

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
California Dept. of Social Services
c/o Horne LLP
661 Sunnybrook Rd., Suite 100
Ridgeland, MS 39157
NO FEE FOR RECORDING PURSUANT TO
GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF RESTRICTIONS

This Declaration of Restrictions (the “**Declaration**”), dated ____ for reference purposes, by County of Nevada, a political subdivision of the State of California (the “**Owner**”), is hereby given to and on behalf of the Department of Social Services, a public agency of the State of California (“**CDSS**”).

RECITALS

A. This Declaration affects Owner’s interest in that certain real property commonly known as 16782 State Highway 49, located in the County of Nevada, State of California, and the improvements thereon (the “**Property**”); as more particularly described and shown on Exhibit A attached hereto and incorporated herein by this reference;

B. Owner and Horne LLP (“**Horne**”), as a contractor to CDSS, entered into that certain Program Funding Agreement, of even date herewith (the “**Program Funding Agreement**”), whereby Owner agreed to renovate or construct certain improvements on the Property and Horne agreed to disburse funds to Owner in accordance with the terms thereof (in an amount not to exceed Two Million Eight Hundred Ninety-Three Thousand Eight Hundred Sixty Seven Dollars (\$2,893,867) (the “**Program Funds**”);

C. The Program Funds are provided pursuant to the Community Care Expansion Program, authorized under Welfare and Institutions Code Section 18999.97-18999.98, established by California Assembly Bill No. 172 (Chapter 696, Statutes of 2021), to fund the acquisition, construction, or rehabilitation of adult and senior care facilities that service applicants and recipients of Supplemental Security Income/State Supplementary Payment (“**SSI/SSP**”) and Cash Assistance Program for Immigrants (“**CAPI**”) applicants and recipients who are experiencing or are at risk of homelessness; and

D. This Declaration shall be secured by a Performance Deed of Trust, the form of which is set forth in Attachment J to the Program Funding Agreement, encumbering Owner’s fee interest in the Property; and the Property shall be owned, held, used, maintained, and transferred pursuant to the covenants, conditions, restrictions, and limitations as further described herein.

E. This Declaration shall be subject in all respects to that certain Disclaimer of Interest and Memorandum of Understanding (as supplemented, amended, restated or modified from time to time, the "Disclaimer"), dated _____ for reference purposes, is among Owner, Horne, CDSS and Banc of America Leasing & Capital, LLC (with its successors and assigns, the "Secured Party").

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby covenants, agrees, and declares the following:

AGREEMENT

1. **Use of Property.** Owner, for itself, and for its successors and assigns, hereby declares and covenants that for the term of this Declaration, all use of the Property, and any improvements thereon, shall be subject to the Disclaimer and restricted to continuous, and lawful use in accordance with the uses described in Exhibit B, attached hereto and incorporated by this reference. Any such other use shall require the express prior written approval of Horne or CDSS in its sole and absolute discretion and the recording of a new Declaration of Restrictions reflecting the use(s) agreed upon which shall thereafter supersede this Declaration.

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

2.1. To keep the Property, and all improvements thereon, in decent, safe, and sanitary condition and repair, and to permit no waste thereof;

2.2. Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable, except in accordance with this Declaration;

2.3. Not to construct any buildings or improvements on the Property, other than the buildings and improvements contemplated as part of this Declaration, that would detrimentally affect the Property; or add to, remove, demolish or structurally alter any buildings or improvements included as part of the Property, now or hereinafter located on the Property;

2.4. To promptly repair, restore or rebuild any buildings or improvements on the Property that may be damaged or destroyed while subject to this Declaration;

2.5. To comply with all applicable laws affecting the Property, and not to suffer or permit any violations of any such applicable law, nor of any covenant, condition or restriction affecting the Property;

2.6. Not to initiate or acquiesce in any change in any zoning or other land use or legal classification which affects any of the Property without Horne or CDSS's prior written consent; and

2.7. Not to alter the use of all or any part of the Property without Horne or CDSS's prior written consent.

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

3.1. Owner shall not, except with Horne or CDSS's prior written consent, make any sale, encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, or transfer of the Property or of any of its interest in the Property.

3.2. If Horne or CDSS determine, in their sole and absolute discretion, to grant prior written consent for a sale, transfer or conveyance of the Property, such consent may impose terms and conditions, as necessary, to preserve or establish the fiscal integrity of the Property or to ensure compliance with this Declaration and/or Program Requirements.

3.3. **Charges; Liens.** Owner shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Property, if any, by Owner making payment, when due, directly to the payee thereof. Owner shall promptly furnish to Horne or CDSS all notices of amounts due under this subsection, and where Owner makes direct payments, Owner shall promptly furnish to Horne or CDSS its receipts evidencing such payments. Owner shall pay when due all encumbrances, charges, and liens on the Property, and shall make payments on notes or other obligations secured by an interest in the Property, with interest in accordance with the terms thereof. Owner shall have the right to contest in good faith any claim or lien, or payment due thereunder, so long as Owner does so diligently and without prejudice to Horne or CDSS.

4. **Building Permits.** Owner agrees not to apply for or accept any permits for the construction of improvements on the Property that are inconsistent with the lawful operation of the Property, as such Property is described in this Declaration.

5. **Hazard and Liability Insurance and Condemnation.**

5.1. Owner shall keep the Property insured against loss by fire and such other hazards, casualties, liabilities, and contingencies, and in such amounts and for such periods as required by Horne and CDSS. All insurance policies and renewals thereof shall be issued by a carrier and in a form acceptable to Horne and CDSS.

5.2. In the event of any fire or other casualty to the Property or eminent domain proceedings resulting in condemnation of the Property or any part thereof, the Owner shall have the right to rebuild the Property and to use all available insurance or condemnation proceeds therefor; provided that, as determined by Horne or CDSS in its sole and absolute discretion: (a) such proceeds are sufficient to rebuild the Property in a manner that ensures continued operation in accordance with this Declaration; and (b) no material breach or default then exists under the Program Funding Agreement. If the casualty or condemnation affects only part of the Property and if total rebuilding is infeasible, then the insurance or condemnation proceeds may be used for partial rebuilding and/or partial repayment of the Program Funds. CDSS or Horne has the right but not the obligation to approve the plans and specifications for any major rebuilding, as well as the right but not the obligation to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement.

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 this Declaration and the Disclaimer. The foregoing Declaration is intended to constitute both equitable servitudes and covenants running with the land. Owner expressly acknowledges and agrees that the Declaration is a reasonable restraint on the Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and is not and shall not be construed to be an unreasonable restraint on alienation. Except for and subject at all times to the Disclaimer, 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 this Declaration, regardless of whether this Declaration is set forth in such contract, deed, or other instrument.

7. **Binding on Successors and Assigns.** The Declaration contained herein shall be binding upon all of Owner's successors, assigns and transferees to or of the Property, and upon all leases, tenants, contractors, agents, and persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing. Any transferee or purchaser of the Property, or of any portion of, or interest in the Property, by the acceptance of a deed therefore, whether from the Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the Property, shall by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants and restrictions set forth in this Declaration.

8. **Term of Declaration.** The covenants in this Declaration shall be binding, effective, and enforceable commencing upon the recordation of this Declaration in the official records of the county in the jurisdiction where the Property is located, and they shall continue in full force and effect for a period of not less than 30 years after the date of _____ (the "**Restriction Period**"), regardless of any sale, assignment, transfer, or conveyance (including, without limitation, by foreclosure sale) of the Property or any portion thereof.

9. **Default, Remedies.** A default under this Declaration shall constitute a default under the Program Funding Agreement; and a default under this Declaration shall entitle CDSS or Horne to any rights, remedies, or damages available at law or in equity, including, but not limited to, those that are specified below. CDSS's or Horne's failure to exercise any specific right or remedy shall not be construed as a waiver of that or any right or remedy.

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

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

9.3. Appointment of Receiver. In conjunction with any other remedy available at law or in equity, Horne or CDSS may apply to a court of competent jurisdiction for the appointment of a receiver to take over and operate the Property in accordance with the requirements of this Declaration.

9.4. Notwithstanding the foregoing or anything to the contrary contained herein, CDSS shall be entitled to any rights, remedies, or damages available pursuant to that certain Performance Deed of Trust executed by Owner, as Trustor, therein, on or about of even date herewith, and recorded in the official records of the county in the jurisdiction where the Property is located.

10. **Horne and CDSS Review and Inspection.**

10.1. At any time during the term of this Declaration and upon reasonable notice, Horne, CDSS, or their designees may, but are not obligated to, enter and inspect the Property, and inspect all records pertaining to the operation, repair, and maintenance of the Property. Upon request by Horne or CDSS, the Owner shall notify occupants of upcoming inspections in accordance with state law.

10.2. CDSS or Horne may, but is not obligated to, request any other information that it deems necessary to confirm compliance with this Declaration. The Owner shall provide such requested information within fourteen (14) calendar days of Horne's or CDSS's written request for the information.

10.3. During the Term of this Declaration, Owner shall submit to CDSS, or Horne, as required by Horne, or CDSS, in their sole discretion, written documentation, in a form and at a frequency acceptable to Horne, or CDSS, in their sole discretion, providing sufficient detail and with sufficient supporting information to permit Horne, or its designee, or CDSS, or its designee, to monitor and confirm that Owner's uses of the Property are in accordance with the uses described in this Declaration, including, Exhibit B, attached hereto.

10.4. CDSS or Horne shall not, by the fact of making or not making any entries or inspections, or by taking or failing to take any action in response thereto: (i) incur or undertake, or be deemed to incur or undertake, any obligation, duty, or liability whatsoever, whether to the Owner, or to any other person or entity; (ii) be deemed as approving or disapproving any matter, action, incident, or condition related to the Property; or (iii) be deemed as approving or disapproving any matter related to the compliance of the Property with this Declaration or other applicable laws. In no event or circumstance shall Horne's or CDSS's exercise or non-exercise of its discretion under this subsection constitute, or be deemed or interpreted as constituting, any termination, limitation, alteration, or waiver by Horne or CDSS of any right, benefit, or remedy under or with respect to this Declaration.

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

accordance with the terms of this Declaration; (3) Owner has the full right and authority to enter into this Declaration; (4) this Declaration constitutes a valid and legally binding obligation on Owner, enforceable in accordance with its terms; and (5) Owner is duly organized and authorized to do business in the State of California.

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

13. **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.

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

15. **Recordation of Agreement.** This Declaration shall be recorded in the official records of the County of Nevada no later than ____ [DATE]. The Declaration shall be recorded, and shall remain, as a lien against the Property in first position (subject to the Disclaimer) over all other agreements, covenants, liens, or other matters of record on the Property.

SIGNATURE ON FOLLOWING PAGE

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

OWNER:

County of Nevada, a political subdivision of the State of California

By: _____

Justin Drinkwater

Its: Director of Facilities

All signatures must be acknowledged.

ADD NOTARY ACKNOWLEDGEMENT

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF NEVADA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

THE SURFACE TO A DEPTH OF 50 FEET OF THAT CERTAIN PORTION OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 8 EAST, M.D.B.&M., LYING WEST OF THE DOWNIEVILLE HIGHWAY, DESCRIBED AS FOLLOWS:

COMMENCING AT A FENCE CORNER AT THE NORTHWEST CORNER FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 11 BEARS NORTH 1 DEGREES 58 MINUTES WEST 808.9 FEET AND RUNNING THENCE NORTH 84 DEGREES 33 MINUTES EAST 124.18 FEET TO THE WEST SIDE OF THE DOWNIEVILLE HIGHWAY; THENCE ALONG HIGHWAY SOUTH 45 DEGREES 23 MINUTES EAST 1043.82 FEET; THENCE SOUTH 44 DEGREES 37 MINUTES WEST 585.42 FEET TO THE SOUTHEAST CORNER; THENCE NORTH 45 DEGREES 23 MINUTES WEST 597.40 FEET TO FENCE; THENCE ALONG FENCE NORTH 2 DEGREES 58 MINUTES WEST 719.40 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED DECEMBER 31, 1941, IN BOOK 77 OF OFFICIAL RECORDS, PAGE 47.

ALSO EXCEPTING THEREFROM ALL THAT PORTION GRANTED TO MICHAEL A. BYRNE, ET UX, IN DEED RECORDED MAY 15, 2003 SERIES NO. 2003-0025168 OFFICIAL RECORDS OF NEVADA COUNTY, DESCRIBED AS FOLLOWS:

A PORTION OF THE NORTHWEST ONE-QUARTER OF SECTION 11, TOWNSHIP 16 NORTH, RANGE 8 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED TO TUCKER RECORDED IN VOLUME 966 AT PAGE 334 OF THE OFFICIAL RECORDS OF NEVADA COUNTY, A POINT ON THE WEST LINE OF SAID SECTION 11 MARKED BY A 5/8" REBAR TAGGED RCE 17403; THENCE ALONG SAID WEST LINE, SOUTH 02 DEGREES 22 MINUTES 10 SECONDS EAST 219.49 FEET; THENCE LEAVING SAID WEST LINE, SOUTH 81 DEGREES 43 MINUTES 00 SECONDS EAST 356.39 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF STATE HIGHWAY 49; THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 45 DEGREES 19 MINUTES 00 SECONDS WEST 387.01 FEET TO THE SOUTHEAST CORNER OF SAID TUCKER PARCEL, MARKED BY A 5/8" REBAR TAGGED RCE 17403; THENCE ALONG THE SOUTH LINE OF SAID TUCKER PARCEL, SOUTH 89 DEGREES 00 MINUTES 37 SECONDS WEST 86.59 FEET TO THE POINT OF BEGINNING.

APN: 04-140-67

TOGETHER WITH AN EASEMENT FOR OPEN SPACE PURPOSES AS DISCLOSED BY DOCUMENT RECORDED MAY 15, 2003 SERIES NO. 2003-25171, OFFICIAL RECORDS.

EXHIBIT "B"

PROPERTY AND OPERATIONS

Permanent supportive housing where 6 units are prioritized for Qualified Residents experiencing or at risk of homelessness. For purposes of this Declaration, "Qualified Resident" shall have the meaning set forth in California Welfare and Institutions Code Section 18999.97(e) and "prioritized" shall mean a preferential interest in occupancy of each designated bed or unit.

If after applying best efforts to identify and enroll a Qualified Resident experiencing homelessness or at risk of homelessness for each designated bed or unit, no such person(s) is identified, the Owner may identify and enroll a Qualified Resident for each designated bed or unit; if after applying best efforts to identify and enroll a Qualified Resident for each designated bed or unit, the Owner also cannot identify and enroll a Qualified Resident, the Owner may enroll a non-Qualified Resident for the designated bed or unit.