

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-10-01-01

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE UP TO A 99-YEAR LEASE AGREEMENT WITH THE HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY OF LANE COUNTY FOR COUNTY OWNED PROPERTY IDENTIFIED AS MAP NO. 17-03-31-11-01400, 540 OAK ST., EUGENE

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to enter into a lease agreement with the Housing Authority and Community Services Agency doing business as Homes for Good for County owned property identified as Assessor's map no. 17-03-31-11-01400.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The County Administrator is authorized to execute a lease with the Housing Authority and Community Services Agency doing business as Homes for Good Housing Agency substantially similar to attached Exhibit "A".
2. The County Administrator is authorized to execute documents related to effecting the lease agreement and development of the property.

ADOPTED this 1st day of Oct., 2019



Pete Sorenson, Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date

9/20/2019

LANE COUNTY OFFICE OF LEGAL COUNSEL

After recording, return to:
Housing Authority and Community Services
Agency of Lane County
dba Homes for Good Housing Agency
177 Day Island Rd.
Eugene, Oregon 97401
ATTN: Jacob Fox

LEASE AGREEMENT

This Lease Agreement (“Lease”) is by and between Lane County, a political subdivision of the State of Oregon, (“Lessor”), and the Housing Authority and Community Services Agency of Lane County dba Homes for Good Housing Agency (“Lessee”).

RECITALS

1. Lessor owns real property situated in Lane County Oregon.
2. Lessor wishes to lease to Lessee and Lessee wishes to lease from Lessor the property for a term through June 12, 2118.
3. Lessor and Lessee are parties to a month-to-month rental agreement for this property. This Lease Agreement will replace the month-to-month lease in its entirety.
4. Lessor and Lessee intend that this Lease will set forth the terms and conditions upon which the property will be leased to and developed by the Lessee.

AGREEMENT

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the real property located at 540 Oak St., Eugene, OR 97401, as more particularly described in the attached Exhibit A (Premises)

1. **TERM:** The original term of this Lease shall commence when it has been fully executed by the parties and shall continue through June 12, 2118, subject to early termination as provided herein.
2. **PURPOSE:** Lessee shall have the right to use and occupy the Premises for the purpose of any use, improvement, development, or sublease allowed by current or

future zoning. The Premises may not be used for any purpose other than the purposes provided in this Section 2 without the written consent of Lessor, which Lessor may withhold in Lessor's sole discretion.

3. RENT: Lessee shall pay a one-time rental payment in the total amount of \$563,339. This amount is calculated as follows, pursuant to subsection 2.3 of the Lease Option Agreement executed between the parties effective December 13, 2013:

Base Rent:	\$636,139.00
Credit for Option payments	(72,800.00)
	<hr/>
One-Time Rent Payment Amount	\$563,339.00

This one-time Rent payment is due on or before 30 days after execution of this Lease.

4. POSSESSION: The right to possession under this Lease shall begin upon commencement of the term of this Lease.

5. IMPROVEMENTS:

(a) The parties anticipate and agree that Lessee may make various improvements to the Premises, including new construction and remodeling (Improvements). Lessee has the right to make such Improvements but shall first provide Lessor with a written description of such Improvements and obtain Lessor's approval, which shall not be unreasonably withheld. This right shall include demolition and replacement of the improvements currently at the Premises with new improvements meeting the Purpose of this Lease as stated above, so long as such improvements are of equal or greater value and utility than the existing improvements and so long as Lessor's consent is obtained in the same manner as stated above.

(b) Title to all improvements shall vest in Lessor.

6. COMPLIANCE WITH LAWS: Lessee agrees to comply with all applicable federal, state, and local legal requirements that now or hereafter apply to the Premises.

7. LESSOR'S OBLIGATIONS: Lessor is obligated to cooperate as needed for Lessee's use of the Premises.

8. LESSEE'S OBLIGATIONS: The following shall be the responsibility of Lessee:

(a) Maintenance and Repair. Lessee must maintain, repair, and replace the Premises and Improvements as and when needed to do so to keep them in good condition and repair, throughout the entire term of this Lease. Lessee takes the property "as-is" with the knowledge and understanding that the Lessor will not be

responsible for any maintenance, upgrading, cleaning, or repair of any portion of the premises during this Lease.

- (b) Services and Utilities. Lessee is responsible for procuring and paying for any services and utilities, including but not limited to internet, garbage, and janitorial services.

9. LESSOR'S INTERFERENCE WITH LESSEE: Any work performed on or around the Premises, by Lessor or Lessor's officers, agents, or employees, shall interfere as little as reasonably possible with the use of the Premises by Lessee.

10. ASSIGNMENT AND SUBLEASE:

- (a) Lessee may not sell, assign, or transfer any interest in this Lease Agreement without the prior written consent of Lessor, which may be withheld in Lessor's sole discretion.
- (b) Lessee may assign or sublease any part of the Premises without the prior written consent of Lessor.
- (c) Consent in one instance shall not require consent to future requests.

11. INSURANCE:

- (a) General Liability Insurance. During the Term of this Lease, Lessee shall cause to be maintained, without cost to the Lessor, a commercial general liability policy (including coverage for broad form contractual liability, sudden and accidental spill coverage on land and on water, and any personal injury liability) for the protection of Lessee, and insuring Lessee and Lessor against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations or actions of Lessee. Such coverage must be primary and non-contributory, and name Lessor as an additional insured. All such coverage must be in an amount not less than \$2,000,000 per occurrence, \$4,000,000 aggregate, combined single limit per occurrence for bodily injury and property damage for all coverage specified herein.
- (b) Personal Property Insurance. Lessee is be responsible to insure all Lessee's own Personal Property (as defined in section 10.2), improvements, betterments, and trade fixtures, which items will not be covered by Lessor's insurance and for which Lessor and its insurance carriers will have no liability.
- (c) Issuing Companies. All policies of insurance must be written by companies having an A.M. Best rating of "A" or better, or the equivalent.

12. INDEMNIFICATION: Except to the extent arising from the negligence or willful misconduct of Lessor or its officers, employees, agents, or invitees, Lessee will indemnify, defend, and hold Lessor harmless for, from, and against:

- (a)** Any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims, judgments, or appeals:
 - i.** Arising from the use, maintenance, repair, occupation, operation, or control of the Premises and Improvements by Lessee; or
 - ii.** Resulting from any breach or default in the performance of any obligation to be performed by Lessee under this Lease or for which Lessee is responsible under the terms of this Lease or in accordance with any governmental or insurance requirement.
- (b)** All reasonable legal costs and charges, including reasonable lawyers' and other reasonable professional fees incurred by the other party related to matters described in paragraph (a) of this Section, and the defense of any action arising out of the same or in discharging the Premises or Improvements any part thereof from any and all liens, charges, or judgments that may accrue or be placed thereon by reason of any act or omission of either party or its employees, agents, or invitees. The provisions of this Section will survive the expiration or earlier termination of this Lease Agreement with respect to any matter occurring before such expiration or termination.

13. NO LIENS: Lessee covenants and agrees to keep the Premises and Improvements free from all construction liens and all other liens of any type whatsoever. If a lien is filed, Lessee will, within thirty (30) days after knowledge of the filing, secure the discharge of the lien or deposit a sufficient corporate surety bond in an amount required by Oregon law to remove the lien. If Lessee fails to discharge or remove the lien, Lessor will have the right to pay the amount of the lien and Lessee will promptly reimburse Lessor for any such payment by Lessor, together with all costs and fees (including attorney fees) that Lessor incurred in connection with the lien. Any amount payable by Lessee under this provision will bear interest at the rate of 10% from the date incurred or paid by Lessor, until reimbursed in full by Lessee. Lessor expressly reserves the right to post notices of nonresponsibility under the lien laws under the state of Oregon.

14. TAXES:

- (a)** Lessor represents and warrants that as of the effective date there are no real property taxes assessed on or applicable to the Premises.
- (b)** Lessee will be liable for and shall pay before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes,

privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever which, at any time during the Term, shall be or become due and payable and which:

- i.** Shall be levied, assessed, or imposed against the Real Property or the Improvements or any interest of Lessor or Lessee; or
 - ii.** Shall be or become liens against the Real Property or the Improvements or any interest of Lessor or Lessee this Lease; or
 - iii.** Shall be levied, assessed, or imposed on or against Lessor by reason of any actual or asserted engagement by Lessor, Lessee, directly or indirectly, in any business, occupation, or other activity in connection with the Real Property or the Improvements; or
 - iv.** Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Real Property or the Improvements; under or by virtue of any Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Lessor shall be free from all such expenses and all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called "Tax" or "Taxes").
- (c) Limitations.** Nothing contained in this Lease requires Lessee to pay any franchise, estate, inheritance, succession, capital levy, or transfer tax of Lessor, or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy on the Rent payable by Lessee under this Lease; provided, however, that if at any time during the Term the methods of taxation prevailing at the commencement of the Term are altered so that in lieu of any Tax under this Section there is levied, assessed, or imposed (1) a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by the Rent payable by Lessee under this Lease, then all such taxes, assessments, levies, impositions, or charges or the part so measured or based, shall be deemed to be included within the term Tax for the purposes of this Lease, to the extent that such Tax would be payable if the Real Property were the only property of Lessor subject to such Tax, and Lessee shall pay and discharge the same as provided in respect to the payment of Taxes.

- (d) Installments. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.
- (e) Evidence of Payment. Lessee covenants to furnish to Lessor, within thirty (30) days after the last date when any Tax must be paid by Lessee as provided in this Section, official receipts, if such receipts are then available to Lessee, of the appropriate taxing authority, or other proof satisfactory to Lessor, evidencing payment or proof of exemption from assessment of taxes from the Lane County Department of Assessment and Taxation.
- (f) Contest of Tax. Lessee shall have the right at their own expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings.

15. HAZARDOUS MATERIALS: Lessee will not use or store Hazardous Substances on any part of the Premises, except in compliance with all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, departments, and commissions, and then only if required to complete any Improvements. Lessee shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of or otherwise released on the Premises. The term "Hazardous Substance" as used herein means any hazardous, toxic, or dangerous substance, waste, or material listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302).

16. EVENT OF DEFAULT: The following shall be events of default:

- (a) **Default in Rent.** The failure of Lessee to make its timely rental payment within thirty (30) days after it is due and payable.
- (b) **Default in Other Covenants.** Failure of Lessee to comply with any term or condition or fulfill any obligation of this Lease within sixty (60) days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 60-day period, this provision will be complied with if Lessee begins correction of the default within the 60-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy.

17. REMEDIES UPON DEFAULT: Upon the occurrence of an event of default, Lessor may exercise any one or more of the following remedies:

(a) Termination. If Lessee defaults, this Lease may be terminated at the option of Lessor by written notice to Lessee. Lessor shall pay Rent back to Lessee on a pro rata basis as specified in the Termination Section (Section 24) below.

(b) Reletting. Following reentry, Lessor must use reasonable efforts to relet the Improvements on their fair market rent and terms and in that connection may make any suitable alterations or refurbish the Improvements, or both.

18. LESSOR'S WARRANTY: Lessor warrants that it is the owner of the Premises, and has the right to lease the Premises.

19. WAIVER: Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice to any party's right to require strict performance of the same provision in the future or of any other provisions.

20. ATTORNEY FEES: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to their costs, such sum as the Court may adjudge reasonable as attorney fees including fees for any appeals herein.

21. REPRESENTATION: The Lessee acknowledges that this lease is accepted and executed on the basis of the Lessee's own examination and personal knowledge of the value and condition of the Premises; that no representation as to value, condition, or repair of said premises has been made by Lessor or Lessor's agent.

22. NOTICE: Notices required or permitted under this Lease Agreement shall be given in writing and deemed delivered upon personal delivery or three calendar days after deposit in the United States mail, postage prepaid, registered mail, return receipt requested, addressed as follows:

To Lessor: Lane County
125 E. 8th Avenue
Eugene, OR 97401
ATTN: County Administrator

To Lessee: Housing Authority & Community Services Agency of Lane
County
177 Day Island Rd.
Eugene, OR 97401
ATTN: Executive Director

Either party may change the address to which notices must be sent at any time by providing notice to the other party as specified in this Section.

23. TERMINATION: Lessee may terminate this Lease Agreement for any reason after giving Lessor ninety (90) days' written notice of its intent to terminate. Upon termination, Lessor shall repay to Lessee the pro rata share of the Rent payment for the remainder of the full term of the Lease rounded to the nearest month.

24. SURRENDER AND EXPIRATION:

(a) Upon the expiration or earlier termination of this lease, the Premises, the Improvements, and control and maintenance revert to the Lessor. The Improvements shall be returned to Lessor in good condition and repair. Depreciation and wear from ordinary use for which the Premises were let need not be restored, but all maintenance for which Lessee is responsible shall be completed to the latest practical date prior to surrender.

(b) Before the expiration or earlier termination of this Lease, Lessee will remove all furnishings, furniture, and trade fixtures that remain Lessee's property. If Lessee fails to do so, at Lessor's option, (1) the failure to remove will be deemed an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it will cease, or (2) by notice in writing given to Lessee, Lessor may elect to hold Lessee to Lessee's obligation of removal. If Lessor elects to hold Lessee to Lessee's obligation to remove, Lessor may effect a removal and charge Lessee the cost of removal, transportation to storage, and storage, together with interest at the rate of 10% from the date of expenditure by Lessor.

25. SURVIVAL. The obligations and liabilities of Lessee arising under this Lease Agreement will survive the expiration or earlier termination of this Lease Agreement or the termination of the right of possession of Lessee.

26. AUTHORITY. Lessee and Lessor each warrant and represent to the other that the person(s) signing this Lease Agreement on their behalf has authority to enter into this Lease Agreement and to bind Lessee and Lessor, respectively, to the terms, covenants, and conditions contained in this Lease Agreement.

27. ATTORNEY FEES. In any dispute involving the interpretation, rescission, or enforcement of this Lease Agreement or involving issues related to bankruptcy (whether or not such issues relate to the terms of this Lease), the prevailing party will be entitled to recover from the non-prevailing party reasonable attorney fees, paralegal fees, costs, disbursements, and other expenses the prevailing party incurred in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party will include an amount estimated as the fees, costs, disbursements, and other expenses that will be reasonably incurred in collecting a

monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.

28. MODIFICATION. No modification of this Lease Agreement will be valid unless it is in writing and is signed by all of the parties.

29. INTEGRATION. This Lease Agreement is the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained in this Lease Agreement. This Lease Agreement supersedes all prior communications, representations, and agreements, oral or written, of the parties.

30. INTERPRETATION. The section and paragraph headings are for the convenience of the reader only and are not intended to act as a limitation on the scope or meaning of the sections or paragraphs themselves.

31. SEVERABILITY. The invalidity of any term or provision of this Lease Agreement will not affect the validity of any other provision.

32. BINDING EFFECT. Subject to restrictions in this Lease Agreement on assignment, this Lease Agreement will be binding on and inure to the benefit of the successors and assigns of the parties.

33. GOVERNING LAW. This Lease Agreement will be interpreted and enforced according to the laws of the State of Oregon.

34. EXISTING LEASE. Lessee acknowledges that a tenant, Oak Street Child Development Center, which provides child care services, occupies a portion of the Premises by virtue of a lease with Lessor. Lessor hereby assigns said lease to Lessee and Lessee acknowledges acceptance of said lease assignment. Upon commencement of this Lease between Lessor and Lessee, Lessee will take full responsibility for management of the lease with Oak Street Child Development Center, and shall perform all of Lessor's obligations pursuant to said lease, including, but not limited to, collection and retention of rents and shall indemnify Lessor for any claims arising after the commencement date of this lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement this ___ day of _____, 2019.

LESSOR:

Lane County

BY _____

TITLE _____

LESSEE:

Homes for Good

BY _____

TITLE _____

EXHIBIT A

Address: 540 Oak Street

Tax Lot Number: 1703311101400

Legal Description:

Beginning at a point 8 feet North of the NE corner of Lot 4, Block 2, Skinner's Donation to Lane County, as platted and recorded in Book ' A', Page 122, Lane County Oregon Deed Records; and running thence South along the West line of Oak Street 102 feet; thence West parallel with the South line of Fifth Avenue East in said City 160 feet or to the alley running North & South through said Block; thence North along the East line of said alley 102 feet; and thence East 160 feet to the place of beginning, all in the City of Eugene, Lane County, Oregon.