permanent Housing. The occupancy requirements set forth in this Section shall be subject to any applicable health orders issued by the State of California Department of Public Health which apply to the Development ("Health Order"). Notwithstanding anything to the contrary herein, if as a result of the implementation of any applicable Health Order the number of Units in the Development available for occupancy is reduced below twenty-eight (28), the County will be deemed to be in compliance with the requirements of this Agreement if the County remains in compliance with the Health Order.

Section 2.2 Accessibility. The Development will be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of the Standard Agreement.

ARTICLE 3 OPERATION OF THE DEVELOPMENT

Section 3.1 Residential Use; Compliance with Standard Agreement.

Until such time as the Development is converted to Permanent Housing, the Development will be operated as Interim Housing. The Development will also be operated in accordance with the terms and conditions of the Standard Agreement. If and to the extent that any conflicts arise between the occupancy requirements under this Agreement and the requirements under the Standard Agreement, then the provisions and requirements of this Agreement shall prevail.

Section 3.2 Covenants to Run With the Land.

The County hereby declares its express intent that the provisions this Agreement shall run with the land, and shall bind all successors in title to the portions of the Development utilized to provide the 28 Units; provided, however, that on the expiration of the Term, said covenants and restrictions expire. Notwithstanding anything to the contrary herein, the County shall be allowed to revise the number of doors required to be provided under this Agreement and may further subdivide the Property and may partially release this Agreement for any portion of the Property not needed for the provision of the 28 Units required under this Agreement, so long as the County uses the released portions of the Property to meet the needs of persons or families of low or moderate income, as defined in Health and Safety Code 50093.

Section 3.3 Enforcement by the County.

The County shall retain the right to enforce this Agreement following any transfer of the Development by the County. If the County's successor in ownership (either in whole or in part) fails to cure the default within thirty (30) days after the County provided notice in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within sixty (60) days, the County shall have the right to enforce this Agreement by any remedy provided by law.

ARTICLE 4
MISCELLANEOUS

Section 4.1 Governing Law.

This Agreement is governed by the laws of the State of California.

Section 4.2 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by the County in writing, but no waiver by the County of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 4.3 Recording and Filing.

The County shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records.

Section 4.4 Amendments.

This Agreement may be amended only by a written instrument duly recorded in the Official Records.

Section 4.5 Subordination.

This Agreement shall be recorded in first lien position. This Agreement may only be subordinated to financing required to convert the Development to Permanent Housing upon approval by the County Board of Supervisors.

Section 4.6 Assignment by the County. The County may assign its rights and obligations under this Agreement to any instrumentality of the County or other public entity.

Section 4.7 Third Party Beneficiaries. The County agrees that HCD is deemed to be a third-party beneficiary of the affordability restrictions set forth herein and shall be entitled to enforce the affordability restrictions set forth herein solely through an action for specific performance, as if HCD was a party hereto. There shall be no other third-party beneficiaries to this Agreement.

Section 4.8 Term.

The provisions of this Agreement shall apply to the Development for the entire Term, which commenced on January 1, 2022 and terminates on January 1, 2032.

[Signature Page Follows.]

IN WITNESS WHEREOF, the County has executed this Agreement as of the day first above written.

COUNTY:

SAN BERNARDINO COUNTY, a political subdivision of the State of California

By: *Dawn Rowe*
Dawn Rowe, Chair of Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE COUNTY BOARD

Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

By: *Cyrene Monell*
Deputy



APPROVED AS TO LEGAL FORM:
TOM BUNTON
County Counsel

By: *Suzanne Bryant*
Suzanne Bryant, Deputy County Counsel

[All signatures must be notarized.]

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 San Bernardino)

On 7/26/2024, before me, Julie A. Arentz, Notary Public, personally appeared Dawn M. Rowe, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.


Name: Julie A. Arentz

Notary Public

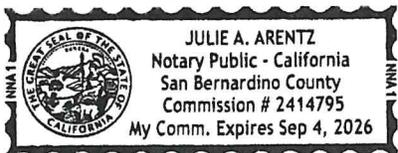


EXHIBIT B

Definition of Homeless and At Risk of Homeless Households under 24 CFR 578.3

The following definitions shall apply to the Agreement to which they are attached. Any future revisions or amendments to the definitions of the terms "At risk of homelessness" or "Homeless" under 24 CFR 578.3 shall apply automatically without need to amend this Exhibit.

Please note that an income restriction applies only to individuals or families qualifying under the "At risk of homelessness" under subsection (1) of that definition. Note also that *there is no income restriction* for persons qualifying as "Homeless".

At risk of homelessness means:

(1) An individual or family who:

(i) Has an *annual income below 30 percent of median family income for the area*, as determined by HUD;

(ii) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the "Homeless" definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Homeless means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.