

**LOAN AGREEMENT WITH  
DECLARATION OF RESTRICTIVE COVENANTS**

**by and between**

**CITY OF HEALDSBURG**

**and**

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This LOAN AGREEMENT WITH DECLARATION OF RESTRICTIVE COVENANTS (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 20\_\_ (“**Effective Date**”) by and between \_\_\_\_\_, [an individual, married couple, partnership, corporation] (the “**Borrower**”) and the City of Healdsburg, a California municipal corporation (the “**City**”). City and Borrower are hereinafter collectively referred to as the “**Parties.**”

A. To further its goals of retaining and improving rental-housing opportunities within the City of Healdsburg and to help stabilize rents by requiring Borrowers to limit annual rent increases to no more than 3% per year for a period of four (4) years following disbursement of a loan pursuant to the Program, and thereafter, for as long as the Rental Advisory is in place, they are limited to increases of 10% per year, City has established a Rental Unit Rehabilitation Loan Program (the “**Program**”) pursuant to which the City provides reimbursable matching loans to property owners of rental units to undertake needed repairs and improvements thereby preserving the rental housing stock in the City.

B. Borrower is the owner of that certain residential property located at \_\_\_\_\_ in the City of Healdsburg, County of Sonoma, known as Sonoma County Assessor’s Parcel No. \_\_\_\_, (the “**Rental Unit**”) and more particularly described in Exhibit A attached hereto (the “**Property**”).

C. Borrower has requested, and City has agreed, to provide a reimbursable matching loan (the “**Loan**”) under the Program pursuant to the terms and conditions hereof for the purpose of financing a portion of the costs of constructing and/or installing the improvements to the Property described in Exhibit B attached hereto (the “**Improvements**”).

D. City has determined that the Borrower, the Property and the Improvements meet the eligibility requirements of the Program Guidelines (the “**Program Guidelines**”), and provision of a loan for the Improvements pursuant to the terms of this Loan Agreement (the “**Agreement**”) is in the interests of the health, safety and welfare of the residents of the City.

E. Prior to the disbursement of any funds by City to Borrower pursuant to this Agreement, Borrower shall execute a promissory note (the “**Note**”) in the amount of the Loan, as hereinafter described. This Agreement and the Note are collectively hereinafter referred to as the “**Loan Documents.**”

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## **AGREEMENT**

### **ARTICLE I**

#### **LOAN TERMS; USE AND DISBURSEMENT OF PROCEEDS**

1.1 LOAN. City agrees to loan to Borrower, and Borrower agrees to borrow from City, a sum of \_\_\_\_ Thousand Dollars (\$\_\_,000) (the “**Loan**”) upon the terms and conditions and for the purposes set forth in this Agreement. The exact amount of the Loan shall be determined in the manner described in Section 1.1.1, below, and at the time of completion of the Improvements. The Loan shall be evidenced by the duly executed Note which shall be substantially in the form attached hereto as Exhibit C and incorporated herein by reference.

1.1.1 LOAN AMOUNT; AMENDMENT. The reimbursable matching loan amount shall be for up to fifty percent (50%) of the Improvement cost to eligible Borrowers; provided, however, that the maximum loan amount shall be Four Thousand Dollars (\$4,000) for each qualifying Rental Unit, for up to three (3) Rental Units owned by the Borrower (“Loan Proceeds”). Borrowers receiving a Loan agree to limit annual rent increases of participating Rental Units to no more than three (3) percent per year for four (4) years following disbursement of a loan pursuant to the Program, and thereafter, for as long as the Rental Advisory is in place, they are limited to increases of 10% per year, in accordance with and as described in the Program Guidelines attached hereto as Exhibit D. The Loan amount set forth in this Agreement is based upon the actual cost to complete the Improvements provided by Borrower at the time Borrower requested the Loan. In the event of unplanned or emergency repairs to the Rental Unit that would necessitate Borrower to increase rents in excess of 3% per year, the City Manager or his or her designee may renegotiate the Loan Agreement in conformance with the Program Guidelines. Any such amendment shall be in the City’s sole reasonable discretion.

1.2 REPAYMENT; INTEREST RATE; FORGIVENESS.

1.2.1 REPAYMENT; ACCELERATION. Provided that Borrower is not in default under the Loan Documents, no payment shall be due on the principal balance of the Loan. On the fourth anniversary of the date upon which the Loan Proceeds are disbursed, provided that no default or breach by Owner has occurred pursuant to Article IV, the entire principal balance and all accrued interest shall be forgiven. If Owner is in default under the Loan Documents or transfers the Property prior to the fourth anniversary of the date upon which the Loan Proceeds are disbursed, City may accelerate and declare the Note and interest accrued thereon immediately due and payable pursuant to Section 4.2.

1.2.2 FORGIVENESS. Notwithstanding the foregoing, unless City agrees otherwise in writing, the entire principal balance and all interest and other sums accrued under the Note shall be due and payable upon the occurrence of an Event of Default pursuant to Article IV of this Agreement.

1.2.3 INTEREST RATE. Interest shall accrue on the principal balance of the Loan at a rate equal to \_\_\_\_ (\_\_\_\_%) as determined by the Wall Street Journal prime rate, and compounded annually.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay the principal balance due under the Note. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest and then to principal. In no event shall any amount due under the Note become subject to any rights of offset, deduction or counterclaim on the part of Borrower.

1.4 USE OF LOAN PROCEEDS. Borrower shall use the Loan Proceeds solely and exclusively to pay for the actual costs incurred, paid for and documented by Borrower and approved by City for the proper performance and completion of the Improvements pursuant to the Program Guidelines attached hereto as Exhibit D and incorporated herein by reference.

1.5 DISBURSEMENT OF PROCEEDS. Upon completion of the Improvements and provided that Borrower has satisfied the conditions set forth in Section 1.6, City shall (i) determine the amount of Total Allowable Expenses; (ii) calculate the Loan amount; (iii) prepare

the Loan Documents to reflect the final Loan amount; and (iv) disburse the Loan Proceeds to Borrower.

1.6 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS. City's obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's execution and delivery to City of the Note and this Agreement;

(b) Borrower's delivery to City of evidence of compliance with the construction requirements of this Agreement in accordance with Article II, including Borrower's delivery to City of evidence reasonably satisfactory to City that Borrower obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to undertake the Improvements;

(c) Borrower's delivery to City of (i) the final budget for the Improvements, including the actual cost of each line item; (ii) the construction contract, (iii) detailed receipts or invoices that match the description of the Improvements and final budget; (iv) proof of payment of all costs relating to the Improvements, including payment of prevailing wages; (v) unconditional lien releases; (vi) two dated, color 8"x10" photographs of the Improvements upon completion; and (vii) and copies of such other documents related to the Improvements as City may reasonably request;

(d) Borrower's delivery to City of a Certificate of Completion, as hereinafter defined, in accordance with Section 2.11; and

(e) Borrower's delivery of a signed certification (in substantially the form attached hereto as Exhibit E and incorporated herein by reference) acknowledging (i) that Borrower agrees to be solely responsible for all tax consequences and liabilities resulting from forgiveness of the Loan or any other aspect of the receipt of funds under the assistance program in which Borrower is participating; and (ii) that the representations made and the materials provided by Borrower when applying for the Loan continue to be true and correct in all material respects.

1.7 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provision of this Agreement, City shall have no obligation to disburse any portion of the Loan Proceeds if there is an occurrence of an Event of Default under the Loan Documents or if Borrower is not in compliance with the Program Guidelines.

1.8 SECURITY FOR LOAN; LIEN ON PROPERTY. In consideration of and as security for the Loan, and pursuant to California Civil Code Sections 2881 and 2884, Borrower hereby agrees and promises that following a default or breach by Borrower or by any agent, successor or assignee of Borrower, the Loan shall become a lien on the Property when such default or breach occurs and is not cured in accordance with the applicable provisions of the Loan Documents.

## **ARTICLE II**

### **CONSTRUCTION OF THE IMPROVEMENTS**

2.1 COMPLETION OF CONSTRUCTION. Borrower shall complete construction of the Improvements prior to entering into this Agreement.

2.2 COMPLIANCE WITH CONTRACTOR LICENSING AND INSURANCE REQUIREMENTS. Once Borrower executes a contract with a qualified, licensed contractor, Borrower shall provide to City a copy of the executed contract as well as evidence of all insurance that may be required under Section 3.3. City may also require Borrower to submit to City proof of the State License issued to the selected contractor.

2.3 APPROVAL OF PLANS AND SPECIFICATIONS. City shall have the right to approve the plans and specifications for the Improvements (“**Plans and Specifications**”). Borrower must obtain City's written approval of any modification to the Plans and Specifications arising prior to or during the course of construction. City must also approve any additional construction work proposed to be performed during the construction of the Improvements.

2.4 APPROVALS. Borrower acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the Improvements, does not limit in any manner the discretion of City in such approval process, and does not relieve Borrower from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the Improvements, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Improvements (if any), and the completion of any required environmental review. Borrower covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City or any other governmental agency having jurisdiction over the Improvements or the Property, (ii) comply with all conditions of approval, (iii) comply with all mitigation measures imposed in connection with any environmental review of the Improvements, and (iv) not commence construction work on the Improvements prior to issuance of building permits required for such work.

2.5 NOTICE TO PROCEED. Within thirty (30) days of having received written approval from the City to proceed with construction of the Improvements, Borrower must commence work on the Improvements, or issue a notice to proceed to the contractor if a contract is awarded. City's approval shall be based upon City's receipt and approval of (i) a signed contract between Borrower and Borrower's contractor, unless Borrower is eligible to construct the Improvements and elects to do so; (ii) the Plans and Specifications; (iii) evidence that Borrower has obtained all necessary approvals and permits; and (iv) evidence that Borrower (and/or Borrower's contractor) has complied with all applicable insurance requirements set forth in this Agreement.

2.6 INSPECTIONS. Borrower shall permit City's agents or representatives to enter upon the Property to inspect the Improvements; permit them to examine all detailed plans and shop drawings for the Improvements; and cause the general contractor and/or subcontractors to cooperate with City in this regard, during normal business hours. If any of the work, in the reasonable opinion of City, is not being performed in accordance with the approved Plans and Specifications, City will provide Borrower with written notice of same. Observation by City of construction shall be for the purpose of determining whether work on the Improvements is being performed and/or has been completed. Such observation shall in no way be construed as an acknowledgment that the Plans and Specifications for the Improvements have been complied with or that the construction is free from defect or in compliance with the terms of this Agreement.

2.7 FEES. Borrower shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Improvements, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, design review, architectural review, historic review, and any subsequent approvals for the construction or installation of the Improvements.

2.8 COST OF CONSTRUCTION. Borrower shall be solely responsible for, and shall promptly pay when due, all direct and indirect costs and expenses incurred in connection with the design, construction and/or installation of the Improvements and compliance with the conditions of approval, and none of such costs and expenses shall be or become the obligation of City.

2.9 EQUAL OPPORTUNITY. During the construction of the Improvements, there shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Improvements, and Borrower shall direct its contractors and subcontractors to refrain from discrimination on such basis.

2.10 MANAGEMENT OF CONSTRUCTION OF THE IMPROVEMENTS. Borrower shall be fully responsible for obtaining all approvals and permits necessary for construction of the Improvements. Borrower shall manage, monitor, and schedule the construction of the Improvements as well as ensure the Improvements are completed properly and in accordance with this Agreement.

2.11 COMPLETION OF CONSTRUCTION; COMPLETION DATE. Promptly after completion of the Improvements, Borrower shall request an inspection of the Improvements for the purpose of obtaining a certification from City that the Improvements have been completed in accordance with this Agreement, including compliance with all applicable laws and approvals (the “**Certificate of Completion**”). Borrower shall complete construction of the Improvements and obtain a Certificate of Completion, in form substantially similar to Exhibit G, attached hereto and incorporated herein by this reference, in accordance with this Section 2.11 no later than one hundred eighty (180) days after receiving final determination of eligibility from City and shall request the Loan within 30 days of obtaining a Certificate of Completion.

### **ARTICLE III**

#### **AFFIRMATIVE COVENANTS**

3.1 USE OF FUNDS. Borrower covenants that it shall use the Loan Proceeds solely for the purpose of financing the Improvements in accordance with Section 1.4.

3.2 COMPLIANCE WITH LAWS. Borrower shall carry out the construction of the Improvements in conformity with the all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, including the Prevailing Wage Laws, as hereinafter defined, City zoning and development standards, building, plumbing, mechanical and electrical codes and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq.,

Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

3.3 **INSURANCE.** If Borrower is eligible and elects to construct the Improvements, within seven (7) days of the Effective Date and continuing throughout the term of the Loan, Borrower shall obtain and maintain in full force and effect during said period the insurance of the types, coverages and limits as may be reasonably determined by City to be appropriate based on the Improvements. If the Borrower awards a contract for the construction of the Improvements, Borrower shall require contractor and subcontractors to have in effect during the term of such contract the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than two million dollars (\$2,000,000) and two million dollars (\$2,000,000) per occurrence general liability; (ii) Automobile Insurance, maintained in full force and effect in an amount of not less than one million dollars (\$1,000,000) per accident; and (iii) Workers' Compensation Insurance in an aggregate amount of not less than one million dollars (\$1,000,000) employer's liability coverage.

3.3.1 Prior to commencement of construction of the Improvements and continuing until Borrower has obtained a Certificate of Completion, Borrower's contractor(s) and subcontractors shall keep in full force and effect the insurance required under this Section 3.3, including, as required under California law, Workers' Compensation Insurance in an aggregate amount of not less than one million dollars (\$1,000,000) employers' liability coverage, with a waiver of subrogation endorsement in favor of the entities listed in Section 3.3.2.

3.3.2 All Comprehensive General Liability Insurance and Automobile Insurance policies that may be required under this Section 3.3 shall name the City of Healdsburg and its respective elected and appointed officials, officers, employees, agents, and volunteers as additional insureds.

3.3.3 Both the General Liability and Auto endorsements must add the City, its officials, officers, employees, agents and volunteers as an additional insured ("Additional Insured"). The Additional Insured coverage under the Consultant's general liability policy shall be "primary and non-contributory" and Contractors' coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

3.3.4 All insurance required by this Agreement shall be carried only by responsible insurance companies that have been given at least an "AV" rating by AM BEST, that are licensed to do business in the State of California and that have been approved by City.

3.3.5 All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of City.

3.4 **MAINTENANCE.** Borrower shall not remove the Improvements from the Property and shall maintain the Property and the Improvements in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property and the Improvements shall be preserved and maintained.

3.5 **INDEMNIFICATION.** Borrower shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless City, and its respective elected and appointed officials, officers, agents, employees, consultants and contractors (collectively, the "**Indemnitees**") from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims,

actions, suits, judicial or administrative proceedings, demands, penalties, deficiencies, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) arising directly or indirectly in any manner in connection with or as a result of Borrower's failure to perform its covenants and obligations under this Agreement and any of its activities or operations related thereto, excluding the wilful misconduct or the gross negligence of the Indemnitees. The provisions of this Section 3.5 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Improvements.

3.6 PREVAILING WAGES. To the full extent required by all applicable state and federal laws, rules and regulations, if any, Borrower and its contractors and agents shall comply with California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto ("**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Borrower shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Borrower's expense.

Pursuant to Labor Code section 1771(a), a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (collectively, "**Claims**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in the construction or installation of the Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.6 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Improvements. Borrower's indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees.

3.7 OBLIGATION TO REFRAIN FROM DISCRIMINATION. Borrower shall not restrict the rental, lease, sublease, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital

status, ancestry, or national origin of any person. Borrower covenants for itself and all persons claiming under or through it and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the lease, sublease, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Borrower or any person claiming under or through Borrower 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, subtenants, sublessees or vendees in, of, or for the Property or part thereof.

3.8 RELIANCE ON COVENANTS. The representations of Borrower, including but not limited to the covenants of this Article III, have been or will be relied upon by City, notwithstanding any investigation made by City or on its behalf.

## ARTICLE IV

### DEFAULT AND REMEDIES

4.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

4.1.1 Borrower fails to comply with the restrictive covenants contained in Article III of this Agreement.

4.1.2 Any representation or warranty contained in this Agreement or any of the Loan Documents proves to have been false or misleading in any material adverse respect when made, regardless of whether the circumstances causing the representation or warranty to be false or misleading were intentional, negligent, inadvertent, or otherwise.

4.1.3 An Event of Default shall have been declared under any of the other Loan Documents, subject to the expiration of any applicable cure period set forth in such documents.

4.1.4 A sale, assignment, conveyance or any other transfer of the Property, the Improvements or the Loan, or any portion thereof, in violation of this Agreement shall have occurred.

4.1.5 Borrower declares bankruptcy or makes an assignment of assets for the benefit of creditors.

4.1.6 Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article IV) contained in this Agreement and, unless a shorter cure period for such default is specified herein, the default continues for ten (10) days after the date upon which City shall have given written notice of the default to Borrower (or such longer time as City may agree upon in writing), provided that in each case Borrower commences to cure the default within ten (10) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

4.1.7 Borrower fails to complete, or cause to be completed, the Improvements in the manner and/or within the time period described herein.

4.1.8 Borrower fails to maintain, or removes or alters, the Improvements.

4.1.9 Borrower increases the rent on the participating Rental Unit in excess of three percent (3%) per year for four (4) years following disbursement of a loan pursuant to the Program.

4.1.10 The Rental Unit is no longer used for rental purposes or rendered uninhabitable.

4.2 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, and a failure to cure such Event of Default where an opportunity to cure is expressly provided herein, City shall have all remedies available to it under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to this Agreement, exercise one or more of the following remedies:

4.2.1 Seek specific performance to enforce the terms of this Agreement.

4.2.2 Accelerate and declare the original principal amount of the Note and interest accrued thereon immediately due and payable.

4.2.3 Record a Notice of Lien substantially in the form attached hereto as Exhibit F and incorporated herein by reference.

4.2.4 Pursue any and all other remedies available under law to enforce the terms of this Agreement and City's rights hereunder.

4.3 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein. City may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

4.4 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of ten percent (10%) per annum (the "**Default Rate**"). If any payment due hereunder is not paid when due, the Default Rate shall apply, commencing upon the due date for such payment. Notwithstanding the foregoing, if the Default Rate exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under the Loan Documents or prevent City from exercising any of its other rights or remedies.

## ARTICLE V

### MISCELLANEOUS

5.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this

Section. All such notices sent by personal delivery shall be deemed delivered upon receipt and all notices sent first class, postage prepaid, return receipt requested shall be deemed delivered five (5) business days after deposit in the United States mail.

**City:** City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448  
Attn: Community Housing & Development Director

**Borrower:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

5.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability. Any term, provision, covenant or condition of this Agreement held invalid, void or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid, void or unenforceable.

5.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

5.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

5.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

5.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City is solely that of borrower and lender. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

5.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement must be filed in Sonoma County, State of California.

5.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

5.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, City's obligation to make the Loan is personal to Borrower, and shall not be assignable by Borrower by operation of law or otherwise absent the express written consent of City and any such assignment by operation of law or otherwise shall be void.

5.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

5.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A, B, C, D, E, F and G are attached hereto are incorporated herein by reference as though fully set forth herein.

5.13 SURVIVAL. All representations made by Borrower herein and the provisions of Sections 3.2, 3.5 and 3.6 hereof shall survive the expiration or earlier termination of this Agreement and the making of the Loan.

5.14 ACTION BY CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council. City shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner.

5.15 NON-LIABILITY OF CITY AND CITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of City shall be personally liable to Borrower or any successor in interest to Borrower in the event of any default or breach by City, or for any amount of money which may become due to Borrower or Borrower's successor in interest or for any obligation of City under this Agreement.

5.16 BINDING UPON SUCCESSORS; COVENANTS TO RUN WITH THE LAND. Borrower hereby subjects its interest in the Property and the Improvements to the covenants and restrictions set forth in this Agreement. The Parties hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in

interest, transferees, and assigns of the Parties, regardless of any sale, assignment, conveyance or transfer of the Property, the Improvements or any part thereof or interest therein. Any successor-in-interest to Borrower, including without limitation any purchaser, transferee or lessee of the Property or the Improvements (other than the tenants of any commercial space on the Property) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement.

5.17 JOINT AND SEVERAL LIABILITY. If Borrower is comprised of more than one person or legal entity such persons and entities and each of them shall be jointly and severally liable for the performance of each and every obligation of Borrower under this Agreement.

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be duly executed as of the date first written above.

**BORROWER**

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

\_\_\_\_\_

**CITY:**

**CITY OF HEALDSBURG**

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

Its: City Manager

ATTEST:

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

**SIGNATURES (except City Clerk and City Attorney) MUST BE NOTARIZED.**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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 \_\_\_\_\_ (Seal)

**EXHIBIT A**

**PROPERTY**

(Attach legal description.)

**EXHIBIT B**  
**IMPROVEMENTS**

(Attach description of rehabilitation/restoration work to be undertaken)

**EXHIBIT C**  
**FORM OF PROMISSORY NOTE**  
(Attach Promissory Note)

**EXHIBIT D**  
**PROGRAM GUIDELINES**  
(Attach Program Guidelines)

**EXHIBIT E**

Form of Program Participant Certification

I, \_\_\_\_\_, (hereinafter “referred to as “Borrower”) am [the Borrower] or [the designated and authorized representative of the Borrower] of that real property located at \_\_\_\_\_, Healdsburg, CA. In that capacity, I have elected to participate in the City of Healdsburg’s (“City”) Residential Rental Unit Rehabilitation Loan Program (“Program”), including receiving a loan (“Loan”) from the City in accordance with, and for purposes identified in, the Program.

As part of the consideration of that participation, I hereby declare under penalty of perjury under the laws of the United States of America as follows:

1. Borrower will be solely responsible for all tax consequences and liabilities resulting from forgiveness of the Loan or any other aspect of the receipt of funds under the Program.
2. Borrower agrees that the City will only pay \$ \_\_\_\_\_ towards the cost of the project.
3. The representations made and the materials provided by Borrower when applying for the Loan continue to be true and correct in all material respects.

I understand and acknowledge that the City is relying on the statements made in this certification in making the Loan, and that said statements are a material consideration for the making of said Loan.

I certify that the foregoing statements are true to the best of my knowledge.

\_\_\_\_\_  
Borrower

Date: \_\_\_\_\_

**EXHIBIT F**

Form of Notice of Lien

RECORDING REQUESTED BY:  
City of Healdsburg

WHEN RECORDED MAIL TO:  
Maria Curiel, City Clerk  
City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448

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**NOTICE OF LIEN**

**LIEN AMOUNT: \$ \_\_\_\_\_**

**LIENOR: CITY OF HEALDSBURG**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, on or about \_\_\_\_\_, 20\_\_, \_\_\_\_ [name of Borrower] entered into, and executed, a loan agreement (“Loan Agreement”) with the City of Healdsburg (“City”); and

WHEREAS, said Loan Agreement authorizes the City to file a lien against real property when the Borrower defaults on any of his/her/its obligations under the Loan Agreement; and

WHEREAS, the Borrower named herein has defaulted on his/her/its obligations under the Loan Agreement by \_\_\_\_\_;

NOW THEREFORE be it known that after the tenth day following proper service of this Notice, this Notice of Lien will be recorded in the Sonoma County Recorder’s Office and shall become a lien of record on that real property located at \_\_\_\_\_, Healdsburg, CA., having an Assessor’s Parcel Number of \_\_\_\_\_, and described as follows:

*SEE EXHIBIT “A” Attached, for legal description of property.*

The amount of such lien shall be \$ \_\_\_\_\_ plus allowable interest and other costs which may hereafter become due.

\_\_\_\_\_  
David Mickaelian, City Manager

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
City Clerk

**EXHIBIT G**

FORM OF CERTIFICATE OF COMPLETION

Recording requested by

and when recorded mail to:

City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448

Attn: \_\_\_\_\_

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

## CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Healdsburg, a California municipal corporation ("**City**") effective as of \_\_\_\_\_, 20\_\_\_\_.

### RECITALS

A. City and \_\_\_\_\_ ("**Borrower**"), entered into that certain Loan Agreement with Declaration of Restrictive Covenants (the "**Agreement**") dated as of \_\_\_\_\_, 20\_\_, concerning the [describe Loan] (the "**Project**") on certain real property located in the City of Healdsburg, California and more particularly described in Exhibit A attached hereto (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

B. Pursuant to Section 2.11 of the Agreement the City is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction of the Project in accordance with the Agreement.

C. The City has determined that the Improvements have been satisfactorily completed in accordance with the Agreement.

**NOW, THEREFORE**, the City hereby certifies as follows:

1. Construction of the Project has been satisfactorily completed in conformance with the Agreement.
2. All use, maintenance, rental amount and nondiscrimination covenants contained in the Agreement shall remain in effect and enforceable in accordance with the Agreement. This Certificate does not constitute evidence of Borrower's compliance with those covenants in the Agreement that survive the issuance of this Certificate.
3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Borrower to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof and does not constitute a notice of completion under California Civil Code Section 3093.3.

4. Nothing contained in this instrument shall modify any provisions of the Agreement or any other document executed in connection therewith.

**IN WITNESS WHEREOF**, City has executed and issued this Certificate of Completion as of the date first written above.

**THE CITY OF HEALDSBURG**

By:           ***FORM-DO NOT SIGN***          

Name: \_\_\_\_\_  
          [Title]

ATTEST:

By:           ***FORM- DO NOT SIGN***            
          City Clerk

APPROVED AS TO FORM:

By:           ***FORM-DO NOT SIGN***            
          City Attorney

**SIGNATURES MUST BE NOTARIZED.**

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