

## **FUNDING AGREEMENT**

This FUNDING AGREEMENT (“**Agreement**”) is made by and between the **CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation organized and operating under Chapter 9, Texas Local Government Code and located in Hays, Travis and Williamson counties, Texas (the “**City**”), acting by and through its Housing and Planning Department, and **FAMILY ELDERCARE, INC.**, a Texas nonprofit corporation authorized to transact business in Texas (“**Family Eldercare**”). The City and Family Eldercare may be referred to singularly as “**Party**” or jointly as “**the Parties**.”

### **RECITALS**

**WHEREAS**, the City is the owner of a hotel located in Austin, Williamson County, Texas at 10811 Pecan Park Blvd, Austin, Texas 78750, known as the Pecan Gardens (the “**Property**”);

**WHEREAS**, the City desires to renovate the Property to create 78 fully-furnished efficiency apartments for permanent supportive housing for single adults with a history of homelessness and a disabling condition;

**WHEREAS**, the City has determined that the renovation of the Property, as depicted on **Exhibit A** (the “**Renovations**”), will protect the health, safety, and general welfare of the community;

**WHEREAS**, the City has determined that it is in the City’s best interest to accelerate the Renovations by reimbursing Family Eldercare to coordinate the Renovations as provided in this Agreement;

**WHEREAS**, the City will reimburse Family Eldercare for the costs of the Renovations and Family Eldercare’s coordination of the Renovations, in a total amount not to exceed \$3,903,216.13 (the “**City Funding Amount**”);

**WHEREAS**, the Austin City Council authorized negotiation of this Agreement on May 19, 2022 and authorized execution of this Agreement on June 16, 2022;

**NOW, THEREFORE**, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Family Eldercare agree as follows:

### **Article 1      DEFINITIONS AND INTERPRETATION**

#### **Section 1.1      Definitions.**

A.      **Contractor** means any contractor hired by Family Eldercare for the engineering, design, construction, and provision of materials and services relating to the Renovations, following

construction contract competitive bidding, as applicable.

B. **Effective Date** means the date the final Party signs this Agreement.

C. **Final Completion** means the final completion of the Renovations by Family Eldercare and the written acceptance of the Renovations by the City, which written acceptance will not be unreasonably with-held or delayed.

D. **Force Majeure** means and refers to causes not reasonably within the control of the Party claiming such inability, including but not limited to acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; or other natural disasters; restraint of government and people; civil disturbances; explosions; or any unforeseen conditions arising under the performance of this Agreement.

E. **Notice** means any formal notice or communication, request, reply, or advice required or permitted to be given by one Party to another Party by this Agreement.

F. **Third Party Agreements** means following all City ordinances, and other rules and regulations regarding permits and approvals related to activities and construction of the Renovations, including the minority-owned and female-owned business enterprise procurement program requirements of City Code, Chapters 2-9A, 2-9B, 2-9C, and 2-9D, the non-discrimination requirements of City Code, Title 5, worker safety training, wage rate compliance, and anti-lobbying ordinances, as well as the bonding, procurement and competitive bidding state law requirements applicable to municipalities, all in the same manner that the City would be required to comply if the City was carrying out the activities and construction of the Renovations and as required by City Resolution Nos. 20120112-058 and 20110728-106, and City Ordinance No. 030508-31. In addition, if applicable, Family Eldercare will comply with the accessibility provisions of (i) the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., (ii) the Texas Architectural Barriers Act, Ch. 469, Texas Govt. Code, (iii) Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards. Family Eldercare will provide a certificate establishing compliance from a Registered Accessibility Specialist licensed by the Texas Department of Licensing and Regulation with respect to any Renovations that must comply with the accessibility provision laws or provide a waiver from the regulatory agency responsible for enforcement of the accessibility provision laws.

**Section 1.2 Interpretation of Terms and Incorporation of Exhibits.** Except where the context otherwise clearly requires, in this Agreement:

A. Words imparting the singular will include the plural and vice versa;

B. The word “including” means “including but not limited to.”

C. All exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though fully copied and set forth at length in the Agreement; and

D. References to any document means that document in effect at the Effective Date; and references to any Party means that Party, its successors, and assigns, if permitted by this Agreement.

## **Article 2      DESIGN OF THE RENOVATIONS**

The City and Family Eldercare agree that the Renovations will be designed in accordance with the applicable portions of the City's written, published technical standards, specifications, and other requirements of the City Code and City rules and regulations in effect on the Effective Date.

## **Article 3      CONSTRUCTION OF THE RENOVATIONS**

### **Section 3.1    Agreement Regarding the Renovations.**

Subject to the terms and conditions of this Agreement, Family Eldercare agrees to cause the Renovations to be constructed in a good and workmanlike manner and in accordance with all applicable laws, regulations, ordinances, and Third Party Agreements.

### **Section 3.2    Schedule of Construction and Extensions of Renovations.**

A. Family Eldercare will fund the construction of the Renovations on a timely basis, and agrees that the construction of the Renovations will:

- (1) start on or before 30 calendar days following the date all required permits are issued;
- (2) once started, make continuous progress toward completion without interruption for a period of more than 30 calendar days; and
- (3) achieve Final Completion on or before 12 months following the Effective Date of this Agreement.

B. The date for start and completion of the Renovations and the 30-day period described in Section 3.2(A)(2) above will be automatically extended due to events of Force Majeure for the same number of days the event of Force Majeure lasted and, with the written approval of the City, for other good cause for a period of time mutually agreeable to the Parties. Upon any Force Majeure delay, Family Eldercare must attempt to remedy the delay with all reasonable dispatch.

**Section 3.3 Safety and Security.** Family Eldercare and its Contractors will at all times:

- A. prohibit camping on the Property;
- B. prohibit drop-ins at the Property;
- C. As a reimbursable cost, provide measures that secure the Property including 24-hour camera surveillance seven days per week, on-site physical presence of security personnel, and secure entryways;
- D. provide the City with safety and security updates in the form of a memorandum submitted every 60 days outlining the following: (1) attempted break-ins, (2) successful break-ins, (3) security breaches of any kind, (4) any changes to security contracts, and (5) any and all important security data requiring consideration by the Austin City Council;
- E. provide the City with Notice within 24 hours when a significant incident occurs on-site related to safety and security of the property; and
- F. provide the City with concerns that occur on nearby properties.

**Section 3.4 Duties of Family Eldercare.** Subject to all the terms and conditions of this Agreement, Family Eldercare will:

- A. comply with applicable provisions of the Third Party Agreements, including making a good faith effort to achieve any applicable MBE/WBE goals;
- B. execute required engineering, design, construction, materials, and services contracts that comply with all applicable laws, regulations, ordinances, City procedures, and the terms of this Agreement. The following general conditions and provisions must be included in such contracts and must not be amended, modified, or waived unless approved by the City in writing:
  - (1) warranties;
  - (2) insurance, and payment and performance bonding requirements (approved by and acceptable to the City Risk Manager in writing);
  - (3) provision that the City is an approved future assignee, with the ability of the City, as assignee, to complete the Renovations if Family Eldercare fails to do so;
  - (4) requirement that policies of insurance evidencing that the required insurance and original payment and performance bonds (both approved by and acceptable to the City Risk Manager in writing) have been obtained and that the

City and Family Eldercare have each been designated as an insured with respect to all liability coverages to the extent allowed by law; and

(5) obligation to obtain and pay for all required permits, inspections, tests, and authorizations necessary for construction of the Renovations.

C. provide the City with a copy of all executed contracts and any additional documents pertaining to the contracts on or about the time they have been signed, and thereafter provide copies of any documents amending or replacing any of said documents;

D. notify the City in writing when Family Eldercare proposes material changes that may affect the Renovations and provide the City an opportunity to comment, in writing or at a meeting, within ten business days following the City's receipt of such notice. If the City fails to comment in writing or at a meeting within ten business days following City's receipt of such notice, such proposed changes affecting the Renovations will be deemed rejected by the City;

E. make timely payment to Contractors for work properly performed and materials and services provided concerning the Renovations in accordance with the terms of this Agreement (including any provisions related to applicable lien retention requirements of Chapter 53, Texas Property Code, and amounts withheld due to improper work or punch list items);

F. reject all work found not to conform to the terms of this Agreement, and advise the City of work that Family Eldercare determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval;

G. arrange and observe with Contractors all acceptance testing for the Renovations, if applicable, and notify the City of the schedule and results of the testing;

H. maintain master job files of correspondence, reports of conferences, shop drawings, samples, plans and specifications, change orders, addenda, daily inspection reports, additional or revised drawings, and other related construction documents for the Renovations;

I. ensure access and permit the City to inspect the construction of the Renovations at all reasonable times during construction until Final Completion;

J. conduct and coordinate final inspection of the Renovations with the City inspector; transmit a final list of items to be completed or repaired, if any, and observe Contractors' correction of the same;

K. prepare and submit to the City monthly during construction of the Renovations a report regarding minority-owned and women-owned business enterprise participation in the construction of the Renovations;

L. notify the City when Family Eldercare considers the Renovations to be completed

for the City to promptly inspect the Renovations, and, if the City determines in its sole discretion that the Renovations are completed, issue to Family Eldercare the City's written notice of Final Completion, which written notice will not be unreasonably withheld or delayed;

M. within 10 calendar days after Final Completion, provide the City with a detailed report in a form acceptable to City of the total costs of the Renovations; and

N. within 30 calendar days after Final Completion, provide the City with complete sets of the plans and specifications for the Renovations, including certified "record drawings," in accordance with the requirements of this Agreement. The City's acceptance of the Renovations will be governed by this Agreement and the requirements of the City Code. As a condition of Final Completion, Family Eldercare will provide the City with:

- (1) an assignment to the City of all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Renovations;
- (2) copies of separate books of accounts, confirming the total costs of the Renovations and accurately documenting costs and expenses incurred in connection with the Renovations; and
- (3) a written, sealed statement from each Contractor certifying that the Renovations have been constructed in accordance with the plans and specifications provided to Family Eldercare (subject to approved change orders).

O. Execute a performance bond for the construction of the Renovations to ensure completion of the project.

#### **Article 4      COSTS AND PAYMENT**

**Section 4.1    Family Eldercare's Responsibility for Renovation Costs.** Family Eldercare will pay all costs associated with the Renovations in a timely manner as provided in this Article 4.

**Section 4.2    City's Responsibility for Renovation.** The total sum of cost reimbursement available from the City to Family Eldercare for engineering, design, construction work, project management, project site security, and other customary and typical project-related soft costs (including inspection fees and legal fees), and for all materials and services relating to the Renovations is the City Funding Amount. Conditioned upon approval by the Austin City Council, the Parties will equitably adjust the City Funding Amount to address additional work necessitated by damage at the Property due to criminal activity.

**Section 4.3    Report of Renovation Costs Required.**

A. Family Eldercare may submit to the City a written request for a payment upon completion and acceptance by the City of any part of the Renovations (the "**Payment Request**").

Following receipt of the Payment Request, the City will verify and determine the eligible costs (eligible costs are hard and soft construction costs approved in accordance with the provisions of this Agreement which hard costs include all charges, costs, and fees payable to Contractors and which soft costs may include project management, engineering, and other customary and typical project-related soft costs incurred by Family Eldercare to complete the Renovations including reasonable legal expenses incurred by Family Eldercare) and will certify the amount paid by Family Eldercare for the Renovations. If the City determines the amount payable to Family Eldercare is the same as the amount submitted by Family Eldercare, the City will work diligently and in good faith to reimburse Family Eldercare within 30 calendar days after the receipt of the Payment Request to make the payment to Family Eldercare.

B. Prior to Final Completion, Family Eldercare must submit a report to the City of the total costs of the Renovations that includes all supporting information. Family Eldercare agrees to provide all information and documents in its possession or immediate control required by the City for proper processing and for accurate accounting and documentation of actual Renovation costs.

C. If Family Eldercare allows work to commence on a change order that results in a material change in the Renovations before receiving the approval of the applicable City department(s) for the change order, any additional costs incurred on that change order may not be eligible for reimbursement if the City in its sole discretion determines that the change in the Renovations is materially unacceptable, which determination will not be unreasonably withheld or delayed.

## **Article 5      OWNERSHIP AND MAINTENANCE OF THE RENOVATIONS**

**Section 5.1      Conditions for City Ownership and Maintenance of the Renovations.** After Final Completion, the City will own and be obligated to perform all ordinary and ongoing maintenance responsibilities for the Renovations.

### **Section 5.2      Warranty.**

A. Upon completion of the Renovations and as a condition precedent to Final Completion, Family Eldercare will transfer to the City all warranties for the Renovations, including any warranty bond and any other warranty or rights Family Eldercare has in connection with the Renovations, excluding any portion of such warranty pertaining to work not including the Renovations.

B. Family Eldercare will be responsible to the City for damage to the Renovations accepted by the City only to the extent that any such damage is caused by a condition existing prior to the City's acceptance.

**Section 5.3      No Liens Permitted.** Family Eldercare will make timely payment for all aspects of properly performed engineering, design, construction work (including inspection fees), and for all materials and services relating to the Renovations. Family Eldercare will not suffer or permit the filing, perfection, or execution of any lien or encumbrance on the Property and will cause any such

lien to be released of record by payment, deposit, bond, or order of court of competent jurisdiction. Family Eldercare will have the right to contest any claim asserted in connection with the construction of the Renovations described herein, including the right to contest such claim in any court of competent jurisdiction. Family Eldercare will secure the release within 90 calendar days of the recordation of any lien or encumbrance.

**Section 5.4 Agreement May be Pledged as Collateral.** Family Eldercare may pledge this Agreement as collateral for the purpose of securing financing from one or more lenders for the Renovations. Family Eldercare or its lender will provide documentation of the use of this Agreement as collateral to the City Law Department for its review and approval. Except for the limitations in this Agreement, the Family Eldercare has the right to assign its rights under this Agreement to any lender holding liens against the Property, and the City specifically agrees to provide to any such lender the rights and benefits of this Agreement if the lender forecloses its liens or encumbrances against the Property.

## **Article 6 INDEMNIFICATION**

**Section 6.1 TO THE EXTENT PROVIDED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY IMMUNITY OR OTHER PROTECTION TO WHICH IT MAY OTHERWISE BE ENTITLED FAMILY ELDERCARE WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE “INDEMNIFIED PARTIES”), AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (“CLAIMS”), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY FAMILY ELDERCARE, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, (THE “FAMILY ELDERCARE PARTIES”), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE FAMILY ELDERCARE PARTIES IN THIS AGREEMENT, OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE FAMILY ELDERCARE PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS’ COMPENSATION CLAIMS. FAMILY ELDERCARE’S OBLIGATIONS UNDER THIS ARTICLE ARE EXCUSED TO THE EXTENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.**

**Section 6.2** The City will give Family Eldercare written notice of a Claim asserted against an Indemnified Party. Family Eldercare will assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties will have the right (but not the obligation) to participate in the defense of any Claim or litigation with attorneys of their own selection without relieving Family Eldercare of any obligations in this Agreement. In no event may Family Eldercare admit liability on the part of an

Indemnified Party without the written consent of the City Attorney, who's written consent will not be unreasonably withheld.

**Section 6.3** Family Eldercare's maintenance of any insurance required under this Agreement does not limit Family Eldercare's obligations under this Article. Family Eldercare will require all Contractors and subcontractors to indemnify the City as provided in this Article.

**Section 6.4** If any claim, demand, suit, or other action arising out of this Agreement is made or brought by any person, firm, corporation, or other entity against Family Eldercare, Family Eldercare will give written notice thereof to the City within five working days after being notified of such claim, demand, suit, or action. Such notice will state:

- A. the date and hour of notification of any such claim, demand, suit, or other action;
- B. the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding;
- C. the basis of such claim, action, or proceeding; and
- D. the name of any person against whom such claim is being made or threatened.

Such written notice will be delivered either personally or by mail directly to the Director of the Housing and Planning Department, 1000 E. 11th Street, Suite 200, Austin, Texas 78702 and the City Of Austin Law Department at P. O. Box 1088, Austin, Texas 78767.

## **Article 7      AVAILABILITY OF FUNDS**

Family Eldercare acknowledges that the City has provided notice that the City's obligations to reimburse the cost of the Renovations are payable only from funds appropriated or available for the purpose of this Agreement. The City has appropriated the City Funding Amount to pay the costs of the Renovations payable to Family Eldercare under this Agreement.

## **Article 8      GENERAL PROVISIONS**

**Section 8.1 Interpretation of this Agreement.** This Agreement will, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for nor against either Party.

**Section 8.2 Notice and Addresses.** Any Notice provided or permitted to be given under this Agreement must be in writing. Notice may, unless otherwise provided herein, be given, or served

(a) by depositing the Notice in the United States mail, postage prepaid, certified mail, and addressed to the Party to be notified at Notice address listed for that Party below, with return receipt requested;

(b) by hand delivering the Notice to such Party;

(c) by electronic transmission to the email address of the party to be notified; or

(d) by transmission provided a machine generated confirmation of receipt is received.

Notice deposited in the mail in the manner hereinabove described is effective two days after such deposit. Notice given in any other manner is effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

**Family Eldercare:** Family Eldercare, Inc.  
ATTN: Kent Herring, CEO  
1700 Rutherford Lane  
Austin, Texas 78754  
E-Mail Address: kherring@familyeldercare.org

**With a copy to:**  
Macdonald Resnevic, PLLC  
ATTN: Cory Macdonald  
3755 S. Capital of Texas Highway, Suite 145  
Austin, TX 78704  
E-Mail Address: cmacdonald@mrfirm.legal

**The City:** The City of Austin, Texas  
Housing & Planning Department  
ATTN: Rosie Truelove, Director  
1000 E. 11th Street, Suite 200  
Austin, Texas 78702  
E-Mail Address: rosie.trelove@austintexas.gov

**With a copy to:** The City of Austin, Texas  
Law Department  
ATTN: Alice Geyer, Assistant City Attorney  
301 W. 2nd Street  
Austin, Texas 78701  
E-Mail Address: alice.geyer@austintexas.gov

### **Section 8.3 Notice of Default; Opportunity to Cure; Remedies.**

A. Should any Party allege that the other has defaulted in the performance of any obligation under this Agreement, the Party will provide written Notice to the other Party specifying the nature of the alleged default and provide the other Party a reasonable opportunity of at least 15 calendar days to cure the default before exercising any remedy related to the alleged default.

B. Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond any applicable grace or Notice and opportunity to cure period, the other Party will have the right to enforce the terms and provisions of this Agreement and pursue any legal or equitable relief to which the non-defaulting Party may be entitled.

C. Any remedy or relief described in this Agreement will be cumulative of, and in addition to, any other remedies and relief available at law or in equity.

**Section 8.4 Amendment.** This Agreement may be modified only by a writing properly executed by each of the Parties. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, will be binding on the Parties unless made in writing and properly executed by each of the Parties.

**Section 8.5 No Third-Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement will be construed to confer upon any person other than the Parties any rights, benefits, or remedies under or because of this Agreement.

**Section 8.6 No Assignment without Approval.** Except as provided in Section 5.4, a Party to this Agreement may not assign or transfer its interests under this Agreement without written approval of the other Party, which approval will not be unreasonably withheld.

**Section 8.7 No Joint Venture or Agency.** This Agreement will not be construed in any form or manner to establish a joint venture or agency, express or implied, or any employer-employee or borrowed servant relationship by and between the Parties.

**Section 8.8 Severability.** If any term or provision of this Agreement is void or unenforceable as determined by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

**Section 8.9 Survival of Obligations.** All provisions of this Agreement that impose a continuing obligation on a Party, including warranty, indemnification, limitation of liability, and confidentiality, survive the expiration or termination of this Agreement.

**Section 8.10 Applicable Law; Venue.** This Agreement is made under and is governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute of this Agreement lies exclusively in a state district court in Travis County, Texas.

**Section 8.11 Counterparts.** The Parties may execute this Agreement in one or more duplicate

originals each of equal dignity.

**Section 8.12 Electronic Signatures.** The use of electronically transmitted signatures, in place of original signatures on this Agreement is expressly allowed. The Parties intend to be bound by the signatures on such electronically transmitted document; are aware that the other Party will rely on the electronically transmitted signatures; and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

**Section 8.13 No Waiver.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by any Party, or their successors or assigns, whether the violations are known or not, does not constitute a waiver or estoppel of the right to do so.

**Section 8.14 Governmental Authority.** Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the operation and maintenance of the Renovations constructed under the terms of this Agreement, except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the same.

**Section 8.15 Binding.** This Agreement is binding upon and inures to the benefit of the Parties and their representatives, successors, and assigns.

**Section 8.16 Authority to Execute.** Each Party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party, except as may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditor's rights, or with respect to City's and Family Eldercare's respective governmental immunity under the Constitution and laws of the State of Texas.

**Section 8.17 Complete Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, or representations concerning its subject matter.

*{remainder of page intentionally left blank, signatures follow}*

THIS AGREEMENT is duly executed by the Parties to this Agreement on the respective dates following each Party's signature and is effective on the Effective Date.

**FAMILY ELDERCARE:**    **FAMILY ELDERCARE**, a Texas nonprofit corporation

By: \_\_\_\_\_

Name: Kent Herring

Title: Chief Executive Officer

74-2286387

Family Eldercare Tax ID Number

Date: \_\_\_\_/\_\_\_\_/2022

*{signature follows}*

**THE CITY:**

**CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation organized and operating under Chapter 9, Texas Local Government Code

By: \_\_\_\_\_

Name: Rosie Truelove

Title: Director, City of Austin Housing & Planning Department

Date: \_\_\_\_/\_\_\_\_/2022

**APPROVED AS TO FORM:**

City of Austin  
Law Department

\_\_\_\_\_  
Alice Geyer  
Assistant City Attorney

**Attachments:**

**Exhibit A:** Renovations

## **Exhibit A**

### **Renovations**

The Renovations include the following scopes of work:

#### **NARRATIVE:**

##### **Site**

- Removal of 55 parking spaces, and replace with landscaping, garden space, and softscape. (36 parking spaces remain, as does the Loading Zone).
- Addition of decomposed granite walking trail along the north, west, and a portion of the south property perimeter.
- Add planting beds for gardening and landscaping enhancements.
- Addition of Cedar trellis with ADA accessible deck area where swimming pool previously was located.
- Addition of chain link enclosed dog park.
- Additional of 10 blooming tree species (Texas Mountain Laurel or Crepe Myrtle) to screen the adjacent parking lot to the north.
- Add wrought iron fence along north property line adjacent to the parking lot and new wooden plank privacy fence on the west and south, adjacent to the residential and hotel uses.
- Provide secured bicycle racks/parking, picnic tables, seating benches, and other miscellaneous outdoor furniture and shade opportunities.
- Add LED heads to existing parking lot pole lights to increase lighting levels throughout the site.

##### **Exterior Building**

- Install new Family Eldercare signage on the building - east front.
- Pest treatment to remove wasp nests and fire ant piles.
- Exterior building caulking maintenance to prevent water intrusion.
- Exterior door hardware re-work for security access control.
- East canopy maintenance (strut re-attachment and re-seal roof).
- Security camera and system upgrades around the building perimeter.

##### **Interior First Floor**

- Remove all corridor carpet to be replaced with LVT or Tile.
- All public area carpet/flooring to be replaced with LVT or Tile.
- Add a secondary, secured lobby space which would include access to the 24-hour reception through a transaction window. This area will also include mail/package area for ease of the United States Postal Service, Amazon, Fed-Ex, etc.
- Add 4 back of house offices and a conference room for employees.
- Demo one guest room and convert to office space.

- Using existing plumbing for an employee breakroom/workroom. Finishes and appliances to be updated.
- Leasing manger office can be accessed to new and existing tenants which is located directly adjacent to secondary entrance.
- Using existing room to create a tenant computer lab with large window for employees to visually see who is in the space.
- Keep existing unisex restrooms.
- Convert existing office at the rear of the building into a pantry storage space. Add shelving to all walls.
- Demo walls and add plumbing and power to create a community kitchen which will include a full-size refrigerator, stove, oven, and ADA sink. Island added to have seating space within community kitchen.
- Laundry room and equipment to remain in place.
- Convert desk area adjacent to laundry to be a phone room for tenants to make private calls.
- Relocate water fountain.

### **Interior Second Floor**

- Remove all corridor carpet to be replaced with LVT or Tile.
- Storage room located on plan east corner to be converted to fitness room. Replace flooring, add power, and adding a storefront window system.
- Convert existing guest suite to be 3 additional offices, storage, and a restroom for employees.
- Demo standard and suite guest rooms and reconfigure. Relocate a standard bedroom, which will create a community gathering space/game room for tenants and will also include a restroom.

### **Interior Third Floor**

- Remove all corridor carpet to be replaced with LVT or Tile.
- Storage room located on plan east corner to be converted to rotating employee office space. Shift rated wall further into the corridor, enlarging the room.
- Eliminate a total 2 guest rooms.
- Convert existing guest suite to be gathering space for tenants with a restroom.
- Demo standard guest room and guest suites. Reconfigure to a standard guest room in new location. Create a training room for employees including a restroom. This new room will be connected by a 12'-0" accordion door to a gathering room for tenants.

### **Guest Rooms**

- Remove all carpet and replace with LVT flooring.
- Remove all bathtubs and replace with tiled roll in showers with grab bars and seats for accessible units and wall blocking to accept grab bars and seats in all other guest units.
- Remove all king size beds, mattresses and headboards. Replace with double size beds, mattresses, and headboards.

## **SPECIFICATIONS:**

### **Site Construction**

1. 475' New 6' Iron Fence - North Property Line
2. 750' New 8' Wood Fence - West/South Property Lines
3. Dog Park, including 425' Vinyl covered Chain Link Fence system
4. Demo 50 Concrete Parking Spaces
5. 525' New Concrete Curb/Gutter
6. New Fire Lane / HC Striping / Paint
7. Softscape Upgrades:
  - a. Garden Bed Materials
  - b. 8100 SF of Soil & Sod (25 pallets)
  - c. Irrigation & Plumbing spicket Upgrades
  - d. (12) 4" caliper trees
  - e. (35) 3 gallon plantings
  - f. (50) 1 gallon plantings
8. 40'x25' Cedar Trellis w/ Footings & walkable surface beneath
9. 800 Linear Feet Compacted Decomposed granite walking trail
10. Outdoor Furnishings:
  - a. Benches
  - b. Picnic Tables
  - c. Umbrella / Shading Devices
  - d. Bicycle Rack & Enclosure
11. Security Upgrades:
  - a. Exterior Camera Security System
  - b. Lighting Upgrades to existing poles & site
  - c. Sliding Iron Gate System
12. Signage with Crane Installation

### **Exterior Building Construction**

1. Signage with Crane Installation
2. Exterior Building Caulking Maintenance
3. Exterior door Hardware re-work for security access
4. East Canopy maintenance (strut re-attachment/roof seal)

5. Pest Treatment / Wasp Removal

### **Interior Construction**

1. Demolition of all interior areas scheduled for improvements
2. Public Area Improvements
3. Public Space Furniture
4. Guest Room Improvements (78 rooms)

### **Soft Costs / Miscellaneous Items**

1. Movers
2. Public Area Fixtures, Furniture & Equipment
3. Contingency Fees
4. Pre-Development Fees (Architect, MEP, Structural, Civil, Landscape, Legal, Other Consultants)
5. Project Management (Family Eldercare and/or Consultant)
6. Contractor Insurance, Overhead
7. Site Security