



Office of the City Manager

CONSENT CALENDAR
February 11, 2014

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing & Community Services Department
Subject: Regulatory Agreement with Derby Walker House Cooperative, 2116 Derby Street

RECOMMENDATION

Adopt a Resolution approving a Regulatory Agreement and Declaration of Restrictive Covenants with Derby Walker House Cooperative.

SUMMARY

In October 2013, members of the Derby Walker House Cooperative (“Co-op”), working together with the Bay Area Community Land Trust (“BALCT”), purchased the 3-unit building located at 2116 Derby Street (“Project”) for the purpose of owning and operating it as permanent, affordable housing. BALCT owns the Project’s land and has leased the improvements to the Co-op for a 99-year term. The Co-op and BALCT completed this transaction without any City funding. They now seek City assistance via a recorded Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”) in order to access the benefits of California’s Revenue and Taxation Code Section 402.1, which requires assessing entities (such as the Alameda County Assessor, “Assessor”) to consider the effects upon property value of local government development controls and contracts. If the City records the Regulatory Agreement, the Co-op will be bound to maintain certain occupancy and rent restrictions for 55 years. This, in turn, will translate at the Assessor’s office into a reduced property valuation, which will result in lower property taxes for the Co-op.

FISCAL IMPACTS OF RECOMMENDATION

The City will incur minor additional reporting duties on an annual basis to ensure that the Co-op is meeting its occupancy and rent obligations.

CURRENT SITUATION AND ITS EFFECTS

The City’s General Plan, Consolidated Plan, and Housing Trust Fund (“HTF”) Program Guidelines all specifically identify limited equity housing cooperatives as among the types of projects eligible to receive City resources in return for implementing the HTF Program’s goal of “preserving long-term, below-market rate housing for low-, very low- and extremely low-income households in order to maintain and enhance the ethnic and

economic diversity of the City”. While the Co-op has not sought HTF funding, the City can assist the effort by providing the regulatory restrictions that trigger a property assessment that is commensurate with the Co-op’s restricted income potential.

The California Revenue and Taxation Code Section 402.1 states: *In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected.* The Regulatory Agreement restricts initial occupancy at the Project to households earning no more than 80% of Area Median Income, and further requires that rents must be set at levels affordable to such households, or no more than 30% of 80% of AML. Because the Assessor’s office uses a “gross rent multiplier” valuation approach in making its assessments, the reduced rental values imposed by the restrictions decrease the property’s value accordingly. Initial discussions with the Assessor indicate that the Co-op may save approximately \$1,500 in property tax payments per year. While this savings is not large, every small adjustment helps private citizens who seek to create affordable housing without the benefit of other public subsidies.

BACKGROUND

The Derby Walker House Cooperative is a “limited equity housing cooperative” (“LEHC”), which is a nonprofit corporation that provides resident-owned and controlled housing. The list below summarizes the main characteristics of an LEHC:

- Members buy shares in the corporation in exchange for occupancy rights
- Shareholders/homeowners are entitled to an annual dividend that, by state law, must be less than 10%
- When shareholders/homeowners move, they sell their shares based upon the original purchase price plus the sum of annual dividends
- Sales prices are permanently divorced from market value, market appreciation, and/or accrued equity
- Resale restrictions are memorialized in the LEHC’s by-laws and articles of incorporation
- A full property sale does not benefit residents or the corporation: residents are only entitled to a return of their share plus the capped equity of dividends; nonprofit corporations must distribute any excess sale proceeds

More specifically for the Co-op, which is working in conjunction with BAHLT, annual dividends from the Project will be tied to the Consumer Price Index, which is typically about 2-3% per year (this index would apply to a property resale as well). Resale restrictions will be included in the Regulatory Agreement as well as the Co-op’s organizational documents.

RATIONALE FOR RECOMMENDATION

The City expressly supports affordable housing development and preservation, and resources to implement these goals are scarce. Encouraging privately-financed affordable housing cooperatives through imposition of regulatory restrictions achieves a

mutually beneficial scenario where the City's goals are achieved at low expense and resident cooperative members can more effectively and efficiently operate their housing.

ALTERNATIVE ACTIONS CONSIDERED

None.

HOUSING ADVISORY COMMISSION ACTION

At its regularly scheduled meeting of January 9, 2014, the Housing Advisory Commission (HAC) unanimously passed a motion recommending Council's approval of the Regulatory Agreement for Derby Walker House Cooperative; M/S/C: Beier/Feller. Ayes: Beier, Darrow, Feller, Skjerping and Wolfe. Noes: None. Abstentions: None.

CONTACT PERSON

Kate Hartley, Sr. Community Development Project Coordinator, HH&CS (510) 981-5411

Attachments:

1: Resolution

Exhibit A: Legal Description of Property

Exhibit B: Regulatory Agreement and Declaration of Restrictive Covenants

RESOLUTION NO. ##,###-N.S.

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS
FOR DERBY WALKER HOUSE COOPERATIVE – 2116 DERBY STREET

WHEREAS, the City has identified limited equity housing cooperatives (LEHCs) as one means of achieving the City's goals of creating and preserving affordable housing and deemed them eligible to receive City assistance to further these objectives; and

WHEREAS, the Derby Walker House Cooperative (Co-op) is a LEHC that, in collaboration with the Bay Area Community Land Trust, acquired the three-unit property located at 2116 Derby Street, known as Derby Walker House and further described in Exhibit A (Project), in October 2013 for the purpose of creating affordable housing; and

WHEREAS, the Co-op's organizational documents permanently restrict initial occupancy to households earning no more than 80% of Area Median Income and restricts rents to levels affordable to such households; and

WHEREAS, California's Revenue and Taxation Code Section 402.1 requires assessors to consider the effect upon property value of any enforceable restrictions to which the use of the land may be subjected; and

WHEREAS, the Co-op requested that the City record regulatory restrictions for the Project that permanently regulate the Project's occupancy and rent, thereby providing enforcement mechanisms for the Co-op's restrictions and enabling the Co-op to realize the tax benefits available to restricted-income properties as intended under the California Revenue and Taxation Code Section 402.1; and

WHEREAS, recordation of the Regulatory Agreement against the Project will add three units of affordable housing to the City's stock; ensure that the units remain affordable for a minimum of 55 years; and provide a model for future LEHC projects in the City.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the Regulatory Agreement and Declaration of Restrictive Covenants with the Derby Walker House Cooperative for 2116 Derby Street.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.

Exhibits

A: Legal Description of Property

B: Regulatory Agreement and Declaration of Restrictive Covenants

DERBY WALKER HOUSE COOPERATIVE
2116 DERBY STREET, BERKELEY

EXHIBIT A
(Legal Description)

The land is situated in the State of California, City of Berkeley, and is described as follows:

Portion of Lots 8 and 9, "Walker and Bradhoff's Resubdivision of a portion of Blake Tract, Southern portion, Berkeley, California, April 1910", Filed April 30, 1910, Map Book 25, Page 56, Alameda County Records, described as follows:

Beginning at the intersection of the Southern line of Derby Street with the Eastern line of Walker Street, as said Streets are shown on the Map herein referred to; running thence Easterly along said line of Derby Street, 32 feet; thence at right angles Southerly 100 feet; thence at right angles Westerly 32 feet, more or less, to said line of Walker Street; thence Northerly along said line of Walker Street, 100 feet, more or less, to the point of beginning.

APN: 054-1719-005-00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Attn: _____

No fee for recording pursuant to
Government Code Section 27383

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS

DERBY WALKER HOUSE COOPERATIVE
2116 DERBY STREET

This Regulatory Agreement and Declaration of Restrictive Covenants ("Agreement") is made and entered into as of _____, 2014 ("Effective Date"), by and between the City of Berkeley, a municipal corporation (City"), and Derby Walker House Cooperative, a California nonprofit public benefit corporation ("DWHC").

RECITALS

A. DWHC, with the assistance of Bay Area Community Land Trust ("BACLT") purchased the property at 2116 Derby Street, Berkeley, known as the Derby Walker Cooperative, as further described in Exhibit A ("Property"), for the purpose of creating three units of permanently affordable housing through a limited equity cooperative housing ownership structure ("LEHC") (the "Project").

B. As an LEHC, and as memorialized in DWHC's articles of incorporation and by-laws, DWHC must, for the life of the Project, restrict occupancy to households with incomes at initial lease-up not exceeding 80% of Area Median Income and set affordable rents for the units accordingly.

C. The City has specifically identify limited equity housing cooperatives in its General Plan, Consolidated Plan and Housing Trust Fund Program Guidelines as among the types of projects eligible to receive City resources in return for implementing the City's goal of preserving and creating below-market rate housing, which the City has determined maintains and enhances the ethnic and economic diversity of the City.

D. DWHC has requested and City has agreed to record this Agreement against the Property for the purpose of creating enforcement mechanisms that will ensure that the Project remains affordable for at least 55 years and allowing DWHC to

realize any operating benefits available through application of California Revenue and Taxation Code Section 402.1, which requires assessors to consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected.

E. In consideration of the parties' mutual goal of creating and maintaining affordable housing and the potential benefit to DWHC from the recordation of the Agreement and in reliance upon the foregoing and upon the covenants, representations and warranties herein contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, DWHC has further agreed to observe all the terms and conditions set forth below.

THEREFORE, the City and DWHC hereby agree as follows.

ARTICLE 1 DEFINITIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

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

(b) "Adjusted Income" means the total anticipated Annual Income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the City shall provide DWHC with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

(c) "Area Median Income" ("AMI") means the area median income as determined annually by the United States Department of Housing and Urban Development for the Oakland-Fremont HUD Metro Fair Market Rent Area (HMFA), adjusted solely for Actual Household Size. 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 City shall provide DWHC with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

(d) "Annual Income" has the definition set forth in 24 CFR 5.609.

(e) "Agreement" means this Regulatory Agreement and Declaration of Restrictive Covenants.

(f) "DWHC" means Derby Walker House Cooperative, a California nonprofit public benefit corporation, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.

(g) "Bay Area Community Land Trust" ("BACL T") means Lessor.

(h) "Cooperative Member", also referred to as Shareholder, means a person who owns a Cooperative Share in the Project, and who is entitled to voting rights.

(i) "Cooperative Share" means a personal property interest in the Project acquired pursuant to the Derby Walker House Cooperative Bylaws that entitles the owner to a Proprietary Lease.

(j) "Derby Walker House Cooperative Bylaws" mean the Bylaws of the Derby Walker House Limited Equity Housing Cooperative, dated September 29, 2013, attached hereto as Exhibit B.

(k) "Existing Tenant" means any tenant lawfully residing in one of the Project's three (3) units on the date of acquisition of the Improvements by DWHC.

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

(m) "Improvements" mean the buildings and structures that include four housing units, along with common areas, landscaping, driveways, and parking spaces, now or hereafter located on the Property. The Improvements are further described in Exhibit A.

(n) "Leasehold Estate" means the estate held by DWHC pursuant to and created by DWHC's 99-year ground lease with Lessor, and further described in Exhibit A.

(o) "Lessor" means the Bay Area Community Land Trust, a California nonprofit public benefit corporation, or its successors and assigns, which holds a fee interest in the Property.

(p) "Limited Equity Housing Cooperative" is a cooperative housing corporation that complies with the requirements of Civil Code Section 817.

(q) "Premises" means, together, the Property and the Improvements.

(r) "Project" means the Improvements.

(s) "Property" means the land upon which the Improvements are located, as further described in Exhibit A.

(t) "Proprietary Lease" means an agreement with a cooperative housing corporation governing a member's right to occupancy, under which a member has an exclusive possessory interest in a unit.

(u) "Shareholder", also referred to as Cooperative Member, means a person who owns a cooperative interest in the Project, and who is entitled to voting rights.

(v) "Rent" (also referred to as "carrying charge") means the total of monthly payments by the Cooperative Member in possession of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by DWHC which are required of all Shareholders, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Cooperative Member, including electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than DWHC, and paid by the Cooperative Member.

(w) "Term" means the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty-fifth (55th) anniversary of the date of this Agreement.

(x) "Unit(s)" means one or all of the three (3) units in the Project.

ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1. Occupancy Requirements. With the exception of Existing Tenants, DWHC shall lease the Units to Cooperative Members with Annual Incomes at initial occupancy not exceeding 80% of AMI. At turnover of Units occupied by Existing Tenants, DWHC shall lease those units to new Cooperative Members with Annual Incomes not exceeding 80% of AMI.

2.2. Allowable Rent. Subject to Section 2.1, Rent for each Unit shall not exceed 1/12th of 30% of 80% of AMI.

(a) City Approval of Initial and Subsequent Rents. The City shall approve rents prior to Cooperative Members' initial occupancy. Subsequent rents shall be set according to the Derby Walker House Cooperative Bylaws. DWHC shall not charge any fee other than Rent to any Cooperative Member for any housing or other services provided by DWHC pursuant to this Agreement.

(b) Existing Tenants. Any Existing Tenant lawfully residing in the Project as of the date of this Agreement shall be entitled to remain a resident of the Project even if such Existing Tenant does not meet the income criteria of Section 2.1.

2.3 Termination of Occupancy. The transfer of Cooperative Shares and the termination of Cooperative Memberships shall conform to the procedures and requirements of the Derby Walker House Cooperative Bylaws. In such cases, DWHC shall maintain the occupancy requirements set forth in section 2.1 above.

2.4 Units Available to the Disabled. All alterations to the Project shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations (24 CFR 8), as they may apply. Any alterations to dwelling units in the Project shall comply with 24 CFR 8.23, including the requirements that a specific percentage of Units be made accessible, as applicable. In addition, in compliance with 24 CFR 8.23, any alterations to common areas or parts of the Project affecting accessibility to the units shall also, to the maximum extent feasible, be made readily accessible, as may be required under 24 CFR 8.23.

ARTICLE 3 INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

DWHC shall obtain, complete and maintain on file, immediately prior to initial occupancy, income certifications from each Cooperative Member leasing any of the Units. DWHC shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate.

3.2 Annual Report to City.

DWHC shall submit to the City not later than the sixtieth (60th) day after the close of each calendar year, or such other date as may be requested by the City, a report including occupancy and Cooperative Member income and Rent data for all Units.

3.3 Additional Information.

DWHC shall provide any additional information reasonably requested by the City related to the income and Rent of the Cooperative Members. The City shall have the right to examine and make copies of all books, records or other documents of DWHC which pertain to the income of the Cooperative Members.

3.4 Cooperative Member Records.

(a) DWHC shall keep and maintain for the Project, in accordance with generally accepted accounting principles consistently applied, complete, accurate and current records pertaining to the Project, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size at initial occupancy of Cooperative Members, Rents, and affirmative marketing requirements. All Cooperative Member lists, applications and waiting lists

relating to the Project shall at all times be kept separate and identifiable from any other business of DWHC and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. DWHC shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years after creation.

(b) The City shall notify DWHC of any records it deems insufficient. DWHC shall have fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then DWHC shall begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

3.5 On-site Inspection.

The City shall have the right to perform an on-site inspection of the Project at least one (1) time per year to verify compliance with the requirements of this Agreement. If City desires to inspect the interior of the residential units, City shall give DWHC sufficient notice to allow DWHC to give seventy-two (72) hours notice to residents.

ARTICLE 4 OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

The Project shall be operated only for residential use. No part of the Project shall be operated as transient housing in which the term of occupancy is less than thirty (30) days.

4.2 Compliance with Program Requirements.

DWHC's actions with respect to the Project shall at all times be in full conformity with this Agreement.

4.3 Taxes and Assessments.

DWHC shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Project; provided, however, that DWHC shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event DWHC exercises its right to contest any tax, assessment, or charge against it, DWHC, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

DWHC is responsible for all management functions with respect to the Project, including without limitation the selection of Cooperative Members, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Project.

5.2 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Project. The purpose of each periodic review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement. DWHC shall cooperate with the City in such reviews.

5.3 Maintenance of the Premises.

DWHC agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Premises in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Project will be acceptable to the City assuming DWHC agrees to provide all necessary improvements to assure the Project is maintained in good condition. DWHC shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that DWHC breaches any of the covenants contained in this section and such default continues for a period of thirty (30) days after written notice from the City with respect to such violation, then the City may pursue its enforcement rights provided in the City of Berkeley Municipal Code , and any other remedy it may have at law or in equity, including inspection, correction, and abatement, as well as creation, recordation, and collection of liens for the purpose of recovering costs incurred by the City for such enforcement and abatement.

ARTICLE 6
MISCELLANEOUS

6.1 Nondiscrimination.

All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. DWHC shall not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to Very Low-, Low-, or Moderate-Income households. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g. SSI), age (except for lawful senior housing), ancestry, pregnancy, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall DWHC or any person claiming under or through DWHC, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit.

6.2 Term.

Subject to Section 6.2 (a), below, the provisions of this Agreement shall apply to the Project for the entire Term. This Agreement shall bind any successor, heir or assign of DWHC, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

(a) If DWHC demonstrates and City confirms that the Assessor's Office of the County of Alameda ("Assessor") has failed to incorporate the occupancy and rent restrictions described in Article 2 in its assessment of the Property, and the resulting property tax levied on the Property by the Assessor is based upon an unrestricted value, the Parties may mutually agree to terminate this Agreement.

6.3 Notice of Expiration of Term.

At least six (6) months prior to the expiration of the Term DWHC shall provide by first-class mail, postage prepaid, a notice to all Existing Tenants and Cooperative Members containing (a) the anticipated date of the expiration of the Term, (b) any anticipated Rent increase upon the expiration of the Term, and (c) a statement that a copy of such notice will be sent to the City. DWHC shall also file a copy of the above-described notice with the Berkeley City Manager. In addition, DWHC shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11.

6.4 Covenants to Run With the Land.

The City and DWHC hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Leasehold Estate, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Leasehold Estate or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Leasehold Estate from the requirements of this Agreement.

6.5 Enforcement by the City.

If DWHC fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified DWHC 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 ninety (90) days, or such longer period as approved by the City, in writing, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel DWHC's performance of its obligations under this Agreement, and/or for damages.

6.6 Recording and Filing.

The City and DWHC shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of Alameda County.

6.7 Governing Law.

This Agreement shall be governed by the laws of the State of California.

6.8 Waiver of Requirements.

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

6.9 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda.

6.10 Notices.

Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

DWHC: Derby Walker House Cooperative
2116 Derby Street
Berkeley, CA 94705

City: City of Berkeley
2180 Milvia Street
Berkeley, CA 94704
Attention: Director, Department of Health, Housing & Community Services

Such addresses may be changed by notice to the other party given in the same manner as provided above.

6.11 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.12 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the City and DWHC have executed this Agreement by duly authorized representatives, all on the date first written above.

APPROVED AS TO FORM:

By: _____

_____,
City Attorney

CITY:

CITY OF BERKELEY, a California
municipal corporation

By: _____

_____, City Manager

DWHC:

DERBY WALKER HOUSE
COOPERATIVE, a California nonprofit
public benefit corporation

By: _____

Its: _____

ATTEST:

_____, City Clerk

Registered:

_____, City
Auditor

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____ 2010, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary (Seal)

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

On _____ 2010, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary (Seal)

EXHIBIT A
(Legal Description)

The land is situated in the State of California, City of Berkeley, and is described as follows:

Portion of Lots 8 and 9, "Walker and Bradhoff's Resubdivision of a portion of Blake Tract, Southern portion, Berkeley, California, April 1910", Filed April 30, 1910, Map Book 25, Page 56, Alameda County Records, described as follows:

Beginning at the intersection of the Southern line of Derby Street with the Eastern line of Walker Street, as said Streets are shown on the Map herein referred to; running thence Easterly along said line of Derby Street, 32 feet; thence at right angles Southerly 100 feet; thence at right angles Westerly 32 feet, more or less, to said line of Walker Street; thence Northerly along said line of Walker Street, 100 feet, more or less, to the point of beginning.

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