

HomeKeeper Participation Agreement

THIS **PARTICIPATION AGREEMENT** (this "Agreement"), effective as of [Insert Date] (the "Effective Date"), is made and entered into by and between the National Community Land Trust Network d/b/a Grounded Solutions Network, a California not-for-profit ("Company"), having a mailing address P.O. Box 42255, Portland, Oregon 97242, and [Insert Company Name] ("Participating Organization"), having an address at [Insert company address].

RECITALS

WHEREAS, the Company is exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, in furtherance of the tax-exempt purposes of the Company, the Company provides technical assistance to participants in the affordable housing industry;

WHEREAS, in furtherance of the tax-exempt purposes of the Company, the Company has developed Salesforce.com managed packages known collectively as "HomeKeeper";

WHEREAS, as of the Effective Date, HomeKeeper consists of two packages (each a "HomeKeeper Package");

(a) "HomeKeeper for Homeownership," which is a workflow management system designed to help participants in the affordable housing industry manage their homeownership programs and track the impact of their programs in their communities; and

(b) "HomeKeeper for Housing Counseling," which is a client management system ("CMS") designed for use by participants in the Housing Counseling Program, 24 CFR part 214 (the "Housing Counseling Program"), of the United States Department of Housing and Urban Development ("HUD") that automates portions of the counseling processes, including data transfers to HUD's Housing Counseling System;

WHEREAS, in furtherance of the tax-exempt purposes of the Company, the Company has also developed a database that will be used to aggregate and analyze data collected through HomeKeeper for Homeownership and generate sector-wide performance reports that are based on such data (the "HomeKeeper National Data Hub");

WHEREAS, in furtherance of the tax-exempt purposes of the Company, the Company has entered into similar types of agreements with affordable housing industry participants who wish to utilize HomeKeeper to manage their homeownership programs and/or support their participation in the Housing Counseling Program, track the impact of their programs in their communities, and/or contribute data to the HomeKeeper National Data Hub in order to improve the depth and quality of the industry data available to participants (collectively, "HomeKeeper Participants");

WHEREAS, the Participating Organization wishes to become a HomeKeeper Participant on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows.

AGREEMENT

1. HomeKeeper Participation. Subject to the payment of the fees described in Section 5 hereof, the Participating Organization will, upon the execution of this Agreement, become a HomeKeeper Participant with respect to the HomeKeeper Package(s) specified in Exhibit A hereto and will be entitled to receive the benefits described in Section 2 hereof with respect to such HomeKeeper Package(s). As used herein, the term “Homeownership HK Participant” refers to a HomeKeeper Participant authorized to use HomeKeeper for Homeownership, and “Housing Counseling HK Participant” refers to a HomeKeeper Participant authorized to use HomeKeeper for Housing Counseling.

2. Benefits Available to Participants. As a HomeKeeper Participant, the Participating Organization will be granted access to and authorized to use a standardized, object code version of the applicable HomeKeeper Package(s), have the opportunity to provide input to the Company with regard to the standardization of national, affordable housing reporting metrics, collaborate on future updates and improvements to HomeKeeper and, if the Participating Organization is a Homeownership HK Participant, have access to the sector-wide performance reports that are generated by the HomeKeeper National Data Hub.

(a) Managed Software Package.

(i) Software. HomeKeeper will be available to the Participating Organization through Salesforce.com.

(ii) Maintenance. The Company will maintain HomeKeeper by:

a. Performing bug fixes as needed; and

b. Updating the software to include new features and functionality from time to time at the Company’s discretion based on input from HomeKeeper Participants.

(iii) Support. The Company will support HomeKeeper, and provide training to HomeKeeper Participants, as described on the then current Training and Support Services Schedule posted on the Company’s website at MyHomeKeeper.org, as such schedule may be updated and modified from time to time by the Company (the “Training / Support Schedule”). Although the Company wishes to provide a seamless user experience to HomeKeeper Participants, it may be necessary or desirable for HomeKeeper Participants to interact directly with the Company’s third party technology service providers from time to time to obtain certain support services as described on the Training / Support Schedule. In addition, the Participating Organization understands and agrees that, in the event that fees collected from HomeKeeper Participants are insufficient to cover all training and support costs, the Company may scale training and support back to a level that is achievable with available funding. Except as noted on the Training / Support Schedule, the cost of third

party support is included in the fees that are payable to the Company pursuant to Section 5.

- (b) HomeKeeper National Data Hub. HomeKeeper for Homeownership is designed to transfer data from certain data fields selected by the Company from each HomeKeeper for Homeownership user account to the HomeKeeper National Data Hub, where the data will be aggregated and analyzed and ultimately used as a basis for industry sector performance reports in furtherance of the Company's tax-exempt purposes. Additional data may be collected through surveys of Homeownership HK Participants conducted by the Company from time to time ("Program Surveys"); Program Survey data will also be stored in and analyzed through the HomeKeeper National Data Hub. The Company will furnish the Participating Organization with a copy of, or access to, all reports containing aggregated affordable housing industry data that are generated by the Company through the HomeKeeper National Data Hub which are intended for general distribution to Homeownership HK Participants. These reports may include measurements of the overall performance and affordability of the affordable homeownership model, and the impact of the affordable homeownership program model as demonstrated by return on community investment, homeowner mobility and foreclosure rates. For clarity, the benefits described in this Paragraph (b) shall apply only if the Participating Organization is a Homeownership HK Participant.
- (c) HomeKeeper Participant Meetings. The Company will organize a meeting of HomeKeeper Participants at least once each year to discuss potential improvements to HomeKeeper, the reports generated through the HomeKeeper National Data Hub and other topics that may be of interest to HomeKeeper Participants. The Company will schedule such meetings, prepare and distribute materials that will be referenced during the meetings, and host the meetings.

3. Responsibilities of Participating Organization. Subject to Paragraph (f) below, as a condition to receiving the benefits available to HomeKeeper Participants described in Section 2 above, the Participating Organization shall fulfill the responsibilities set forth in this Section 3.

- (a) HomeKeeper Package Features. The Participating Organization shall limit its use of HomeKeeper to those features of the HomeKeeper Package(s) with respect to which it is a HomeKeeper Participant under this Agreement (e.g., if the Participating Organization is a Homeownership HK Participant only, it shall not use the features that are specific to HomeKeeper for Housing Counseling, and vice versa).
- (b) Cooperation. The Participating Organization shall use its best efforts to cooperate with the Company and third parties identified by the Company as may be reasonably necessary so as to enable the Company to facilitate: (i) the activities of HomeKeeper Participants with respect to HomeKeeper; and (ii) the implementation, maintenance and support of HomeKeeper, including identification of a primary contact for implementation, maintenance and support. If the Participating Organization is a Homeownership HK Participant, such cooperation shall include facilitating the implementation, maintenance and support of the HomeKeeper National Data Hub as well as the data collection, aggregation, reporting and analytics for the HomeKeeper National Data Hub; furnishing information and materials regarding the Participating

Organization's affordable homeownership programs and related transactions to the Company in a timely, accurate and complete fashion; entering all current and past property and homebuyer files for then current homeowners; completing all required data fields as indicated within HomeKeeper for Homeownership; making Participating Organization's personnel reasonably available to the Company upon request; and completing Program Surveys upon request.

- (c) Salesforce.com Account and Additional Technology Services. The Participating Organization must have a Salesforce.com account in order to access and use HomeKeeper. The Participating Organization is solely responsible for establishing the account and paying the fees charged by Salesforce.com in connection with the account, including set up and account administration fees (if any). One of the Salesforce.com user licenses acquired by the Participating Organization must be allocated to the Company so that the Company may access the Participating Organization's Salesforce.com account in order to transfer data to the HomeKeeper National Data Hub and collection of usage data. If Salesforce.com or any other third-party offers products or services that are not specified on the Training / Support Schedule to the Participating Organization and the Participating Organization elects to purchase such products and services, the Participating Organization is solely responsible for paying the fees charged by Salesforce.com or any third-party with respect to such products and services.
- (d) HomeKeeper National Data Hub. If the Participating Organization is a Homeownership HK Participant, it agrees to contribute the data described in Section 2(b) above to the HomeKeeper National Data Hub throughout the Term of this Agreement. The Company will have a non-exclusive, unrestricted, fully paid up, transferable, sub-licensable, perpetual right and license to use, distribute and create derivative works of all such data contributed by or on behalf of the Participating Organization to the HomeKeeper National Data Hub (collectively, "Participating Organization HomeKeeper National Data Hub Data"), provided that the Company will not distribute or otherwise disclose Participating Organization HomeKeeper National Data Hub Data that has not been aggregated ("Raw Data"), or performance metrics based on Participating Organization HomeKeeper National Data Hub Data that are specific to the Participating Organization, to any unaffiliated third party unless the third party has entered into an agreement with the Company containing protections against the unauthorized disclosure of the Raw Data or organization-specific performance metrics. The foregoing license shall survive the termination of this Agreement for any reason. For the avoidance of doubt, following the termination of this Agreement for any reason the Company shall have the right under the foregoing license to retain and use, distribute and create derivative works of all Participating Organization HomeKeeper National Data Hub Data collected prior to the termination of this Agreement; however, the Participating Organization shall not have an ongoing obligation to continue to contribute additional Participating Organization HomeKeeper National Data Hub Data following the termination of this Agreement.
- (e) HomeKeeper Usage Data. The Participating Organization acknowledges and agrees that the Company, in its discretion, may collect and use data concerning the frequency, volume and types of uses of HomeKeeper by the Participating Organization and other HomeKeeper Participants ("HomeKeeper Usage Data"); provided, however, the Company will not distribute or otherwise disclose HomeKeeper Usage Data that is

specific to the Participating Organization to any unaffiliated third party unless the third party has entered into an agreement with the Company containing protections against the unauthorized disclosure of such HomeKeeper Usage Data.

- (f) Exceptions. The Company recognizes that due to the nature of their organization or other circumstances certain HomeKeeper Participants may not be in a position to fulfill all of the responsibilities set forth in this Section 3. If requested by the Participating Organization, the Company, in its discretion, may agree to certain exceptions to these responsibilities for the Participating Organization and, in light of such exceptions, may elect to exclude or limit certain of the benefits described in Section 2 above that will be made available to the Participating Organization. Any such exceptions, exclusions and limitations will be as agreed in writing by the parties and attached as an Exhibit to this Agreement.

4. Term and Termination.

- (a) Term. The term of this Agreement will commence on the Effective Date and will continue in effect for [Insert term period] (the "Initial Term"). This Agreement will automatically renew for additional, consecutive one (1) year periods (each, a "Renewal Term" and, together with the Initial Term, the "Term"), until such time as the Company or the Participating Organization notifies the other party of its intent not to renew or this Agreement is otherwise terminated as described in subsection (b) below.
- (b) Termination. Either party may terminate this Agreement:
- (i) at the end of the then-current Term, by providing thirty (30) days prior written notice to the other party of its intent not to renew the Term;
 - (ii) immediately at the conclusion of a thirty (30) day cure period, if the other party breaches any material term of this Agreement (including any payment obligation), and the breach remains uncured for a period of thirty (30) days following written notice thereof; or
 - (iii) immediately upon written notice to the other party, if the other party shall: (i) apply for or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial portion of its assets; (ii) file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due; (iii) make a general assignment for the benefit of creditors; (iv) file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceedings; or (v) if an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating it a bankrupt or insolvent or approving a petition seeking reorganization of it or appointing a receiver, trustee, or liquidator of all or a substantial portion of its assets and such order, judgment, or decree shall continue unstayed and in effect for a period of at least sixty (60) consecutive days.

In addition, the Company may terminate this Agreement at any time without cause on thirty (30) days prior written notice to the Participating Organization.

- (c) Effect of and Obligations upon Termination. Subject to the Participating Organization's obligation to pay all fees then due and owing to the Company, and the parties continuing obligations referenced in Section 13(l), upon the termination of this Agreement: (i) the rights and obligations of the parties under this Agreement will cease (including, but not limited to, the Participating Organization's right to enjoy the benefits described in Section 2 hereof, and the Company's right to collect additional data relating to the Participating Organization's programs for HomeKeeper National Data Hub), provided that the rights and licenses under Section 3(d) and 3(e) above shall survive the termination of this Agreement for any reason; and (ii) each party will promptly return or destroy all Confidential Information (defined below) of the other party that is then in its possession or control other than any Confidential Information that is the subject of any right or license that survives the termination of this Agreement. In addition, in the event that the Company terminates this Agreement without cause pursuant to the last sentence of Section 4(b) above or the Participating Organization terminates this Agreement pursuant to Section 4(b)(iii) above, the Company will return to the Participating Organization a pro rata portion of the Participation Fee for the then-current Term (i.e. based on the percentage of the 12-month period remaining after termination); otherwise, no fees or expenses paid or payable under this Agreement shall be subject to refund or return.

5. Financial Terms.

- (a) Fees. The Participating Organization shall pay to the Company: (i) a one-time enrollment fee (the "Enrollment Fee"); and (ii) a recurring, participation fee (the "Participation Fee"), in each case in the amounts specified in the schedule attached hereto and incorporated herein by this reference as Exhibit A. The Enrollment Fee and the Participation Fee for the Initial Term shall be due and payable on or before the Effective Date of this Agreement. Participation Fees may be increased as of the commencement of each Renewal Term in the Company's discretion upon at least forty-five (45) days' written notice to the Participating Organization. If the Participating Organization objects to any increase, the Participating Organization may elect to terminate this Agreement without cause pursuant to Section 4(b)(i). The Company will use reasonable efforts to send an invoice reminding the Participating Organization of the commencement of a new Term and setting forth the Participation Fee for the new Term at least forty-five (45) days before the commencement of the new Term. The Participation Fee attributable to each Renewal Term following the Initial Term shall be due and payable on the later to occur of (i) the commencement of the new Term or (ii) thirty (30) days after receipt of an invoice from the Company setting forth the Participation Fee for the new Term.
- (b) Invoices. The Company will submit invoices to the Participating Organization for all fees authorized hereunder. All invoices will be submitted to the physical or electronic address or addresses specified by the Participating Organization from time to time. Except as otherwise provided in this Agreement, invoices shall be payable by the

Participating Organization within thirty (30) days of its receipt of the invoice. At the Company's option, payments may be made by check or by electronic funds transfer to the Company's bank account. In the event of an overpayment, the Company shall promptly issue a refund to the Participating Organization by means acceptable to both parties.

6. Representations, Warranties and Covenants.

- (a) By the Company. The Company makes the following representations, warranties and covenants to the Participating Organization, in each case as of the Effective Date of this Agreement and, where the context requires, on a continuous and uninterrupted basis throughout the Term of this Agreement.
- (i) Authority. The Company is duly formed, validly existing and in good standing in the jurisdiction in which it was incorporated. The Company has the legal power and authority to conduct its business and operations as currently conducted and as proposed to be conducted, and to execute, deliver and perform this Agreement.
 - (ii) Compliance with Laws. The Company is in compliance, and will comply, with all Federal, state and local laws, rules and regulations applicable to its business and operations. The Company does not, and will not, discriminate on the basis of race, color, national origin, age, sex, sexual orientation, marital status, creed, religion, citizenship, ancestry, political affiliation, or any other protected class.
 - (iii) Insurance. At all times during the Term of this Agreement and, to the extent that any insurance is carried on a claims made basis, for such period thereafter that claims may be legally made with respect to occurrences during the Term, the Company shall maintain insurance against all risks of the kinds customarily insured against, in amounts customarily carried, by entities engaged in a similar business in the same geographical area as the Company.
- (b) By the Participating Organization. The Participating Organization makes the following representations, warranties and covenants to the Company, in each case as of the Effective Date of this Agreement and, where the context requires, on a continuous and uninterrupted basis throughout the Term of this Agreement.
- (i) Authority. The Participating Organization is duly formed, validly existing and in good standing in the jurisdiction in which it was incorporated. The Participating Organization has the legal power and authority to conduct its business and operations as currently conducted and as proposed to be conducted, and to execute, deliver and perform this Agreement.
 - (ii) Compliance with Laws. The Participating Organization is in compliance, and will comply, with all Federal, state and local laws, rules and regulations applicable to its business and operations. In furtherance, and not in limitation of, the foregoing, the Participating Organization acknowledges and agrees that it is solely responsible for obtaining all third party consents that may be required by applicable privacy laws in connection with the collection, retention and

dissemination of data relating to its use of HomeKeeper. The Participating Organization does not, and will not, discriminate on the basis of race, color, national origin, age, sex, sexual orientation, marital status, creed, religion, citizenship, ancestry, political affiliation, or any other protected class.

- (iii) Insurance. At all times during the Term of this Agreement and, to the extent that any insurance is carried on a claims made basis, for such period thereafter that claims may be legally made with respect to occurrences during the Term, the Participating Organization shall maintain insurance against all risks of the kinds customarily insured against, in amounts customarily carried, by entities engaged in a similar business in the same geographical area as the Participating Organization.
- (iv) Database Integrity. The integrity of the HomeKeeper National Data Hub and the reports generated through the HomeKeeper National Data Hub are entirely dependent upon the reliability and accuracy of the data furnished by Homeownership HK Participants through HomeKeeper for Homeownership and Program Surveys. Accordingly, the Participating Organization represents and warrants to the Company that any data it furnishes through HomeKeeper for Homeownership is, and will be, accurate, up to date and complete. The Participating Organization covenants that it will update the data that it stores in HomeKeeper for Homeownership on at least a quarterly basis, and that it will notify the Company promptly upon its discovery of any errors in data previously uploaded to HomeKeeper for Homeownership.

7. Confidentiality. If a party to this Agreement (the “receiving party”) obtains access to Confidential Information (defined below) of the other party to this Agreement (the “disclosing party”), the receiving party agrees: (a) not to disclose the Confidential Information to any third party without first obtaining the disclosing party’s consent; and (b) to use the Confidential Information only as reasonably necessary to perform its obligations under this Agreement. The receiving party shall use at least the same degree of care to protect the Confidential Information of the disclosing party from unauthorized disclosure or use that the receiving party uses to protect its own Confidential Information, but not less than reasonable care.

The foregoing restrictions on the use and disclosure of Confidential Information shall not apply: (a) if the information was previously known to the receiving party free of any obligation to keep it confidential and through no wrongful act of the receiving party; (b) if the information is available to the public through no wrongful act of the receiving party; (c) if the information is independently developed by the receiving party without reference to the Confidential Information of the disclosing party; (d) if the information is subject to disclosure pursuant to applicable law or regulation, subpoena, or judicial order, provided that the receiving party has given the disclosing party sufficient prior notice of such order or requirement so as to permit the disclosing party a reasonable opportunity to seek a protective order or other appropriate remedy; (e) if the information is disclosed by the receiving party to: (i) its legal and financial advisors who have a need to know the information in order to provide legal or financial advice to the receiving party, or (ii) its officers, directors, employees, independent contractors and agents who have a need to know the information in order to support the receiving party in performing its obligations hereunder, provided, that such advisors and personnel are under a confidentiality obligation to the receiving party that is similar in scope to the confidentiality obligation described hereunder; and

(f) in the case of information disclosed by the Participating Organization, if the information is: (i) Participating Organization HomeKeeper National Data Hub Data (subject to the restrictions set forth in Section 3(d) above regarding Raw Data and performance metrics), (ii) HomeKeeper Usage Data (subject to the restrictions set forth in Section 3(e) above regarding HomeKeeper Usage Data that is specific to the Participant Organization); (iii) information disclosed in connection with HomeKeeper Participant activities (including Program Surveys), or (iv) information disclosed for the general purpose of furthering industry data collection or market research, or for the purpose of participating in other collaborative learning activities. For the avoidance of doubt, subject to the restrictions set forth in Sections 3(d) and 3(e) above, the parties expressly agree that performance reports and analyses that are based on data processed by or through HomeKeeper or HomeKeeper National Data Hub, or other similar Company-sponsored applications or platforms, are not confidential and may be disclosed by the Company to the public in furtherance of its mission and that Raw Data collected through the HomeKeeper National Data Hub and HomeKeeper Usage Data may be disclosed to The Urban Institute and other third parties for further industry research and analysis.

Each party understands and agrees that the other party will suffer irreparable harm in the event of a breach of the confidentiality obligations set forth herein and that monetary damages will be inadequate to compensate for any such breach. Accordingly, each party agrees that, in the event of a breach or threatened breach of these obligations by the receiving party, the disclosing party shall be entitled to injunctive relief without the necessity of posting a bond, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity.

The term “Confidential Information” means: (a) information that is not a matter of public knowledge or which is specifically designated as confidential, including, but not limited to, business development strategies, corporate assessments and plans, product pricing, financial and statistical information, accounting information, software, business processes, designs, financial and other business models, and algorithms; (b) non-public personally identifying information subject to protection under Federal or state privacy laws; and (c) compilation or summary information or data that contains or is based on information of the type described in subsections (a) or (b).

8. Ownership. As between the Company and the Participating Organization, the Company will own all Intellectual Property Rights in: (a) HomeKeeper, including all source code, object code, documentation, training manuals and other materials relating thereto; (b) all reports created or generated through the HomeKeeper National Data Hub and other similar Company-sponsored platforms that are prepared by or on behalf of the Company for use by Homeownership HK Participants and/or Housing Counseling HK Participants generally (“HomeKeeper Reports”); (c) the selection, arrangement, compilation and original expression by the Company of all data (including Participating Organization HomeKeeper National Data Hub Data) that is contained in the HomeKeeper National Data Hub at any time, provided that the Participating Organization will continue to own all Intellectual Property Rights in the individual data elements that comprise the Participating Organization HomeKeeper National Data Hub Data subject to the Company’s license thereto under Section 3(c) above; and (d) HomeKeeper Usage Data, including the selection, arrangement, compilation and expression thereof. The Participating Organization will have a non-exclusive, fully paid up, non-transferable, perpetual right and license to use any HomeKeeper Report furnished by the Company to the Participating Organization under this Agreement. Notwithstanding anything to the contrary in this Agreement or in any Prior Agreement (as defined in Section 13(c) below): (i) the Participating Organization’s right to access and use HomeKeeper (including any software code and related documentation comprising HomeKeeper) is limited to the then current object code version of the HomeKeeper Package(s) with respect to which it is a HomeKeeper

Participant under this Agreement that is made generally available to HomeKeeper Participants by the Company, and such right of access and use of HomeKeeper shall terminate immediately upon expiration or termination of this Agreement for any reason; (ii) unless otherwise agreed in writing by the Company on a case-by-case basis, the Participating Organization will have no right to access or use the source code for HomeKeeper or any portion thereof; and (iii) the Participating Organization may use HomeKeeper solely in accordance with the documentation therefor provided by the Company to the Participating Organization and shall not take any actions with respect to HomeKeeper that adversely impacts the Company's ability to support HomeKeeper or collect HomeKeeper Usage Data or data for the HomeKeeper National Data Hub. The term "Intellectual Property Rights" means copyrights, patents, trademarks, service marks, trade secrets, moral rights and all other proprietary and intellectual property rights of any nature whatsoever.

9. Publicity. The Participating Organization shall not use the Company's name, logos, or trademarks in advertisements, marketing materials, or other publications of any kind without the prior written consent of the Company. The Company shall not use the Participating Organization's name, logos, or trademarks in any advertisements, marketing materials, or other publications of any kind without the prior written consent of the Participating Organization, provided, however, the Participating Organization hereby expressly consents to the disclosure of its use of HomeKeeper to the public, and the inclusion of its name, logos and trademarks in industry publications and sector performance reports for attribution and in marketing materials relating specifically to HomeKeeper, the HomeKeeper National Data Hub and HomeKeeper Participants.

10. Indemnification. The Participating Organization shall indemnify, hold harmless and defend the Company, its affiliates and their service providers, and their respective officers, directors, employees, independent contractors and agents (each, an "Indemnified Party") against all third party claims, losses, damages, costs and expenses (including reasonable attorney's fees) arising in connection with, or incident to, the Participating Organization's failure to comply with: (a) applicable privacy laws in connection with the collection, storage and dissemination of data by or on behalf of the Participating Organization, including, but not limited to, the Participating Organization's failure to obtain required consents from individuals with respect to which data is collected, stored, or disseminated; or (b) laws and regulations relating to the Housing Counseling Program in connection with, or incident to, the Participating Organization's use of HomeKeeper for Housing Counseling. The Participating Organization shall not settle any indemnified claim without the Indemnified Party's prior written consent, which shall not be unreasonably withheld.

11. Disclaimer. The Participating Organization acknowledges that the Company is not in the business of developing technology or providing technology support to end users and has developed and operates HomeKeeper solely as a public benefit in furtherance of its mission to support affordable homeownership programs, housing counseling assistance, and related industry best practices. The Participating Organization further acknowledges that the Company is not responsible for any products or services provided by independent, third party service providers. Further, notwithstanding anything to the contrary in this Agreement, the Participating Organization acknowledges and agrees that the Company shall have no obligation to be or remain on HUD's list of CMS compliant vendors or otherwise in compliance with HUD specifications and requirements for Client Management Systems under the Housing Counseling Program. ACCORDINGLY, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SUITABILITY OF HOMEKEEPER FOR THE PARTICIPATING ORGANIZATION'S BUSINESS, THE ACCURACY AND COMPLETENESS OF ANY INFORMATION OR MATERIALS MADE AVAILABLE TO THE PARTICIPATING ORGANIZATION UNDER THIS AGREEMENT, COMPLIANCE WITH HUD

REQUIREMENTS, OR THE TECHNOLOGY OR TECHNOLOGY SERVICES PROVIDED TO THE PARTICIPATING ORGANIZATION UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ALL INFORMATION, MATERIALS, PRODUCTS AND SERVICES HEREUNDER ARE PROVIDED AS-IS.

12. Limitation of Liability. IN NO EVENT SHALL THE PARTICIPATING ORGANIZATION, THE COMPANY, OR ANY THIRD PARTY SERVICE PROVIDERS BE LIABLE TO ONE ANOTHER FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES OR LOSSES OF ANY KIND OR NATURE RESULTING FROM, ARISING OUT OF, OR INCIDENTAL TO THIS AGREEMENT UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO INDEMNIFICATION OR PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

13. Miscellaneous.

- (a) Independence of Parties; No Joint Venture. In carrying out their respective duties hereunder, each party shall at all times be independent of the other. The Company's personnel and the Participating Organization's personnel shall be, and shall remain at all times, employees or independent contractors of the Company or the Participating Organization, respectively, and shall not be deemed to be employees or independent contractors of the other party under any circumstances for any purpose whatsoever. Each party is responsible for the payment of wages and other amounts due, and the provision of all benefits required by law, to its personnel. Nothing in this Agreement shall constitute or be construed as a partnership, joint venture, or other similar relationship between the Company and the Participating Organization.

- (b) Governing Law; Arbitration. This Agreement shall be governed by the laws of the State of California without regard to its conflicts of law provisions. Except with respect to injunctive relief sought in connection with a breach or threatened breach of Section 7, any controversy or claim arising out of or relating to this Agreement shall be settled by a single arbitrator mutually acceptable to the parties by means of an arbitration proceeding to be conducted in Alameda County, California in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). Neither party shall object to Alameda County, California as a convenient forum. If the parties are unable to select a mutually agreeable arbitrator within twenty (20) days of either party's initial request therefor, the Company and the Participating Organization shall each choose an arbitrator, and the two (2) arbitrators so chosen will agree upon and select a third (3rd) arbitrator within ten (10) days of such request, who will arbitrate the controversy or claim. The parties elect to provide for pre-arbitration discovery pursuant to the Federal Rules of Civil Procedure. The arbitrator may award injunctive relief or any other remedy available from a court of competent jurisdiction. Unless modified by the arbitrator in his or her discretion, the arbitration shall proceed upon the following schedule: (i) the arbitration shall commence no later than sixty (60) days following the selection of the arbitrator; and (ii) the arbitrator shall hear the claims on successive days and shall render his or her written decision within fifteen (15) days following the conclusion of the arbitration proceedings. The arbitrator's decision will be

final and binding upon the parties and may not be appealed except on grounds of a conflict of interest. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. Each party shall be responsible for its own costs of arbitration and attorney's fees, except that the arbitrator shall have the discretion to award costs of arbitration and reasonable attorney's fees as he or she may deem appropriate.

- (c) Entire Agreement. This Agreement, including all documents incorporated herein by reference, evidences the entire agreement of the parties, and supersedes all prior agreements and representations of the parties, whether written or oral, with respect to the subject matter hereof. If the Company and the Participating Organization entered into a HomeKeeper Membership Agreement or other similar agreement (each, a "Prior Agreement") prior to the Effective Date of this Agreement, the parties agree that each such Prior Agreement (including all licenses granted to the Participating Organization thereunder) is hereby terminated, effective as of the Effective Date of this Agreement, and that each such Prior Agreement is superseded and replaced in its entirety by the terms and conditions hereof.
- (d) Amendments. Except as provided herein, this Agreement may be amended or modified only by a specific written instrument signed by the Company and the Participating Organization. The Company may amend this Agreement on a prospective basis by providing at least forty-five (45) days advance written notice of the amendment to the Participating Organization. The Participating Organization shall have the right to reject any such amendment by providing written notice to the Company within thirty (30) days after receipt of the same. In the event that the Participating Organization rejects the amendment, it shall not be bound by the amendment and this Agreement shall terminate as of the expiration of the then current Term unless otherwise agreed in writing by the Company. Unless the Participating Organization provides such rejection notice within such thirty (30) day period, the Participating Organization shall be deemed to have consented to such amendment and such amendment shall form part of this Agreement effective as of the commencement of the next Renewal Term following the date the Company provided notice of the amendment to the Participating Organization.
- (e) No Implied Waiver. No failure to contest a breach of any term of this Agreement shall be deemed to waive such breach, unless such waiver shall be in a specific written instrument signed by the waiving party. Any waiver of a particular breach of this Agreement shall not constitute a waiver of any other different or subsequent breach.
- (f) Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (g) Notices. All notices required or permitted to be given hereunder shall be in writing. All such notices shall be: (i) personally delivered; (ii) sent by confirmed facsimile; or (iii) sent by mail as follows:

<u>If to the Company:</u> P.O. Box 42255 Portland, Oregon 97242 Facsimile: 503.493.1004 Attn: Rachel Silver, Chief Operating Officer Copy to: Tiffany Eng, Program Director	<u>If to the Participating Organization:</u> [Insert Company Address] Facsimile: N/A Attn: [Insert Signor Name], [Insert Signor Title]
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All such notices shall be deemed to have been given on the date of receipt or refusal if delivered personally, by facsimile, or by overnight carrier, or three (3) days after the date of posting if transmitted by mail. Either party may change its address or contact by providing written notice of the change to the other party as specified herein.

- (h) Assignments. The Participating Organization may not assign its rights or obligations under this Agreement to any other party without the Company's prior written consent. This Agreement shall be binding on and shall inure to the benefit of the successors and permitted assigns of the Company and the Participating Organization.
- (i) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- (j) Form of Signature. This Agreement may be executed in writing or by electronic (including digital) means; electronic signatures that are adopted by a person with the intent to sign this Agreement shall be legally effective and enforceable against the party represented by such person.
- (k) Name and Trademark Usage. If, during the term of this Agreement, the Company re-brands the managed package known as HomeKeeper or the database known as the HomeKeeper National Data Hub, the terms HomeKeeper and HomeKeeper National Data Hub, and all other terms comprised of, or defined with reference to, the word "HomeKeeper" hereunder, shall be deemed to instead be comprised of, or defined with reference to, the replacement name(s) and/or mark(s) designated by the Company, without any further action on the part of the parties hereto.
- (l) Survival. Any provisions of this Agreement that contemplate their continuing effectiveness, including, but not limited to, Sections 3(c), 3(d), 3(e), 4(c), 5(b), 7, 8, 9, 10, 11, 12, and 13, shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the Participating Organization, intending to be legally bound, have executed this Agreement, effective as of the Effective Date.

Agreement No. [Insert Agreement Number]

The Company: National Community Land Trust Network d/b/a Grounded Solutions Network

The Participating Organization: Downstreet Housing & Community Development

By:

By:

Name: Tiffany Eng
Title: Program Director, HomeKeeper

Name: [Insert Signor Name]
Title: [Insert Signor position]

Agreement No. [Insert Agreement Number]

EXHIBIT A
FEE SCHEDULE

Initial Term:

For the period starting: **[Insert Start Date]** through **[Insert End Date]**

HomeKeeper Packages:

The Participating Organization shall become a HomeKeeper Participant during the Term with respect to the following HomeKeeper Package(s):

HomeKeeper for Homeownership AND/OR HomeKeeper for Housing Counseling

Enrollment Fee:

[Insert Enrollment Fee]

Participation Fee – Initial Term:

[Insert Participation Fee]