

## Junior Unit Initiative Program Guidelines



## **I. PROGRAM PURPOSE AND INTRODUCTION**

The purpose of the Junior Unit Initiative Program (the “Program”) is to implement the authority delegated by the City Council to the City Manager and the Community Development Director (pursuant to Council Resolutions No., R2017-086, R2018-066, and R2019-022), with a goal of expanding housing opportunities for low-income households in the City of Napa through the creation of independent apartments within existing owner-occupied single family homes, or the conversion of existing structures, accessory to owner-occupied single family homes, into accessory dwelling units. Under the Program, the City provides participating homeowners with technical assistance and below-market financing to create flexible, independent apartments within existing homes or from the conversion of existing accessory structures into accessory dwelling units. The creation of accessory dwelling units, including junior units within existing homes, is a creative, low-cost method of expanding the community’s affordable housing stock.

Junior Units, called “junior accessory dwelling units” in the Municipal Code, are private secondary units of up to 500 square feet in size that are created by carving out an existing bedroom or bedrooms and ancillary spaces from an existing home. These units have private entrances, efficiency kitchens, and either a private or shared bathroom, and share utility systems with the main residence.

“Accessory dwelling units” (“ADU”) are defined in the City’s Municipal Code as a small dwelling unit, accessory to a single-family dwelling unit that meets the standards in Section 17.52.015(A-E). Unlike junior accessory dwelling units that need only have an efficiency kitchen, an ADU that is created by converting an existing accessory structure to an ADU (“Converted ADU”) must have a full kitchen.

Under the Program, approved homeowners who agree to create a Junior Unit (or Converted ADU) and rent either the Junior Unit or the remainder of the home (or in the case of a Converted ADU, rent either the Converted ADU or the principal dwelling) to Eligible Tenant Households at Affordable Rents for 20 years will be provided with schematic designs and/or a scope of work and assistance with finding a qualified contractor at no cost, and a no-interest, deferred payment, construction loan that is forgivable over a twenty-year term. A participating homeowner may opt to rent the newly-created Junior Unit (or Converted ADU) as an Affordable Rental Unit, or may elect to reside in the Junior Unit (or Converted ADU) and rent out the remainder of the residence (or in the case of a Converted ADU, the principal dwelling unit) as an Affordable Rental Unit.

These Guidelines describe the Program requirements, the terms of assistance, and the application process.

## **II. DEFINITIONS.**

As used in these Guidelines, the following terms have the meanings set forth below.

“Accessory Dwelling Unit” or “ADU” means an independent residential unit that can be attached to or detached from a single-family residence and that provides the necessities for living, sleeping, food preparation and sanitation. For the purpose of the Program, Junior Units and Converted ADUs are ADUs eligible for assistance under the Program.

“Affordable Rent” means a monthly Rent that does not exceed 1/12<sup>th</sup> of 30% of 60% of median income for Napa County adjusted for the presumed household size for the Unit based on the bedroom count; provided however, for Units that are rented to households with a Section 8 Housing Choice Voucher or other rental subsidy, the Rent shall be determined to be Affordable Rent if the portion of the monthly Rent payable by the Tenant does not exceed 1/12<sup>th</sup> of 30% of the Tenant’s household income.

“Affordable Rental Unit” means a Unit that is rented to an Eligible Tenant Household at an Affordable Rent.

“Borrower” means the homeowner who owns and occupies the Property and is obtaining a Loan and participating in the Program.

“City” means the City of Napa.

“Converted ADU” means an ADU that is created by converting an existing non-habitable detached or attached structure accessory to an ADU in accordance with the requirements in Section 17.52.015(A-E) of the City’s Municipal Code. Converted ADUs must have full kitchens and private bathrooms. Converted ADUs are eligible for Program Loans provided that the ADU can be constructed for an amount not to exceed the Loan amount, or if the Owner is willing to contribute funds for the project, for an amount that does not exceed the Loan amount plus the Owner’s contribution.

“Deed of Trust” means the deed of trust that will be recorded against the Property to secure performance under the Regulatory Agreement and repayment of the Loan (unless forgiven in accordance with the Program).

“Eligible Tenant Household” is a household whose total household income does not exceed 80% of Napa County median income as established annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for actual household size and that does not include members who are household members or family members of the Borrower.

“JADU” (or Junior Accessory Dwelling Unit) is the term used in the Napa Municipal Code for a Junior Unit.

“Junior Unit” means a residential unit that complies with the requirements of Napa Municipal Code Section 17.52.015(F), that is no larger than 500 square feet in size, and that is created within an owner-occupied single-family home by carving out a sleeping room, efficiency kitchen and ancillary space into a separate unit. Junior Units may have private or shared bathrooms.

“Loan” means a no-interest forgivable loan of up to \$50,000 provided to Program participants for construction of a Junior Unit in accordance with the Program. In the case of a Converted ADU, “Loan” also includes a deferred payment loan of up to \$25,000 repayable in full in 20 years.

“Loan Agreement” means the Loan Agreement to be signed by Borrower and City that describes the Loan to be provided by the City and the Borrower’s obligations under the Program.

“Note” means the promissory note to be signed by the Borrower to evidence a Program Loan.

“Property” means the owner-occupied single-family home in which a Junior Unit or Converted ADU is created pursuant to the Program.

“Regulatory Agreement” means the Affordable Housing Regulatory Agreement that will impose Rent restrictions and that will be recorded against the Property.

"Rent" means the total of monthly payments payable by the Tenant for the following: use and occupancy of the Unit and associated facilities, including parking; any separately charged fees or service charges assessed by the Borrower and payable by the Tenant, other than security deposits; utilities paid by the Tenant, if any, which may include garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges paid by Tenant in connection with the use of the Unit or associated facilities and assessed by a public or private entity other than the Borrower.

“Tenant” means an Eligible Tenant Household legally occupying a Unit pursuant to a valid lease with the Borrower.

“Unit” means either the Junior Unit or the remainder of the residence. In the case of a Converted ADU, “unit” means either the Converted ADU or the principal dwelling unit.

### **III. GENERAL ELIGIBILITY REQUIREMENTS**

#### **A. Borrower Eligibility**

The Borrower must be the occupant and owner of record of the Property at the time of application, and must certify that Borrower will occupy one of the Units on the Property as the Borrower’s principal place of residence. If there is more than one owner of the Property, all owners must agree to participate in the Program and sign the required application and loan documents.

#### **B. Property Eligibility**

1. The Property must be located within the corporate limits of the City of Napa.
2. At the time the Loan is made, there may be no liens (other than mortgages secured by the Property) or monetary judgments recorded against the Property, unless the lienholder agrees to subordinate such lien to the City's Deed of Trust and the Regulatory Agreement.
3. The Property must be a detached or attached single-family home that is occupied and owned in fee simple by the Borrower.

C. Loan Repayment/Forgiveness.

Payments under Program Loans are deferred for as long as the Program requirements are met; however, the Loans are due and payable at the time of sale or transfer of ownership of the Property; the Borrower's failure to rent one of the Units on the Property to an Eligible Tenant Household at an Affordable Rent; the Borrower's breach of the terms of the Note, the Deed of Trust, or the Regulatory Agreement; or upon the Loan maturity date if the Loan has not been fully forgiven. Vacancies due to required repairs or normal tenant turnover are permitted provided that the Borrower is participating in the Napa Valley Community Housing's Home Share Match-Up Program or otherwise demonstrates that the Borrower is diligently pursuing rental of a vacant Unit in compliance with the Regulatory Agreement.

#### **IV. RENTAL REQUIREMENTS**

A. Property Requirements

The Borrower must agree to rent a Unit to Eligible Tenant Households at Affordable Rents for 20 years. This obligation will be documented in the Regulatory Agreement and secured by the Deed of Trust.

B. Tenant Requirements

1. Prior to a Tenant's initial occupancy of a Unit, the Borrower must verify that the Tenant's gross household income is not greater than 80% of Napa County median income adjusted for actual household size. As long as the Tenant resides in the Unit, no additional income verification is required unless an additional adult moves into the Unit within the first six (6) months of a Tenant's initial occupancy. In addition, income verification for new Tenants is required when the Unit is vacated.
2. Because the purpose of the Program is to expand the supply of affordable rental housing, to be considered an Eligible Tenant Household for the Affordable Rental Unit, the Tenant cannot be a current household member or

a family member of the Borrower, including a grandparent, parent, child, or sibling of the Borrower.

C. Maximum Rents

In establishing the maximum Affordable Rent for the Affordable Rental Unit, the following presumed household sizes shall be utilized regardless of the Tenant's actual household size:

<b>Number of Bedrooms</b>	<b>Presumed Household Size</b>
Studio	1
One	2
Two	3
Three	4
Four	5

The Rent shall not exceed the then-current Affordable Rent, and must include all charges payable by the Tenant including any tenant-paid utilities or other fees other than a security deposit. The Borrower shall annually submit to the City verification of the Rent charged.

The Rent may not be increased above the Affordable Rent determined on the basis of the area median income limits established each year.

D. Verification of Rent and Income

The City must review both the proposed Tenant's household income and the proposed Rent before the Borrower signs a lease and the Tenant moves into the Affordable Unit.

E. Lease Requirements

The lease for the Affordable Unit must include restrictions on Rent consistent with Program requirements, and must provide that the lease is subject to termination if the Tenant has materially misrepresented the Tenant's household income in seeking to qualify as an Eligible Tenant Household.

F. Tenant Screening; Compliance with Laws

The City does not perform screening or background checks on potential tenants. The Borrower is responsible for doing due diligence/screening of prospective renters. Borrowers may wish to utilize Napa Valley Community Housing's Home Share Match-Up Program to locate prospective tenants who have undergone background screening for participation in the Home Share Match-Up Program.

As a landlord, the Borrower must comply with all applicable State and federal laws pertaining to renting residential properties, including without limitation, all applicable fair housing/non-discrimination laws and all applicable landlord-tenant laws.

## **V. TECHNICAL ASSISTANCE**

Homeowners interested in participating in the Junior Unit Program have the option of first contacting the City for a free on-site feasibility assessment. This may include measuring the unit, reviewing exterior access, consulting with the Planning Division on any special zoning that may be applicable, and discussing layout options. A feasibility assessment is not required for submission of an application.

If the homeowner decides to proceed with the creation of a Junior Unit through the Program, the homeowner shall submit a Program application. If the application is approved, the homeowner and the City will sign the loan documents described in Section XIII. Once the loan documents have been signed, the City will have schematic designs and documentation for construction estimates prepared free of charge. If the City determines that design of the proposed Junior Unit (or Converted ADU) requires the services of a design professional, the Borrower may enter into an agreement with a design professional approved by the City for design services. For Junior Units, the City may provide a grant of up to \$2,000 to cover the costs of the design services. For Converted ADU's, the City may provide a grant of up to \$4,000 to cover the costs of the design services. If the City determines the design of the proposed Junior Unit (or Converted ADU) requires the services of an engineer, the City may provide a grant of up to \$3,000 to cover the costs of an engineer. Provided the plans are approved by the City's Building Division, the City will disburse the grant proceeds directly to the architect, designer, and/or engineer upon receipt of bills or other documentation indicating the amount due.

## **VI. SCOPE OF IMPROVEMENTS**

### **A. Use of Funds**

The City may provide a Loan to the Borrower to finance the construction costs in the amount of up to \$50,000 for the creation of a Junior Unit and \$75,000 for the creation of a Converted ADU. If the lowest responsible bid received by the Borrower for the work exceeds the amount of the Loan, the Borrower may terminate the Loan documents within 15 days after receipt of all of the bids.

Any Junior Unit created under the Program must meet all City requirements for Junior Units in Napa Municipal Code Section 17.52.015(F). Junior Units must have a private entrance, an efficiency kitchen, and either a private bathroom or access to a shared bathroom. Any Converted ADU created under the Program must comply with the requirements in Municipal Code Section 17.52.015(A-E)

and must have a full kitchen and private bathroom. The Junior Unit and Converted ADU must meet all applicable codes including the Uniform Building Code, the National Electrical Code, the Uniform Plumbing Code, and the Uniform Mechanical Code. All Junior Units and Converted ADUs must have smoke detectors and carbon monoxide detectors.

Modifications or improvements to existing ADUs are not an eligible use of funds under the Program as the funding must be used to create new rental units.

#### B. Ineligible Improvements

Non-code based general improvements that exceed 10% of the total project cost, or luxury amenities or furnishings are ineligible for funding. Examples of luxury items include TV sets and antennas, furniture, barbecues, spas and Jacuzzi/jet massage tubs.

#### C. Contractor Selection and Construction Contract

Section XIV below describes procedures that will be followed to finalize the scope of work, bid solicitation, and contractor selection. As described below, once the Borrower has approved the scope of work, the City will manage bid solicitation using the City's standard bid and contract documents, and the Borrower will enter into a construction contract with a contractor approved by the Borrower.

The Program provides financing for rehabilitation of privately-owned, single-family owner-occupied homes, and therefore, construction funded by the Program satisfies the exemption from prevailing wage requirements set forth in California Labor Code Section 1720(c)(5)(C).

### VII. FINANCING

#### A. Terms

Loans; Loan Documents. The Program provides deferred payment no-interest loans in an amount up to \$50,000 for a Junior Unit and \$75,000 for a Converted ADU. When a Loan is originated, the Borrower will sign and deliver to the City a Loan Agreement, a Note for the benefit of the City in the amount of the Loan, a Deed of Trust to secure repayment of the Loan, and a Regulatory Agreement that describes and imposes the rent and occupancy requirements of the Program. Forms of the Loan Agreement, the Note, the Deed of Trust, and the Regulatory Agreement are attached as Appendix C to these Guidelines. The



Regulatory Agreement and the Deed of Trust will be recorded against the Property.

Program Loans of \$50,000 or less are forgiven at the rate of 5% of the original Loan amount at the end of each year a Unit has been rented as an Affordable Rental Unit in compliance with the Regulatory Agreement. At the end of 20 years, if the Borrower has complied with the terms of the Regulatory Agreement, the Regulatory Agreement shall terminate, the Loan will be fully forgiven, and the Deed of Trust and Regulatory Agreement will be reconveyed.

If during the 20-year term, the Borrower decides to no longer rent a Unit as an Affordable Rental Unit in accordance with the Regulatory Agreement, the Borrower shall notify the City in writing. The outstanding Loan balance shall become fully due and payable within one year from the date of the Borrower's written notification to the City.

For Program Loans for Converted ADUs that exceed \$50,000, the amount of the loan that exceeds \$50,000 is not forgivable and is due in full upon the earlier of (i) within one year of the date of the Borrower's written notification to the City that the Unit is no longer used as an affordable rental (ii) the date of sale of the Unit, or (iii) 20 years from the date of the promissory note evidencing the loan. For example, if the Borrower receives a \$65,000 loan, \$50,000 of the loan amount is forgivable at a rate of 5% per year that the Unit is rented as an Affordable Rental Unit and the remaining \$15,000 is not forgivable and will be due in full as described in the preceding sentence.

If the Borrower ceases to rent the Unit as an Affordable Rental Unit (other than for normal unit turnover or repairs) in compliance with the Regulatory Agreement in writing of the Borrower's decision to terminate participation, then the Program Loan shall become immediately due and payable.

### Grants.

ADA Grants: If a Borrower participating in the Program elects to make Americans with Disability Act (ADA) improvements to the Unit that will be rented as an Affordable Rental Unit in order to make it accessible to a disabled Tenant, the City may provide an add-on grant in an amount up to \$5,000 to defray costs of making ADA improvements.

If the Borrower desires to make ADA or other improvements to the owner-occupied unit, the Borrower shall be referred to the City's Owner Occupied Rehabilitation Loan Program for assistance.

Design Grants: If the City determines that design of the proposed Junior Unit (or Converted ADU) requires the services of an architect or design professional, the Borrower may enter into an agreement with an architect or designer approved by the City for design services. The City may provide a grant to cover the costs of

the architect's or designer's services of up to; \$2,000 for a Junior Unit and \$4,000 for a Converted ADU.

Engineering Grants: If the City determines that the services of a structural engineer are required, the Borrower may enter into an agreement with an engineer approved by the City for structural engineering services. The City may provide a grant to cover the costs of the engineer of up to \$3,000.

Provided that the building plans are approved by the City's Building Division, the City will disburse the grant proceeds directly to the architect, designer, and/or engineer upon City's receipt of bills or other documentation from the Borrower indicating the amount due to the architect, designer, and/or engineer.

If the Borrower is in default under the Loan documents, the City may at its discretion require the Borrower to immediately repay the City any grant proceeds that have been disbursed to the Borrower or contractor under the Loan documents.

#### B. Maximum Assistance

The total of all loans secured by the Property, including the Program Loan, may not exceed 100% of the appraised, after-rehabilitated value of the Property. The current maximum assistance is as follows:

- Junior Unit Loan: \$50,000
- Converted ADU Loan: \$75,000
- Add-on grant for ADA improvements: \$5,000
- Add-on grant for architect/design services (Junior Unit): \$2,000
- Add-on grant for architect/design services (Converted ADU): \$4,000
- Add-on grant for engineering services: \$3,000

The City may adjust these maximum limits annually in accordance with the Engineering News-Record (ENR) Construction Cost Index.

#### C. Loan Approval

All Loans must be reviewed by the City's Housing Manager and approved by the City's Community Development Director.

#### D. General Terms and Conditions

1. Loans will be immediately due and payable upon the sale of the Property or change in title/ownership (except as permitted under the Regulatory Agreement). In addition, unless the Borrower provides written notice to the City of Borrower's decision to terminate participation in the Program (in which case the Loan will be due and payable by not later than one year following delivery of such notice), the

Loan will be immediately due and payable upon the Borrower's failure to rent one of the Units as an Affordable Rental Unit (other than for normal unit turnover or for repairs), the Borrower's failure to occupy one of the Units, or Borrower's breach of any other term or provision of the Loan Agreement, Note, the Deed of Trust, or the Regulatory Agreement that continues beyond any applicable cure period.

2. Loans shall be due and payable within one year if Borrower notifies City that Borrower has decided to no longer rent one of the Units as an Affordable Rental Unit to an Eligible Tenant Household.

3. Throughout the term of the Loan, the Borrower must maintain fire and extended-coverage insurance on the Property with the City named as an additional insured/loss payee. Flood insurance is required for property located within a 100-year flood zone.

4. The Borrower must agree to hold the City harmless from all liability resulting from personal injury or property damage during and as a result of the construction of the Junior Unit or Converted ADU. The Borrower must permit reasonable inspection of the Property by the City for compliance with contract documents and inspection of construction work, and must provide such documentation as City may require to verify compliance with Loan conditions.

#### E. Loan Security and Regulatory Agreement

The Loan shall be secured by a Deed of Trust recorded against the Property. A Regulatory Agreement that specifies the rent and Tenant eligibility restrictions, shall also be recorded against the Property.

#### F. Relocation

The Borrower must agree to cooperate with the City to ensure compliance with State and federal relocation laws. The City's Housing Manager shall provide an approval for the source and mechanism for funding temporary relocation benefits if required as determined on a case-by-case basis relative to the scope of work and the need for temporary relocation.

### **VIII. TENANT INCOME VERIFICATION**

In order to receive a Program Loan to create a Junior Unit or Converted ADU, the Borrower must agree to rent a Unit at an Affordable Rent to an Eligible Tenant Household for 20 years. Before each prospective Tenant signs a lease to rent a Unit, documentation of the Tenant's household income must be submitted to the City for eligibility determination. Once a Tenant has been determined to be an Eligible Tenant Household, no future income verifications are required for such Tenant unless an additional adult moves into the Unit within the first six (6) months of a Tenant's initial occupancy. In addition, income verification for new prospective

Tenants is required when the Unit is vacated.

Income is defined as the gross annual income received by all household members. If all or part of such income is derived from irregular employment or includes earnings from occasional overtime work, such income received during the preceding twelve months will be used as a basis to anticipate income for the upcoming twelve months.

A. Income Included in Eligibility Determination

1. All wages and salaries, overtime pay, commissions, fees, tips and bonuses, and any other compensation for personal services (before any payroll deductions).
2. Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness cannot be used as deductions in determining net income; however, an allowance for depreciation of assets used in a business or profession may be deducted in accordance with IRS regulations. Any withdrawal of cash or assets from the business or profession is included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the household.
3. Interest, dividends, and other net income of any kind from real or personal property. Where the household has assets in excess of \$5,000, annual income includes the greater of the actual income derived from such assets or a percentage of the value of such assets based on the current passbook savings rate, as specified by HUD.
4. All gross periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.
5. Payments in lieu of earnings, such as unemployment, worker's compensation and severance pay excluding, however, lump sum payments under health and accident insurance such as workers' compensation.
6. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts from any person not residing in the dwelling.
7. All regular pay, special pay, and allowances of a member of the Armed Forces who is head of the household, whether or not he or she is living in the dwelling.

8. All payments made to, or for the benefit of, any member of the household, under the provisions of the Economic Opportunity Act or any other anti-poverty program.

**B. Income Excluded from Calculation**

1. Income from employment of children under the age of 18 years.
2. Payments received for the care of foster children.
3. Lump sum additions to household assets, such as inheritances, insurance payments including payments under health and accident insurance and workers' compensation, capital gains and settlements of personal property losses (but see #5 under the listing of income inclusions above).
4. Amounts received that are specifically for, or in reimbursement of, the cost of medical expenses of any household member.
5. Income of a live-in aide.
6. Educational scholarships paid directly to the student or school, and veterans' benefits paid for tuition and education expenses. Any amounts received that are not used for such purposes are included as income.
7. The special pay for a household member serving in the Armed Forces who is exposed to hostile fire.
8. Amounts received under HUD-funded training programs or received under a public assistance program that are specifically for out-of-pocket costs made solely to allow participation in a specific program.
9. Temporary, nonrecurring, or sporadic income.
10. Lump sum payments of Supplemental Security Income (SSI) and Social Security benefits, and the value of the allotment provided under the Food Stamp Act of 1977.
11. Income of full-time students.

**IX. HOMEOWNER SELECTION PROCESS**

If there is no waiting list, eligible homeowners and properties will be selected for the Program on a first-come, first-served basis as complete applications are received by the City.

If there is more demand than loan funds available, a waiting list shall be established. When funds become available, the potential participants will be contacted in the order their names appear on the list. Each person contacted will then be given two weeks to return a completed loan application or his or her name shall be removed from the waiting list. Once the waiting list has been exhausted, the Program will again select participants on a first-come, first-served basis.

## **X. LOAN APPLICATION AND ADMINISTRATION PROCEDURES**

Upon request for a Loan, the applicant will be given a formal application package that requires submittal of a financial statement for all Property owners of record, copies of the Property owner's recent federal income tax returns, and completed disclosure forms.

### **A. The following documentation must be included in the submitted application:**

- Complete signed copy of most recent and previous year's federal income tax returns with all schedules and attachments for all persons on title;
- Copies of mortgage statements for the most recent prior month for all loans secured by the Property, and the remaining balance of all such loans;
- Signed Credit Information Disclosure Statement; and
- Signed Fair Lending Notice.

### **B. Additional Documentation for Trusts**

- A notarized certification of trust is required.
- A copy of the trust agreement may be required.

### **C. Deadlines for Submittal**

Applicants must submit all documentation necessary to complete the application within two weeks of initial submittal. If this deadline is not met, the incomplete application package will be returned to the applicant.

Upon submission of a complete application, the City will make a preliminary determination of eligibility. If the preliminary review indicates that the application does not meet Program requirements, the City will provide a written explanation of the reasons for ineligibility.

## **XI. PROPERTY INSPECTION**

### **A. Additional Property Reports**

As part of its inspection of the Property to determine the scope of work, the City may order a termite or other professional report if necessary based upon the

City's site inspection. This may include a lead-based paint screening and assessment or asbestos survey.

**B. Work Write-Up/Design Plans**

The City will conduct a property inspection which will be used to develop a schematic design, a work write-up (or scope of work) and cost estimates. The work write-up will include a cost estimate with a contingency (generally 10%) for unanticipated items. The Borrower must provide written acceptance of the work write-up before bids are solicited. The City will assist the Borrower in soliciting bids from licensed contractors.

As mentioned above, if the City determines that design of the proposed Junior Unit or Converted ADU requires the services of an architect, the Borrower will enter into an agreement with an architect approved by the City for design services. The City will provide a grant of up to \$2,000 to cover the architect's costs for Junior Units and up to \$4,000 for Converted ADUs. Provided that the design plans are approved by the City's Building and Planning Divisions, the City will disburse the grant proceeds directly to the architect upon City's receipt of bills or other documentation acceptable to the City from the Borrower indicating the amount due to the architect.

**XII. FINANCIAL ANALYSIS**

**A. Review Criteria**

The City's Housing Division staff will review Loan applications and supporting documentation to determine eligibility. Final approval will be given by the City's Community Development Director. When reviewing applications, a number of factors may be evaluated, including but not limited to, debt to income ratio of applicant, loan to value ratio of the Property, and the credit history of the applicant.

**B. Credit History**

A credit check will be done for each Loan applicant. A credit report will be obtained by Housing Division Staff and reviewed to ensure that the information submitted on the application is accurate as compared to the information supplied in the credit report.

**C. Value of the Security; Title Report**

The outstanding debt secured by the Property cannot exceed 100% of the after-construction value of the Property. The City will review a title report for the Property.

Using recent comparable sales figures, City staff will establish comparable values for similar owner-occupied homes. If information is not currently available for comparable properties, the City may require a formal appraisal.

#### D. Loan Review and Approval

Housing Division staff will complete the financial review and prepare recommendations to be presented to the Housing Manager. If the application does not qualify under the Program guidelines, the applicant will be sent a letter explaining the reasons for ineligibility.

The Housing Manager will make the final recommendation to the Community Development Director on whether to approve or deny each Loan application. If the Loan is approved, the Housing Manager will specify any special conditions or terms applicable to the Loan. Applicants who are denied Loans will be provided with an explanation for the denial.

### **XIII. LOAN SETTLEMENT**

Once the Community Development Director approves a Loan, Housing Division staff will prepare the Loan documents.

#### A. Loan Amount

City staff shall determine the Loan amount based on consideration of:

- The selected bid contractual amount;
- Supplemental inspections, including but not limited to termite, roofing, etc.;
- A contingency (generally 10% of the work being financed);
- Title insurance fees and notary or document preparation fees;
- Delivery fees, if any;
- Relocation expenses, if any.

#### B. Fees

Any fees will be charged to Borrower at the actual cost to the City. All such fees will be included in the Loan amount and can be paid with the proceeds of the Loan. No out of pocket money will be required from the Borrower to initiate the Loan process.

#### C. Contingency

A contingency amount will be established by Housing Division staff, generally equal to 10% of the work being financed. Any unspent contingency shall be used to pay down the balance of the Loan upon completion of construction.



#### D. Loan Documentation and Closing

The following Loan documents will be prepared for Loan closing:

- Owner/Contractor Contract;
- Truth In Lending Disclosure Statement;
- Loan Agreement;
- Promissory Note(s);
- Deed of Trust (notarized);
- Regulatory Agreement (notarized) for Rental Unit
- Request for Notice of Default (notarized)
- Notice of Right to Cancel (three-day rescission option);
- Evidence of Hazard Insurance must be provided that names City as loss payee;
- Evidence of flood insurance must be provided, if applicable;
- Commitment for issuance of a lender's title insurance policy for the benefit of City;
- Estimated settlement statement.

Any funds the Borrower will contribute toward construction or other costs must be deposited into escrow at the Loan closing.

Upon expiration of the rescission period, the Loan Agreement, the Deed of Trust, Regulatory Agreement, and Request for Notice of Default will be recorded against the Property, and the title company selected by the City will issue a lender's policy of title insurance for the benefit of the City insuring the City's lien.

### **XIV. CONTRACTING PROCEDURES**

#### A. Scope of Work Write-Up

The City will prepare the Scope of Work. Upon the Borrower's written acceptance of the Scope of Work, the City will prepare bid and contract documents using the City's standard documents substantially in the form attached as Appendix D to these Guidelines, and the City will solicit competitive bids using its list of qualified contractors. Upon the Borrower's selection of a contractor, and expiration of the 3-day Right to Cancel period for the City's Loan, the Borrower will execute the construction contract directly with the contractor.

#### B. List of Qualified Contractors

The City maintains a list of contractors who have completed a Qualification Application and have provided proof that all applicable licenses and insurance are current and in good standing. All contractors must be actively licensed by and bonded with the California State Licensing Board (CSLB). All contractors must have current public/general liability insurance in accordance with City-

required limits, listing the Property address and naming the City and the Borrower as additional insured. All contractors with employees must provide proof of current Workers' Compensation Insurance. City staff will advertise annually for licensed, certified building and general contractors for placement on the qualified list. A qualified contractor that is not already on the list can be added at any time.

C. Invitation to Bid

The City maintains a 24-hour Contractor Bid-line listing all projects currently out to bid. Projects remain on the Bid line until a minimum of three contractors express interest in bidding on the project or a Good Faith Effort to obtain three bids has been completed.

D. Bonding and Permits

At the discretion of the City, and in consultation with the Borrower, specific payment and performance bonds may be required, particularly for jobs costing in excess of \$30,000. Any such bond requirement shall be included in the bid documents. All work shall be performed in accordance with required permits and shall be inspected by the City Building Division. The selected contractor shall be responsible for obtaining all required bonds and permits.

E. Bid Process, Contractor Selection and Bid Award

The City will develop a bid package that includes bidding instructions and deadline, a work write up, materials list, and any other necessary documents such as relocation requirements, hazardous mitigation instructions, bonding requirements, etc.

Staff will facilitate a bid walk that will include a walk-through of the Property, review of bid specifications, and an opportunity to address contractor questions about the project.

Following the bid walk, interested contractors will submit bids to the City. Bids are considered eligible if they are accurate, complete, and received by the deadline.

When three eligible and responsible bids have been received, or a Good Faith Effort to obtain three bids has been completed, City staff will present the bids to the Borrower for review and contractor selection. A responsible bid is one in which the cost for the project is within 15% of the City's estimate. The City recommends that the Borrower select the lowest responsible bid. However, the Borrower may select another contractor as long as the bid amount is within 15% of the City estimate. City staff will make appropriate arrangements for the signing of contract documents. The construction contract will include a start and

completion date and a clause that specifies that any extra work must be agreed to in writing and approved by City staff and the Borrower.

If all of the bids exceed the amount of the approved Loan, the Borrower may terminate the Loan Documents within 15 days of receipt of all bids.

F. Pre-Construction Conference

Prior to commencing the construction of a Junior Unit, a pre-construction conference will be held with the Borrower, the selected contractor (“Contractor”), sub-contractors, and City staff. During the conference, a construction schedule will be developed, materials selections will be finalized, and any subcontractors will be identified. Terms of the Borrower/Contractor Contract will be reviewed by all parties.

G. Notice to Proceed

A Notice to Proceed will be signed and approved by the Borrower and the Contractor specifying the construction start and completion dates.

H. Disbursement Schedule

An agreed upon schedule of construction progress payments will be specified in the contract, and will include a provision that ten percent (10%) will be withheld from each progress payment. This retention amount will be held for 35 days after the “Notice of Completion,” signed by the Borrower, has been recorded.

I. Change Orders

The Contractor may request change orders if the work must deviate from the original specifications due to unforeseen conditions, or changes requested by the Borrower. The City will inspect and approve all change orders and may allocate use of the contingency amount to cover payments. All change orders shall be signed by the Borrower, the Contractor, and City staff.

J. Work Inspections

Site inspections will be performed for each payment request and change order, or at the request of the Borrower or the Contractor. These inspections will be in addition to those conducted by the City’s Building Division.

K. Job Close-Out

The Contractor will initiate the job close-out by submitting a request for final payment. A final inspection will be performed by a City Building Inspector and a Housing Rehabilitation Specialist. The Housing Rehabilitation Specialist will

prepare all lien waivers and payment requests for the Borrower to sign. If there are no deficiencies, a Notice of Completion will be signed by the Borrower, and the final progress payment will be released. The 10% retention will be held for 35 days after recordation of the Notice of Completion, and will be released upon verification by City staff that no liens were recorded. For all Junior Unit construction projects, substantial completion shall be defined as 100% completion with no outstanding deficiencies. Any remaining contingency funds are used to pay down the Loan balance.

#### L. Warranty

The Contractor shall be required to guaranty all labor and materials for one year from the date of the Notice of Completion. Warranties for products and work performance will be given to the Borrower.

#### M. Dispute Resolution

All claims or disputes between the Borrower and the Contractor arising out of or related to work performed pursuant to the Junior Unit Program that cannot be resolved in cooperation with City staff may be referred to the California State Contractor's License Board and/or State Department of Consumer Affairs for mediation assistance prior to any civil action taken by either party.

### **XV. FILES**

#### A. Financial Documents

Each Loan financial document packet will contain the following documents:

- Original application
- All loan eligibility verification including Credit Report, Title Report, and Appraisal as applicable
- Copy of the Bid and Contract, specifying amount of loan requested
- Project Financial Itemization Statement showing funding sources for the entire job

#### B. Tenant documentation

The tenant documentation packet will contain the following:

- Tenant's household income certification form including household composition
- Income verification documentation for all adult household members
- Copy of lease

### C. Construction File

Each construction file packet will contain the following documents:

- Original Owner/Contractor Agreement
- Original Site Survey Inspection forms
- Copy of the construction drawings, schematic design documentation, and Scope of Work Write-up and Estimate, and Addendums
- Insurance verifications
- Copies of all progress payment certificates and inspections forms
- Copy of the Notice of Completion
- Project Data and Chronology Log sheets
- Change Orders
- Copy of the finalized Building Permit

## **XVI. LOAN SERVICING**

City staff maintains responsibility for monitoring and servicing loans.

### A. Refinancing

Borrowers may refinance outstanding senior loans. The City will review requests to subordinate its Deed of Trust on a case-by-case basis; provided however, the total outstanding debt secured by the Property may not exceed 100% of the then-current estimated Property value.

### B. Monitoring

Staff shall monitor all Loans and agreements for compliance with Program requirements including the requirement to rent a Unit as an Affordable Rental Unit. The City shall, upon no less than 24 hours' notice, be allowed to inspect the Units and to contact the Tenant to verify continued compliance with the rent restrictions and occupancy requirements of the Program.

### C. Defaults and Remedies

If a Borrower violates any provision of the Loan documents or applicable Program regulations, the City will provide written notice of default to the Borrower, and the Borrower will have the period specified in the notice to cure the default, consistent with the requirements of the Loan documents. If the violation is not cured within the specified time period, the City, at its discretion, may seek remedies as specified in the Loan documents, including:

- Collection – City staff may be directed to initiate and pursue collection proceedings on delinquent Loans. The City may accelerate all amounts due under the Loan and demand immediate repayment. Staff may be

directed to renegotiate Loan terms with the Borrower based on family hardship or drastic changes in circumstances that necessitate financial adjustments. If the Borrower is not able to meet the obligation associated with the newly-renegotiated payment terms and the Loan is not brought current, staff may be authorized to initiate foreclosure/trustee sale proceedings.

- Foreclosure/Trustee Sale – If a default is not cured, staff may pursue foreclosure/trustee sale of the Property in accordance with statutory requirements
- City Cure of Default under Senior Liens - If a senior lien holder files a notice of default, staff may consider satisfying the senior lien to forestall a foreclosure action by the senior lien holder. This action shall only be initiated when it is determined to be in the City's best interest and upon the City Manager's approval. In such cases, the amount expended by the City to cure the senior lien default will be added to the principal balance owed by Borrower to City, and the City may subsequently record a notice of default against the Property and pursue foreclosure. If staff determines it is in the City's best interest to let the senior lien holder's foreclosure proceed, staff shall determine whether the City should bid at the trustee's sale to protect the City's investment or let the trustee's sale proceed without City participation. Staff shall bid at the trustee's sale only upon the City Manager's direction and approval of a pre-established amount.
- Short Sale – when the market value of the Property is less than the total indebtedness, the City may consider negotiating a short sale. This action involves the City's reduction of the Loan payoff amount, and may be conditioned upon other lien holders discounting their loans.
- Deed-in-Lieu of Foreclosure – Under appropriate circumstances, including an evaluation of the amount and applicable terms of other liens recorded against the Property, the City may in the City's sole discretion, agree to accept a deed in lieu of foreclosure.
- Discount Note Sale – The City may, in its discretion sell the Note to recover a portion of its investment.

## **XVII. ADMINISTRATIVE REQUIREMENTS**

### **A. Program Outreach and Marketing**

All outreach efforts will be done in accordance with state and federal fair housing and lending laws to ensure nondiscriminatory treatment, outreach and access to the Program. No person shall, on the grounds of age, ancestry, color, creed, physical

or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender, gender identity or sexual orientation, be excluded, denied benefits, or be subjected to discrimination under the Program. The City will ensure that all persons, including qualified individuals with disabilities, have access to the Program.

#### B. Fair Housing

The Fair Housing Lender logo will be placed on all outreach materials. Flyers or other outreach materials, in English and Spanish, will be distributed in the Program-eligible area, and will be provided to local social service agencies.

#### C. Dispute Resolution and Appeals Procedure

Any applicant denied participation in the Program has the right to appeal. The appeal must be made in writing and addressed to the City's Housing Manager, who will make a determination in writing within 30 days of receipt of the appeal. If the applicant's appeal is denied, a further appeal may be made to the City Council which will make a determination in writing within 30 days of receipt of the second appeal. The decision of the City Council will be final.

#### D. Non-Discrimination Requirements

The Program will be implemented consistent with the City's commitment to non-discrimination. No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under, any program or activity funded in whole or in part with City or State funds on the basis of his or her religion or religious affiliation, age, race, color, creed, gender, gender identity, sexual orientation, marital status, familial status (children), physical or mental disability, national origin, or ancestry, or other arbitrary cause.

**Appendix A**  
**Income Limits for**  
**Eligible Tenant Households (2019)**

<b>Household Size</b>	<b>Maximum Household Income (*)</b>
1	\$60,100
2	\$68,650
3	\$77,250
4	\$85,800
5	\$92,700
6	\$99,555

(\*) 80% of Napa County median income, as published by U.S. Department of HUD, effective April 2020.



## APPENDIX B

### 2020 AFFORDABLE RENT LIMITS

Unit Size	Maximum Affordable Rent*
Studio	\$1,139
1-bedroom	\$1,301
2-bedroom	\$1,463
3-bedroom	\$1,625
4-bedroom	\$1,755

**\*Maximum rent includes the amount paid by the Tenant for utilities, parking fees, and other charges.**

**APPENDIX C**  
**STANDARD CITY LOAN DOCUMENTS**

## JUNIOR UNIT INITIATIVE AFFORDABLE HOUSING LOAN AGREEMENT

### (Junior Unit Initiative Program)

This Junior Unit Initiative Affordable Housing Loan Agreement (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between the City of Napa, a California charter city (the “**City**”), and \_\_\_\_\_ and \_\_\_\_\_ (hereinafter collectively referred to as “**Owner**”). Collectively, City and Owner are referred to herein as the “**Parties.**”

### RECITALS

A. Pursuant to City Council Resolutions R2017-086, R2018-066, and R2019-022, the City operates a Junior Unit Initiative Program (the “**Program**”) for the purpose of expanding affordable rental housing opportunities by providing eligible homeowners with technical and financial assistance to create independent junior accessory apartment units (“**Junior Units**”) within existing owner-occupied single-family homes, or accessory apartment units converted from accessory structures (“**Converted ADUs**”) on properties which contain owner-occupied single family homes, located in the City of Napa.

B. Under the Program, the City provides participating eligible homeowners with financing in the form of a forgivable, deferred payment loan to finance the cost to create a Junior Unit within the homeowner’s existing home or create a Converted ADU from an existing attached or detached accessory structure located on the homeowner’s property. The Program requires either the newly-created Junior Unit or Converted ADU or the remainder of the home to be rented to an eligible low-income household in accordance with the City’s Junior Unit Initiative Program Guidelines (“**Program Guidelines**”).

C. Owner is the owner and occupant of the single-family home located in the City of Napa at \_\_\_\_\_ Street (as more particularly described in Exhibit A attached hereto, the “**Property**”), and has applied to participate in the Program. The City has reviewed Owner’s application to participate in the Program, and the City has determined that Owner is eligible to participate in the Program.

D. In accordance with the terms and conditions set forth in this Agreement and the Program Guidelines (which are hereby incorporated herein by reference), City has agreed to provide a loan to Owner to finance the construction of a [Junior Unit/Converted ADU] (“**ADU**”) on the Property in accordance with a construction contract to be executed by and between Owner and a City-approved contractor.

E. The Parties wish to enter into this Agreement in order to set forth the terms and conditions of Owner’s participation in the Program, Owner’s obligations with

respect to the use of the loan proceeds and construction of the ADU, and City's role with respect to Program administration and oversight of the construction work.

**NOW THEREFORE**, for good and valuable consideration, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge the truth of the foregoing Recitals, which by this reference are incorporated into this Agreement.

2. **Loan and Loan Documents.** City will provide a forgivable loan to Owner in the amount of up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "**Forgivable Loan**") to finance the construction of an ADU on the Property. As more particularly described in the Forgivable Note, the Loan will be a deferred payment, zero percent (0%) interest loan that is forgivable over a twenty (20)-year term provided that Owner complies with the rent and occupancy restrictions set forth in the Regulatory Agreement (defined below). [Include if applicable for Converted ADUs: In addition, the City will provide a deferred payment loan to Owner in the amount of up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Deferred Payment Loan") to finance the construction of an ADU on the Property. The Deferred Payment Loan and Forgivable Loan are hereinafter referred to collectively as the "**Loan**").]

The Loan proceeds will be made available to fund construction of the ADU in accordance with a construction contract to be executed by and between Owner and a City-approved contractor ("**Contractor**"). Owner will execute and deliver to City a Secured Promissory Note in the amount of the Forgivable Loan in the form attached hereto as Exhibit B-1 (the "**Forgivable Loan Note**"), [if applicable: a Secured Promissory in the form attached hereto as Exhibit B-2 (the "Deferred Loan Note")] and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing in the form attached hereto as Exhibit C (the "**Deed of Trust**"), and Owner and City will enter into an Affordable Housing Regulatory Agreement and Restrictive Covenants that imposes rent and occupancy restrictions in the form attached hereto as Exhibit D (the "**Regulatory Agreement**").

This Agreement, the Forgivable Loan Note, [if applicable: the Deferred Loan Note], the Deed of Trust, and the Regulatory Agreement are collectively referred to herein as the "**Loan Documents**." Upon closing for the Loan, the Deed of Trust and the Regulatory Agreement will be recorded against the Property to secure compliance with the Program Guidelines and the Loan Documents, [if applicable: repayment of the Deferred Loan] and repayment of the Forgivable Loan in the event of default. The Forgivable Loan Note, [if applicable: the Deferred Loan Note], the Deed of Trust, and the Regulatory Agreement are all incorporated into this Agreement by reference.

[Include if applicable] 2.1 **Grant for Accessibility Improvements.** In addition to the Loan described in Section 2 above, City will provide a grant to Owner in the amount of up to Five Thousand Dollars (\$5,000) (the "**ADA Grant**") to cover costs to make the ADU (or the remainder of the Home if the remainder of the Home will be rented to eligible tenants at affordable rent in accordance with the Regulatory Agreement) accessible to tenants with disabilities in compliance with the Americans

with Disabilities Act (“**ADA**”). ADA Grant proceeds shall be used only for such purpose. City shall disburse ADA Grant proceeds in accordance with the Owner-Contractor Contract (defined below) for ADA improvements specified in the Construction Plans. Upon the occurrence of an Event of Default (as defined in Section 9), the City may, at its discretion, require the Owner to immediately repay any ADA Grant proceeds that have been disbursed pursuant to this Agreement. Each use of the term “Loan proceeds” in this Agreement shall collectively mean the proceeds of the Loan and the proceeds of the ADA Grant.

**[Include if applicable]** 2.2 **Design Costs.** In the event the City determines that an architect or designer is required to draw the plans for the proposed ADU, the City will provide a grant to Owner in the amount of up to Two Thousand Dollars (\$2,000) [Four Thousand Dollars (\$4,000)] to cover the costs to design the Junior Unit [Covered ADU] (“**Design Grant**”) provided that the Owner enters into an agreement for design services with an architect or designer approved by the City. The Owner shall use Design Grant proceeds only for such purpose. Provided that the plans prepared by the architect are acceptable to the City’s Building Division, City will disburse Design Grant proceeds to the architect or designer within fourteen (14) days of Owner’s delivery to City of the plans developed by the design professional and receipts or other documentation acceptable to the City indicating that the design services have been completed to the satisfaction of the Owner and the amount due to the architect for such services. Upon the occurrence of an Event of Default (as defined in Section 9), the City may, at its discretion, require the Owner to immediately repay any Design Grant proceeds that have been disbursed pursuant to this Agreement.

**[Include if applicable]** 2.3 **Engineering Costs.** In the event the City determines that a structural engineer’s services are required to draw the plans for the proposed ADU, the City will provide a grant to Owner in the amount of up to Three Thousand Dollars (\$3,000) to cover the costs the engineering costs for creation of the ADU (“**Engineering Grant**”) provided that the Owner enters into an agreement for engineering services with an engineer approved by the City. The Owner shall use Engineering Grant proceeds only for such purpose. Provided that the plans prepared by the engineer are acceptable to the City’s Building Division, City will disburse Engineering Grant proceeds to the engineer within fourteen (14) days of Owner’s delivery to City of the plans developed by the engineer and receipts or other documentation acceptable to the City indicating that the engineering services have been completed to the satisfaction of the Owner and the amount due to the engineer for such services. Upon the occurrence of an Event of Default (as defined in Section 9), the City may, at its discretion, require the Owner to immediately repay any Engineering Grant proceeds that have been disbursed pursuant to this Agreement.

**3. Construction Work; Compliance with Laws and Program Guidelines.** City will prepare a write-up of the construction work required to create the ADU (“**Construction Work**”) based upon the construction drawings, schematic design plans, materials list, and construction cost estimate prepared by the City and architect (if applicable) (the “**Construction Plans**”). City shall prepare and advertise a bid package for the Construction Work, and shall work with both Owner and the Contractor to inspect the Construction Work while in progress, review progress

payment requests, and conduct an inspection to ascertain that the Construction Work has been completed in accordance with the Construction Plans. Owner shall comply with, and the Owner-Contractor Contract (defined below) shall require the Contractor to comply with, the Construction Plans, the Program Guidelines, and all applicable Federal, State and Local laws and regulations with respect to completion of the Construction Work.

**4. Owner Contract with Contractor.** Following identification of the lowest responsible bids for performance of the Construction Work in accordance with the procedures identified in the Program Guidelines, Owner shall enter into a contract with the Contractor substantially in the form attached hereto as Exhibit E (“**Owner-Contractor Contract**”). The Owner hereby acknowledges that the City’s approval of the Contractor and the Owner-Contractor Contract shall not be deemed a representation or warranty by the City that the Contractor will perform the Construction Work in a workmanlike manner. The City assumes no responsibility or liability for any act or omission by any contractor performing work upon the Property and in no way guarantees any of the work to be done or materials to be supplied.

**5. Conditions Precedent to Disbursement of Loan Proceeds.** The City’s obligation to disburse the Loan proceeds are expressly conditioned upon the satisfaction or written waiver by the City of the following conditions precedent:

5.1 No Breach. There exists no condition, event, act or omission which constitutes a breach, default or event of default under any of the Loan Documents, or which would constitute such a breach, default or event of default after notice or the lapse of time or both.

5.2 Loan Documents. Borrower has executed, acknowledged (as applicable) and delivered to the City all of the Loan Documents, and the Deed of Trust and Regulatory Agreement have been recorded in the Napa County Recorder’s Office.

5.3 Construction Contract. Owner and Contractor have executed the Owner-Contractor Contract, and City has approved the Contract as the Contract administrator.

5.4 Notice to Proceed. A Notice to Proceed has been issued to the Contractor by the City and the Owner.

**6. Compliance with Approved Construction Plans; Disbursement and Use of Loan Proceeds.** Provided that all of the conditions precedent to disbursement of the Loan proceeds in Section 5 have been either satisfied or waived in writing by the City, the City shall disburse Loan proceeds for the Construction Work in accordance with the provisions of the Owner-Contractor Contract. Owner shall use the Loan proceeds only for the work and materials necessary for the Construction Work as set forth in the Construction Plans. If City determines that Loan proceeds will not or cannot be used for the purposes described in Owner’s application and the Construction Plans, Owner shall return the Loan proceeds upon City’s written

demand. Owner's failure to return such proceeds within five (5) days following City's written demand shall constitute an Event of Default (defined below) entitling City to pursue remedies pursuant to Section 9 below.

**7. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue through the twentieth (20<sup>th</sup>) anniversary of the Effective Date ("**Term**") unless earlier terminated in accordance with Section 8 below; provided however, all provisions of this Agreement that expressly provide for continuation beyond the termination of this Agreement shall survive.

**8. Termination by Owner.**

8.1 If the amount of the lowest responsive and responsible bid for the Construction Work exceeds the amount of the Loan thereby making the Construction Work economically infeasible, the Owner may terminate this Agreement by providing written notice to the City within ten (10) days following Owner's receipt of all bids for the Construction Work. This Agreement shall thereafter terminate upon City's receipt of Owner's notice.

8.2 If during the Term of this Agreement, the Borrower desires to no longer participate in the Program and to terminate this Agreement, the Borrower shall notify the City in writing and shall repay the entire outstanding Loan balance in full to the City within one year from the date of the Borrower's written notification to the City. This Agreement shall thereafter terminate upon City's receipt of payment in full of the outstanding Loan balance.

**9. Default and Remedies.** The occurrence of one or more of the following events shall be an event of default ("**Event of Default**") hereunder:

9.1 Owner fails to comply in any respect with the Program Guidelines, the Loan Documents or the Owner-Contractor Contract and such default continues beyond the expiration of the applicable cure period or if there is no applicable cure period, continues beyond thirty (30) days after written notice from the City specifying the Event of Default;

9.2 Any of Borrower's representations or warranties in the Loan Documents or in Borrower's application for the Loan shall prove to have been untrue in any material respect when made; the Borrower shall have concealed any material fact from the City; or any of Borrower's representations and warranties in the Loan Documents or in the Borrower's application for the Loan cease to be true and shall remain untrue for fifteen (15) days after notice of such change to Borrower by City;

9.3 Borrower ceases to rent a Unit to an Eligible Tenant Household at an Affordable Rent (other than for normal unit turnover or repairs) in compliance with the Regulatory Agreement, and fails to notify the City in writing of the Borrower's decision to terminate participation in the Program in accordance with Section 8.2. Capitalized terms used in this subsection but not defined in this Agreement, shall have the meaning ascribed to such terms in the Regulatory Agreement.

Upon an Event of Default, City shall be entitled to terminate this Agreement, accelerate the Loan, and pursue all remedies available at law, in equity, or provided under the Loan Documents. All such remedies are cumulative and not alternative.

**10. Indemnification.** Owner agrees to accept all responsibility for loss, damage or injury to any person or entity, and to the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, 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 (all of the foregoing collectively “Claims”) arising directly or indirectly, in whole or in part, as a result of or in connection with this Agreement, the Owner-Contractor Contract, the Construction Work, the ADU, or any failure to perform any obligation as and when required by the Loan Documents. Owner’s indemnification obligations set forth in this Section: (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the sole active negligence or sole willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in the Loan Documents.

## **11. General Provisions.**

11.1 Headings. The heading titles for each Section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

11.2 Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties’ intent under this Agreement.

11.3 Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.

11.4 Attorney’s Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing Party is entitled to reasonable attorneys’ fees, costs, and expenses incurred, whether or not such action proceeds to judgment.

11.5 Modifications. This Agreement may not be modified orally or in any manner



other than by an agreement in writing signed by both Parties.

11.6 Waivers. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

11.7 Time. Time is of the essence in carrying out the duties hereunder.

11.8 Entire Agreement; Exhibits. This Agreement, including all Exhibits attached hereto and all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. The following Exhibits are attached hereto and incorporated by reference:

- A Legal Description of the Property
- B Promissory Note
- C Deed of Trust
- D Regulatory Agreement
- E Owner-Contractor Contract

11.9 Notices. Except for any notice, demand or communication required under applicable law to be given in another matter, all notices, demands and communications 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 Parties in accordance with this Section. All notices demands or communications shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

**City:** City of Napa  
1115 Seminary Street  
Napa, CA 94559  
Attention: Housing Manager

**Owner:** At the Property address.

11.10 Each Party's Role in Drafting the Agreement. Each Party to this Agreement

has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

11.11 Action by City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the 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's Housing Manager or by any person who shall have been designated by the City's Housing Manager, without further approval by the City Council unless the City's Housing Manager determines in his or her discretion that such approval is required.

11.12 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship; No Third-Party Beneficiaries. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party. This Agreement is not intended to, nor shall it establish any third-party beneficiaries. Owner shall at no time pretend to be or hold himself or herself out as an employee or agent of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.13 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or Owner's successor or for any obligation of City under this Agreement.

11.14 Joint and Several Obligations. If more than one person has executed this Agreement as the Owner, the obligations of each such person hereunder shall be joint and several.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, and all of which taken together shall constitute one and the same instrument.

11.16 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of themselves or their respective legal entities.

*SIGNATURES ON NEXT PAGE*

IN WITNESS WHEREOF, the Parties have caused this Junior Unit Initiative Affordable Housing Loan Agreement to be executed as of the date first written above.

**CITY:**

CITY OF NAPA, a California charter city

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Tiffany Carranza, City Clerk

Date: \_\_\_\_\_  
("Effective Date")

**COUNTERSIGNED:**

\_\_\_\_\_  
Desiree Brun, City Auditor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael W. Barrett, City Attorney

**OWNER:**

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

Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Exhibit A

**PROPERTY**

(Insert legal description.)

Exhibit B-1

**FORGIVABLE LOAN PROMISSORY NOTE**

(Attach form of Promissory Note)

[if applicable] Exhibit B-2

**DEFERRED PAYMENT LOAN PROMISSORY NOTE**

(Attach form of Promissory Note)

Exhibit C

**DEED OF TRUST**

(Attach form of Deed of Trust.)

Exhibit D

**REGULATORY AGREEMENT**

(Attach form of Regulatory Agreement.)

Exhibit E

**OWNER-CONTRACTOR CONTRACT**

(Attach form of Owner-Contractor Contract.)

SECURED PROMISSORY NOTE  
(Junior Unit Initiative Program)  
Forgivable Loan

\$ \_\_\_\_\_

Napa, California  
\_\_\_\_\_, 20\_\_

**FOR VALUE RECEIVED**, \_\_\_\_\_ and \_\_\_\_\_ (collectively, "**Borrower**"), promise to pay to the City of Napa, a California charter city ("**City**"), in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to and in accordance with a Junior Unit Initiative Affordable Housing Loan Agreement dated as of the date hereof, and executed by and between Borrower and City (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

In connection with the Loan Agreement, Borrower and City executed that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof (the "**Regulatory Agreement**"). Payment of this Note and performance under the Regulatory Agreement are secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City, and encumbering the property described therein. The Loan Agreement, this Note, [if applicable: the Deferred Loan Note], the Regulatory Agreement, and the Deed of Trust are collectively referred to herein as the "**Loan Documents**."

1. PAYMENTS.

1.1 INTEREST RATE; LOAN FORGIVENESS. This Note shall not bear interest unless and until an Event of Default arises under the Loan Documents, at which time interest shall accrue at the Default Rate specified in Section 2.3 below. Provided that Borrower complies with the occupancy and Rent restrictions set forth in the Regulatory Agreement, on the first anniversary of the date of this Note, five percent (5%) of the original principal amount of this Note shall be forgiven, and on each succeeding anniversary of the date of this Note, an additional five percent (5%) of the original principal amount shall be forgiven so that the balance payable under this Note shall be reduced to zero on the twentieth (20<sup>th</sup>) anniversary of the date of this Note. The principal balance reduction provisions set forth in this Section shall not apply during any period following Borrower's delivery of notice to City of Borrower's intent to terminate participation in the Program, unless Borrower continues to comply with the occupancy and Rent restrictions set forth in the Regulatory Agreement during such period. In no

event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower.

1.2 DUE ON SALE OR TRANSFER. The entire outstanding principal balance and all interest (if any) and other sums accrued hereunder shall be due and payable in one lump sum upon the occurrence of an Event of Default under the Loan Documents, or upon the sale or other transfer of the Property. Without limiting the foregoing, this Note shall not be assumable without City's prior written consent.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued interest (if any), and then to principal.

1.4 PAYMENT UPON WITHDRAWAL FROM PROGRAM. Pursuant to Section 8.2 of the Loan Agreement and Section VII of the Guidelines, the entire outstanding principal balance and all interest (if any) and other sums accrued hereunder shall be due and payable in full by not later than one year following the date that Borrower notifies City in writing that Borrower intends to terminate participation in the Program.

1.5 MANNER OF PAYMENT. All payments on this Note shall be made to the City at 1115 Seminary Street, Napa, CA 94559, or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

## 2. DEFAULTS AND REMEDIES.

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

(a) Borrower fails to pay when due the principal and any other sums payable hereunder and such failure continues for five (5) days after City notifies Borrower thereof in writing.

(b) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower for substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property and in

each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

(d) Borrower fails to occupy the ADU or remainder of the home as Borrower's principal residence in accordance with Section 2.2 of the Regulatory Agreement.

(e) Borrower fails to rent either the ADU or the remainder of the home at Affordable Rent to an Eligible Tenant Household in accordance with the requirements of the Regulatory Agreement, unless Borrower has provided written notice to City of Borrower's intention to terminate participation in the Program, in which case the repayment provisions set forth in Section 1.4 above shall prevail.

(f) A default arises under any debt instrument secured by a mortgage, deed of trust, or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder and exercise rights and remedies against the Property.

(g) Borrower fails to maintain insurance on the Property and the Home as required pursuant to the Loan Documents, and Borrower fails to cure such default within five (5) days.

(h) Subject to Borrower's right to contest the following charges pursuant to the Loan Agreement, if Borrower fails to pay taxes or assessments due on the Property or fails to pay any other charge that may result in a lien on the Property, and Borrower fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon.

(i) An Event of Default shall have been declared under the Loan Documents and remains uncured beyond the expiration of the applicable cure period.

**2.2 REMEDIES.** Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law or in equity, and (iii) exercise any and all rights and remedies available to City under the Loan Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder, and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.



2.3 **INTEREST; DEFAULT RATE.** Prior to the occurrence of an Event of Default, no interest shall accrue on the principal balance of this Note. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate (the “**Default Rate**”) equal to the lesser of ten percent (10%) per annum or 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 this Note or prevent City from exercising any of its other rights or remedies.

### 3. MISCELLANEOUS.

3.1 **WAIVERS; AMENDMENTS; BORROWER’S WAIVERS.** No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor, demand and protest, and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. To the maximum extent permitted by applicable law, Borrower hereby waives the pleading of any statute of limitations as a defense to the obligations evidenced by this Note.

3.2 **NOTICES.** Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.9 of the Loan Agreement.

3.3 **SEVERABILITY.** If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 **GOVERNING LAW; VENUE.** This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed and litigated in the Superior Court of Napa County, California, or in the Federal District Court for the Northern District of California.

3.5 **PARTIES IN INTEREST.** This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and

assigns. The foregoing is not intended to modify any restrictions or limitations on assignment of this Note or restrictions or limitations on transfer set forth in the Loan Documents.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the indebtedness evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 JOINT AND SEVERAL OBLIGATION. If more than one person has signed this Note as Borrower, the obligations of each such party hereunder shall be joint and several.

IN WITNESS WHEREOF, Borrower has executed and delivered this Secured Promissory Note as of the date first written above.

**BORROWER:**

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

Print Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

SECURED PROMISSORY NOTE  
(Junior Unit Initiative Program)  
Deferred Payment Loan

\$ \_\_\_\_\_

Napa, California  
\_\_\_\_\_, 20\_\_

**FOR VALUE RECEIVED**, \_\_\_\_\_ and \_\_\_\_\_ (collectively, "**Borrower**"), promise to pay to the City of Napa, a California charter city ("**City**"), in lawful money of the United States of America, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to and in accordance with a Junior Unit Initiative Affordable Housing Loan Agreement dated as of the date hereof, and executed by and between Borrower and City (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

In connection with the Loan Agreement, Borrower and City executed that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof (the "**Regulatory Agreement**"). Payment of this Note and performance under the Regulatory Agreement are secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City, and encumbering the property described therein. The Loan Agreement, this Note, the Forgivable Loan Note, the Regulatory Agreement, and the Deed of Trust are collectively referred to herein as the "**Loan Documents.**"

1. PAYMENTS.

1.1 INTEREST RATE. This Note shall not bear interest unless and until an Event of Default arises under the Loan Documents, at which time interest shall accrue at the Default Rate specified in Section 2.3 below. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower.

1.2 DUE ON SALE OR TRANSFER. The entire outstanding principal balance and all interest (if any) and other sums accrued hereunder shall be due and payable in one lump sum upon the occurrence of an Event of Default under the Loan Documents, or upon the sale or other transfer of the Property. Without limiting the foregoing, this Note shall not be assumable without City's prior written consent.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued interest (if any), and then to principal.

1.4 MATURITY DATE. The entire outstanding principal balance and all interest (if any) and other sums accrued hereunder shall be due and payable in full on the twentieth (20<sup>th</sup>) anniversary of the date of this Note; provided however, if Borrower decides to terminate participation in the Program before the 20<sup>th</sup> anniversary of the date of this Note, pursuant to Section 8.2 of the Loan Agreement and Section VII of the Guidelines, the entire outstanding principal balance and all interest (if any) and other sums accrued hereunder shall be due and payable in full by not later than one year following the date that Borrower notifies City in writing that Borrower intends to terminate participation in the Program.

1.5 MANNER OF PAYMENT. All payments on this Note shall be made to the City at 1115 Seminary Street, Napa, CA 94559, or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

## 2. DEFAULTS AND REMEDIES.

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

(a) Borrower fails to pay when due the principal and any other sums payable hereunder and such failure continues for five (5) days after City notifies Borrower thereof in writing.

(b) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(c) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower for substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property and in each case the order or decree is not released, vacated, dismissed or fully bonded within sixty (60) days after its issuance.

(d) Borrower fails to occupy the ADU or remainder of the home as Borrower's principal residence in accordance with Section 2.2 of the Regulatory Agreement.

(e) Borrower fails to rent either the ADU or the remainder of the home at Affordable Rent to an Eligible Tenant Household in accordance with the requirements of the Regulatory Agreement, unless Borrower has provided written notice to City of Borrower's intention to terminate participation in the Program, in which case the repayment provisions set forth in Section 1.4 above shall prevail.

(f) A default arises under any debt instrument secured by a mortgage, deed of trust, or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder and exercise rights and remedies against the Property.

(g) Borrower fails to maintain insurance on the Property and the Home as required pursuant to the Loan Documents, and Borrower fails to cure such default within five (5) days.

(h) Subject to Borrower's right to contest the following charges pursuant to the Loan Agreement, if Borrower fails to pay taxes or assessments due on the Property or fails to pay any other charge that may result in a lien on the Property, and Borrower fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon.

(i) An Event of Default shall have been declared under the Loan Documents and remains uncured beyond the expiration of the applicable cure period.

2.2 **REMEDIES.** Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law or in equity, and (iii) exercise any and all rights and remedies available to City under the Loan Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder, and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 **INTEREST; DEFAULT RATE.** Prior to the occurrence of an Event of Default, no interest shall accrue on the principal balance of this Note. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate (the "**Default Rate**") equal to the lesser of ten percent (10%) per annum or 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 this Note or prevent City from exercising any of its other rights or remedies.

### 3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER'S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor, demand and protest, and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice. To the maximum extent permitted by applicable law, Borrower hereby waives the pleading of any statute of limitations as a defense to the obligations evidenced by this Note.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 11.9 of the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed and litigated in the Superior Court of Napa County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns. The foregoing is not intended to modify any restrictions or limitations on assignment of this Note or restrictions or limitations on transfer set forth in the Loan Documents.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the indebtedness evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 JOINT AND SEVERAL OBLIGATION. If more than one person has signed this Note as Borrower, the obligations of each such party hereunder shall be joint and several.

IN WITNESS WHEREOF, Borrower has executed and delivered this Secured Promissory Note as of the date first written above.

**BORROWER:**

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

Print Name:\_\_\_\_\_

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

Print Name:\_\_\_\_\_

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Napa  
P.O. Box 660  
Napa, CA 94559  
Attention: Housing Manager

(SPACE ABOVE THIS LINE RESERVED FOR  
RECORDER'S USE)

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**  
(Junior Unit Initiative Program)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_ (collectively, "**Trustor**") to \_\_\_\_\_ Title Company as trustee ("**Trustee**"), for the benefit of the City of Napa, a California charter city ("**Beneficiary**").

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). The Land is located in the City of Napa, Napa County, California.

B. Beneficiary and Trustor have entered into a Junior Unit Initiative Affordable Housing Loan Agreement ("**Loan Agreement**") pursuant to which Beneficiary will provide to Trustor a forgivable loan in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "**Forgivable Loan**") [if applicable: and a deferred payment loan in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "**Deferred Payment Loan**")] for the purpose of financing construction of a [junior accessory dwelling unit within the existing single family home located on the Land/conversion of an existing accessory dwelling unit located on the Land to an accessory dwelling unit]. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the "**Forgivable Loan Note**") to evidence Trustor's obligation to repay the Forgivable Loan, [if applicable: and a secured promissory note dated as of the date hereof (the "**Deferred Loan Note**") to evidence Trustor's obligation to repay the Deferred Payment Loan.] In addition, Trustor and Beneficiary have executed an Affordable Housing Regulatory Agreement, and Declaration of Restrictive Covenants dated as of the date hereof (the "**Regulatory Agreement**") which imposes certain rent and occupancy restrictions. The Forgivable Loan Note, [if applicable: the **Deferred Loan Note**], the Loan Agreement, the Regulatory



Agreement, and this Deed of Trust are hereinafter collectively referred to as the “**Loan Documents.**”

C. The Regulatory Agreement will be recorded in the Official Records of Napa County (“**Official Records**”) substantially concurrently herewith.

D. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (defined below) to secure repayment of the Note and performance of Trustor’s obligations under the Loan Documents (defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land (“**Improvements**”);

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, “**Appurtenances**”);

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, “**Equipment**”);

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, “**Leases**”), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become

payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with development of the Land and construction of the Improvements (collectively, "**Plans**"); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with development of the Land and construction of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future indebtedness evidenced by the Forgivable Loan Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Forgivable Loan Note, [if applicable: and all present and future indebtedness evidenced by the Deferred Loan Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Deferred Loan Note] ; (ii) all present and future obligations of Trustor to Beneficiary under the Loan Documents; (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other Loan Document as such may be modified, supplemented, amended, renewed or extended.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. Trustor intends this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "**UCC**"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, Trustor intends that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the

purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC, and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Napa County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iii) this Deed of Trust creates a valid lien on Trustor's entire interest in the Property subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"); and (iv) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and except as disclosed to Beneficiary in writing, to Trustor's knowledge, no condition on the Land

violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; and (iii) all information that Trustor has delivered to Beneficiary in connection with Trustor's application for the Loan is accurate and complete.

7.3 Intentionally omitted.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and all interest due on the indebtedness evidenced by the Forgivable Loan Note [if applicable: and the Deferred Loan Note], and shall promptly pay and perform all other obligations of Trustor arising in connection with the Secured Obligations or the Loan Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan (the "**Loan Proceeds**") solely for purposes authorized by the Loan Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property, including without limitation all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the Loan Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the Loan Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other transfer occurs in violation of the Loan Documents. If any such transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the Loan Documents, subject to reasonable safety and tenant privacy rules as may be reasonably adopted by Trustor. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds together with copies of all Leases that affect the Property. The books, records, and Leases shall be subject to examination and inspection by Beneficiary at any reasonable time following two business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor; provided however, if Trustor is not in default under the Loan Documents, the proceeds shall be released to Trustor to repair or rebuild the Improvements provided that sufficient additional sources of financing to complete such repair or rebuilding are available to complete such work. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.10.1 Trustor shall at all times during the term hereof, maintain insurance coverage in the amounts and in accordance with the requirements specified in the Loan Documents, and shall otherwise comply with all requirements pertaining to insurance specified in the Loan Documents.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within five (5) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, without further notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least thirty (30) days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof.

7.11 Hazardous Material. Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below). Nothing herein shall be deemed a waiver of any right Trustor may have against any third party for reimbursement or contribution.

**"Hazardous Materials"** means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes

without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic waste”, “toxic pollutant”, “toxic substance”, “solid waste” or “pollutant or contaminant” in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any “Superfund” or “Superlien” law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

**“Environmental Law”** means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances



Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars (\$50,000) within three (3) business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three (3) business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any Property, including books and records pertaining to the Property.

7.13 Indemnification. To the greatest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold

harmless the Trustee and the the Beneficiary and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "Indemnitees") 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 (all of the foregoing collectively "Claims") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, except to the extent arising from the gross negligence or willful misconduct of the Indemnitees. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, except to the extent the loss is caused by the willful misconduct or gross negligence of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Notwithstanding the foregoing, so

long as the value of Beneficiary's lien is not impaired, Trustor shall have the right to use insurance and/or condemnation proceeds to repair and/or restore the Improvements.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Forgivable Loan Note [if applicable: and/or the Deferred Loan Note] for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust, and the Forgivable Loan Note [if applicable: and the Deferred Loan Note], Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Either Beneficiary or Trustee may cure any breach or default of Trustor if Trustor fails to do so in the time provided for cure, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

## 8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events.

a. Beneficiary's declaration of an Event of Default under any Loan Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust or any other Loan Document, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other transfer occurs in violation of the Loan Documents and Trustor fails to rescind such conveyance or otherwise cure such breach within the time period specified in paragraph j below;

d. Trustor fails to maintain the insurance coverage required hereunder or under the other Loan Documents and fails to cure such default within five (5) days, or Trustor otherwise fails to comply with the requirements of Section 7.10 hereof and Trustor fails to cure such default within the applicable time specified in Section 7.10;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay when due any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon.

f. Any representation or warranty of Trustor contained in or made in connection with the execution and delivery of this Deed of Trust or in any certificate or statement furnished pursuant hereto or in any other Loan Document proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or substantially all of Trustor's assets, (iii) orders the liquidation of Trustor, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or any part thereof,

and in each case the order or decree is not released, vacated, dismissed or fully bonded within 60 days after its issuance.

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within ten (10) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than ninety (90) days following receipt of notice of default.

**8.2 Remedies.** Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any Loan Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Forgivable Loan Note, [if applicable: the Deferred Loan Note] and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any

unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust, the Forgivable Loan Note [if applicable: and the Deferred Loan Note] or other evidence of indebtedness which is secured hereby, together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the Loan Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Forgivable Loan Note [if applicable: and the Deferred Loan Note] immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Forgivable Loan Note [if applicable: and the Deferred Loan Note].

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

- a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and
- b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the Loan Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisal, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust 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 parties in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice shall be deemed delivered upon receipt; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

**TRUSTOR:** At the Property address.

**BENEFICIARY:** City of Napa  
Attn: Housing Manager  
Housing Division  
P.O. Box 660  
Napa, CA 94559

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.



10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Napa County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the state and federal courts and authorities with jurisdiction in Napa County, California. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's Housing Manager or by any person who shall have been designated by Beneficiary's Housing Manager, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

**IN WITNESS WHEREOF**, Trustor has executed this Deed of Trust as of the date first written above.

**TRUSTOR**

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

Print Name:\_\_\_\_\_

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

Print Name:\_\_\_\_\_

*SIGNATURES MUST BE NOTARIZED.*

## CALIFORNIA ALL-PURPOSE 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 NAPA

On \_\_\_\_\_ before me, \_\_\_\_\_ (here 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)

**CALIFORNIA ALL-PURPOSE 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 NAPA

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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

**LAND**

The land is situated in the State of California, County of Napa, and is described as follows

[Insert Legal Description.]

APN

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

City of Napa  
P.O. Box 660  
Napa, CA 94559  
Attention: Housing Manager

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

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Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**  
(Junior Unit Initiative Program)

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of \_\_\_\_\_, 20\_\_ ("**Effective Date**") by and between the City of Napa, a California charter city ("**City**") and \_\_\_\_\_ and \_\_\_\_\_ (collectively "**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

**RECITALS**

A. Pursuant to City Council **Resolutions No. R2017-086**, R2018-066, and R2019-022, the City operates a Junior Unit Initiative Program (the "**Program**") pursuant to which the City provides technical and financial assistance to support the creation of affordable Junior Units (as defined in Section 1.2) or Converted ADUs (as defined in Section 1.2) within existing single-family, owner-occupied homes in the City of Napa.

B. Under the Program, the City provides deferred payment, zero-interest, forgivable loans to eligible households who agree to create an ADU (as defined in Section 1.2) and rent either the ADU or the remainder of their residence to Eligible Tenant Households at an Affordable Rent.

C. Owner is the owner and occupant of the single-family home located at \_\_\_\_\_ Street in the City of Napa, known as Napa County Assessor's Parcel No. \_\_\_\_\_ and more particularly described in Exhibit A attached hereto (the "**Property**").

D. In accordance with the Program and subject to the terms and conditions set forth in the Junior Unit Initiative Affordable Housing Loan Agreement dated as of the

date hereof and executed by and between City and Owner (the “**Loan Agreement**”), City has agreed to provide Owner with a Loan in the amount of \_\_\_\_\_ Dollars \$\_\_\_\_\_ (the “**Loan**”) to finance the creation of an ADU located on the Property.

E. In accordance with the Program, and as a condition to its agreement to provide the Loan to Owner, City requires the Property to be subject to the terms, conditions and restrictions set forth herein.

F. This Agreement provides that either the ADU or the remainder of the Home will be required to be rented at an Affordable Rent to Eligible Tenant Households for a period of twenty (20) years.

G. The purpose of this Agreement is to satisfy the affordability requirements of the Program and to impose rent and occupancy restrictions on the Property. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner’s successors and assigns for the full term of this Agreement.

H. The Parties each acknowledge and agree that the Loan constitutes a “direct financial contribution” from the City as described in California Civil Code Sections 1954.52(b) and 1954.53(a)(2), and that this Agreement is executed in consideration for such financial contribution, thereby allowing the City to enforce rent restrictions pursuant to this Agreement.

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

1. Incorporation of Recitals and Exhibits; Definitions.

1.1 Incorporation of Recitals and Exhibits. The Parties each acknowledge the truth of the foregoing Recitals which are by this reference, incorporated into this Agreement. Exhibits A and B attached hereto are incorporated herein by this reference.

1.2 Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

“**Actual Household Size**” means the actual number of persons in a Tenant’s or prospective Tenant’s household.

“**ADU**” means the Junior Unit or Converted ADU that the Owner has agreed to construct on the Property.

“**Affordable Rent**” means a monthly Rent that does not exceed one-twelfth (1/12<sup>th</sup>) of thirty percent (30%) of sixty percent (60%) of Area Median Income adjusted for Assumed Household Size; provided however, for Units that are rented to households

with a Section 8 Housing Choice Voucher or other rental subsidy, the Rent shall be determined to be Affordable Rent if the portion of the monthly Rent payable by the Tenant does not exceed 1/12<sup>th</sup> of 30% of the Tenant's Gross Household Income.

**"Affordable Rental Unit"** means either the ADU or the remainder of the Home that is rented to an Eligible Tenant Household at an Affordable Rent.

**"Area Median Income"** means the median income for Napa County, California, adjusted for Actual Household Size, as determined by the United States Department of Housing and Urban Development ("HUD") and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of the Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

**"Assumed Household Size"** means a household of one person for a studio unit, two persons for a one-bedroom unit, three persons for a two-bedroom unit, and one additional person for each additional bedroom.

**"Commencement Date"** means the date upon which the City Building Division issues a final certificate of occupancy or equivalent for the ADU.

**"Converted ADU"** means an ADU that is created by converting an existing non-habitable detached or attached structure accessory to an owner-occupied single family home in accordance with the requirements in Section 17.52.015(A-E) of the City's Municipal Code. Converted ADUs must have full kitchens and private bathrooms. Converted ADUs are eligible for Program Loans provided that the ADU can be constructed for an amount not to exceed the Loan amount, or if the Owner is willing to contribute funds for the project, for an amount that does not exceed the Loan amount plus the Owner's contribution.

**"City's Authorized Representative"** means the City's Housing Manager.

**"Deed of Trust"** means the deed of trust dated as of the date hereof, executed by Owner and recorded against the Property to secure performance under this Regulatory Agreement and repayment of the Loan.

**"Eligible Tenant Household"** means a household whose total gross household income does not exceed 80% of Area Median Income as established annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for actual household size and that does not include members who are household members or family members of the Owner.

**"Gross Income"** shall be determined in accordance with Article VIII of the Guidelines.

**"Guidelines"** means the City of Napa Junior Unit Initiative Program Guidelines.



**“Home”** means the principal residence existing on the Property as of the Effective Date.

**“Improvements”** means the improvements constructed on the Property, including without limitation, the ADU.

**“Junior Unit”** means a residential unit that complies with the requirements of Napa Municipal Code Section 17.52.015(F), that is no larger than 500 square feet in size, and that is created within an owner-occupied single-family home by carving out a sleeping room, efficiency kitchen and ancillary space into a separate unit. Junior Units may have private or shared bathrooms.

**“Loan”** is defined in Recital D.

**“Loan Agreement”** means that certain Junior Unit Initiative Affordable Housing Loan Agreement dated as of the date hereof, and executed by and between City and Owner.

**“Note”** means the promissory note or notes dated as of the date hereof signed by Owner evidencing the Loan.

**“Official Records”** means the Official Records of the Napa County Recorder.

**“Property”** is defined in Recital C.

**“Regulations”** means Title 25 of the California Code of Regulations.

**“Rent”** means the total of monthly payments required to be paid by a tenant of the Unit for the following: use and occupancy of the Unit and associated facilities, including parking; any separately charged fees or service charges assessed by the Owner and required to be paid by the Tenant other than security deposits; utilities paid by the Tenant, if any, which may include garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges paid by the Tenant in connection with the use of the Unit or associated facilities and assessed by a public or private entity other than the Owner.

**“Tenant”** means a household legally occupying a Unit pursuant to a valid lease with Owner.

**“Term”** is defined in Section 2.1.

**“Unit”** means either the ADU or the remainder of the Home that Owner will rent to a Tenant.

## 2. Affordability, Use, and Occupancy Restrictions.

2.1 Term. The Term of this Agreement (“**Term**”) shall commence on the Effective Date and shall terminate on the twentieth (20<sup>th</sup>) anniversary of the Effective Date unless this Agreement is sooner terminated in accordance with the Loan Agreement.

2.2 Owner Occupancy. Owner covenants and agrees that throughout the Term, Owner shall occupy one of the Units in the Home as the Owner’s principal place of residence. On or before February 1 of each year, Owner shall provide a written certification to the City, in the form shown in Exhibit B, together with supporting documentation acceptable to City, that the Owner is occupying the Home as the Owner’s principal place of residence. Owner shall be considered as occupying the Home as Owner’s principal residence if Owner lives in the Home for at least ten (10) months during each calendar year.

2.3 Use Restrictions; Rental Requirement. Owner hereby covenants and agrees that throughout the Term, one of the Units shall be used solely as a residential dwelling unit that will be made available for rent by Eligible Tenant Households at Affordable Rents in compliance with the requirements set forth herein. Without limiting the generality of the foregoing, Owner covenants and agrees that Owner shall use diligent efforts to rent one of the Units to Eligible Tenant Households on a continuous basis throughout the Term. Short-term vacancies to accommodate initial lease-up, tenant turnover, and renovations are permitted provided that the Owner is participating in the Napa Valley Community Housing’s Home Share Match-Up Program or otherwise demonstrates that the Owner is diligently pursuing rental of a vacant Unit in compliance with this Agreement.

2.4 No Condominium Conversion or Short-Term Vacation Rentals. During the Term of this Agreement, Owner shall not convert the Home or the Unit to condominium or cooperative ownership, nor shall the Owner rent or enter into any contract to allow the use of all or any portion of the Home as a short term vacation rental, including without limitation, through any “shared economy” online forums or services such as Craigslist, VRBO, Airbnb or any similar program or company.

2.5 Affordability Requirements; Increased Income of Tenants. Commencing upon the Commencement Date and continuing throughout the Term of this Agreement, one of the Units shall be rented to Eligible Tenant Households at Affordable Rents. The maximum Rent payable by Tenants shall not exceed Affordable Rent. Notwithstanding the foregoing, no tenant qualifying as an Eligible Tenant Household at initial occupancy shall be denied continued occupancy of the Unit because, after admission, such tenant’s Gross Income increases to exceed the limit for Eligible Tenant Households. In such event, the Unit will continue to be considered as satisfying the requirements of this Agreement if the Unit continues to be rented at Affordable Rent.

2.6 City Approval of Rents. The initial Rent for the Affordable Rental Unit shall be approved by the City prior to occupancy by a Tenant. All rent increases for the Affordable Rental Unit shall also be subject to City approval. The City shall annually

provide the Owner with a schedule of maximum permissible Rent for the Affordable Rental Unit.

2.7 Section 8 Voucher Holders. The Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of rent subsidies pursuant to the existing Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor, or other rent subsidy programs. The Owner shall not apply selection criteria to Section 8 voucher holders or participants in other rent subsidy programs that are more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply management policies or lease provisions with respect to the Affordable Rental Unit which have the effect of precluding occupancy of the Affordable Rental Unit by such prospective tenants.

Notwithstanding any contrary provision hereof, if the Affordable Rental Unit is subsidized pursuant to the Section 8 Housing Choice Voucher Program or any other program that provides a rent subsidy, Owner shall be permitted to receive additional rent revenue pursuant to and in accordance with such program, and the restriction on Rent set forth herein shall only apply to the Rent that is payable by the Tenant. The total Rent charged for a Unit subsidized through the Section 8 Housing Choice Voucher Program may not exceed the Section 8 Payment Standard adopted by the Housing Authority of the City of Napa based on the Unit's bedroom count.

2.8 Lease Provisions. The Owner shall use a form of tenant lease approved by the City for the Affordable Rental Unit. The form of lease shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for: (i) Tenant's failure to provide any information required under this Agreement or reasonably requested by the Owner to establish the Tenant's qualification, or the qualification of the Tenant's household, for occupancy of the Unit in accordance with the standards set forth in this Agreement, or (ii) Tenant's material misrepresentation made with respect to Tenant's income verification or certification;

(b) be for an initial term of not less than one (1) year, unless a shorter term is mutually agreed upon by Owner and the Tenant. After the initial term of the lease, the lease may be month-to-month by mutual agreement of the Owner and the Tenant; provided however, the Rent may not be raised more often than once every twelve (12) months after such initial term. The Owner will provide the Tenant with at least sixty (60) days' written notice of any increase in Rent;

(c) prohibit subleasing or assignment, including without limitation, as a short-term vacation rental; and

(d) allow termination of the tenancy by Owner only for good cause, including serious or repeated violation of the terms and conditions of the rental

agreement, violations of applicable federal, state, or local law; or other good cause.

2.9 Tenant Selection; Non-Discrimination; Compliance with Fair Housing Laws.

Owner shall comply with state and federal fair housing laws in the marketing and rental of the Unit. Owner shall not restrict the rental, lease, use, occupancy, tenure or enjoyment of the Unit on the basis of race, color, religion, creed, sex, sexual orientation, gender identity, disability, marital status, ancestry, or national origin of any person.

3. Reporting Requirements; Access to Information; Inspections.

3.1 Eligibility Determination; Tenant Income Certification. Prior to a Tenant's initial occupancy of a Unit, the Owner must verify that the Tenant's gross household income is not greater than 80% of Area Median Income adjusted for actual household size. Owner shall verify that prospective Tenants of the Affordable Rental Unit qualify as Eligible Tenant Households. In furtherance thereof, Owner shall, immediately prior to initial occupancy obtain from each prospective Tenant of the Unit a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require: (a) the identity of each household member; and (b) the aggregate Gross Income of all adult members of the household. Owner shall make a good faith effort to verify that the certification provided by a Tenant is accurate by taking two or more of the following steps: (i) obtain copies of the three (3) most recent pay stubs for all adults age eighteen (18) or older in the tenant's household; (ii) obtain the prospective Tenant's income tax return for the most recent tax year; (iii) conduct a credit agency or similar search; (iv) obtain an income verification form from the Tenant's current employer; or (v) obtain an income verification from the Social Security Administration and/or the California Department of Social Services if the Tenant receives assistance from either of such agencies. Upon City's request, Owner shall provide copies of such certificates to City.

As an alternative to the requirements set forth in the preceding paragraph, the City may provide screening of prospective Tenants to determine that they qualify as Eligible Tenant Households. In such event, Owner will not be obligated to undertake income verification or obtain certifications from Tenants that have been qualified as Eligible Tenant Households by the City or the City's designee.

As long as the Tenant resides in the Unit, no additional income verification is required unless an additional adult moves into the Unit within the first six (6) months of a Tenant's initial occupancy. In addition, income verification for new Tenants is required when the Unit is vacated.

Because the purpose of the Program is to expand the supply of affordable rental housing, to be considered an eligible Tenant for the Affordable Rental Unit, the Tenant cannot be a current household member or a family member of the homeowner, including a grandparent, parent, child, or sibling of the homeowner.

**3.2 Owner Certification; Annual Report.** Following the Commencement Date, by not later than April 30 of each year during the Term of this Agreement, Owner shall submit a report (“**Annual Report**”) to the City in form satisfactory to City, together with Owner’s certification that the Unit is in compliance with the requirements of this Agreement. The Annual Report shall include the following information: (i) current rent and other charges; (ii) dates of any vacancies during the previous year; (iii) number and identity of all persons residing in the Affordable Rental Unit; (iv) total Gross Income of the Tenant’s household at initial occupancy; and (v) documentation of source of household income at initial occupancy. Income information is only required to verify that prospective Tenants qualify as Eligible Tenant Households upon initial occupancy.

**3.3. Access to Records; Inspections.** With at least 48 hours’ notice, during normal business hours, Owner shall permit City and its authorized agents and representatives access to any books, documents, papers and records pertaining to rental of the Affordable Rental Unit for the purpose of verifying compliance with this Agreement. In addition, with at least 48 hours’ notice, during normal business hours, Owner shall permit representatives of City to enter upon the Property to inspect the Affordable Rental Unit and interview the Tenants, in order to verify compliance with this Agreement.

#### **4. Term of Agreement.**

**4.1 Term of Restrictions; Effectiveness Succeeds Conveyance of Property.** This Agreement shall remain in effect throughout the Term, subject to Owner’s right to terminate this Agreement upon repayment of the Loan in accordance with the Loan Agreement, and shall remain effective and fully binding for the full Term regardless of any sale or transfer of the Property or the Improvements or any part thereof or interest therein unless terminated in accordance with the Loan Agreement.

**4.2 Reconveyance.** Upon the expiration of the Term or sooner termination of this Agreement in accordance with the Loan Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement and reconvey the Deed of Trust; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the Term.

**5. Binding Upon Successors; Covenants to Run with the Land.** Owner hereby subjects Owner’s interest in the Property and the Improvements to the covenants and restrictions set forth in this Agreement. The City and Owner 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 Owner and City, 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 Owner, including without limitation any purchaser, transferee or ground lessee of the Property or the Improvements shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement.

## 6. Property Management; Repair and Maintenance.

7.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Affordable Rental Unit, including without limitation the selection of tenants and the certification of household income and eligibility (unless such certification is undertaken by the City or the City's designee), evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for any of the foregoing.

7.2 Repair, Maintenance and Security. Throughout the Term, Owner shall at Owner's own expense, maintain the Affordable Rental Unit, the Property and the Improvements, including the landscaping, in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Owner shall install smoke and carbon monoxide detectors, and shall provide adequate security measures for the Affordable Rental Unit, including without limitation, the installation of deadbolt locks.

7.3 Intentionally omitted.

7.4 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest.

7.5 Insurance Coverage. Throughout the Term of this Agreement Owner shall keep the Improvements insured by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name City as loss payee as its interest may appear. Owner shall file with City prior to the commencement of the Term, a certificate (or such other proof as City may require, including without limitation, a copy of the required insurance policy) evidencing the insurance policy required by this Section, and such certificate (or policy) shall provide that at least thirty (30) days' prior written notice shall be provided to City prior to the expiration, cancellation or change in coverage under the policy.

7.6 Property Damage or Destruction. If any part of the ADU is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

## 8. Subordination; Mortgagee Protection.

8.1 Subordination. This Agreement shall be recorded in the Official Records. Owner hereby represents, warrants and covenants that with the exception of easements of record and mortgages secured by the Property on the date that the Loan was originated, or the refinancing of such mortgages in accordance with the Loan Agreement, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien, encumbrance, or other interest in the Property or the Improvements.

8.2 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Unit or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Unit or the Property that such violation has occurred.

## 9. Default and Remedies.

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

(a) Owner's failure to maintain insurance on the Property and the Improvements as required hereunder, and the failure of Owner to cure such default within five (5) days;

(b) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Improvements or failure to pay any other charge that may result in a lien on the Property or the Improvements, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(c) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(d) A default arises under the Loan Agreement, the Note or the Deed of Trust and remains uncured beyond the expiration of any applicable cure period;

(f) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), including without limitation: (i) Owner's failure to rent a Unit to Eligible Tenant

Households at an Affordable Rent, (ii) Owner's failure to occupy the ADU or the remainder of the Home as Owner's principal residence, or (iii) Owner's failure to provide information to the City necessary to determine Owner's compliance with the requirements of this Agreement, and such failure continues following written notice by the City and thirty (30) days opportunity to cure following the date of such notice.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

- A. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;
- B. Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;
- C. For violations of obligations with respect to Rent for the Unit, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;
- D. Pursue any other remedy allowed under this Agreement, the Note or the Deed of Trust, or at law, or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, 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 (all of the foregoing collectively "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with the construction, rehabilitation, management, leasing, rental or operation of the Improvements or the Property, or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations set forth in this Section: (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the



deposit with City by Owner, of any of the insurance policies described in this Agreement.

## 11. Miscellaneous.

11.1 Attorneys' Fees and Costs. In any action brought to enforce or interpret this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

11.2 Recording and Filing. The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Napa.

11.3 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws. The parties agree that any controversy arising under or in relation to this Agreement shall be filed and heard in the Superior Court of Napa County, California or in the Federal District Court for the Northern District of California.

11.4 Headings; Construction. The titles of the sections and subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting the provisions of this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against either Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Napa shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.5 No Implied Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

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

11.7 Entire Agreement; Exhibits. This Agreement, together with the Exhibits attached hereto and the Loan Agreement, the Note, and the Deed of Trust contains the entire agreement of the Parties with respect to the subject matter hereof, and

supersedes all prior oral or written agreements between the Parties with respect thereto.

11.8 Notices. Except for any notice, demand or communication required under applicable law to be given in another matter, all notices, demands and communications 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 Parties in accordance with this Section. All notices demands or communications shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

**City:** City of Napa  
1115 Seminary Street  
Napa, CA 94559  
Attention: Housing Manager

**Owner:** At the Property address.

11.9 Severability. If any provision of this Agreement is held by court of competent jurisdiction to 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.

11.10 Action by City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the 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's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council unless the City's Authorized Representative determines in his or her discretion that such approval is required.

11.11 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Unit. Owner shall at no time pretend to be or hold himself or herself out as an employee or agent of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.13 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or Owner's successor or for any obligation of City under this Agreement.

11.14 Joint and Several Obligations. If more than one person has executed this Agreement as the Owner, the obligations of each such person hereunder shall be joint and several.

11.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, and all of which taken together shall constitute one and the same instrument.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

**CITY:**

CITY OF NAPA, a California charter city

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Tiffany Carranza, City Clerk

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

(“Effective Date”)

**COUNTERSIGNED:**

\_\_\_\_\_  
Desiree Brun, City Auditor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael W. Barrett, City Attorney

**OWNER:**

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

Print Name: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

*SIGNATURES MUST BE NOTARIZED.*

**CALIFORNIA ALL-PURPOSE 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 NAPA

On \_\_\_\_\_ before me, \_\_\_\_\_ (here 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)

**CALIFORNIA ALL-PURPOSE 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

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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)

## STANDARD CITY BID AND CONTRACT DOCUMENTS

### OWNER-CONTRACTOR CONTRACT

Application # \_\_\_\_\_

This OWNER-CONTRACTOR CONTRACT ("Contract") is made as of the \_\_\_th day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between \_\_\_\_\_ ("**Owner**") and \_\_\_\_\_ ("**Contractor**").

Pursuant to City Council Resolutions R2017-086, R2018-066, R2019-022, the City of Napa, a California charter city ("**City**") operates a Junior Unit Initiative Program (the "**Program**") for the purpose of expanding affordable rental housing opportunities by providing eligible homeowners with technical and financial assistance to create independent junior accessory apartment units ("**Junior Units**") within existing owner-occupied single-family homes, or to convert existing accessory structures into accessory dwelling units ("**Converted ADUs**"), on properties containing existing owner-occupied single-family homes, located in the City.

Under the Program, the City provides participating eligible homeowners with financing in the form of a forgivable, deferred payment loan to finance the cost to create a Junior Unit or Converted ADU ("ADU") within the homeowner's existing home. The Program requires either the ADU or the remainder of the home to be rented to an eligible low-income household in accordance with the City's Junior Unit Initiative Program Guidelines ("**Program Guidelines**").

Owner is the owner and occupant of the single-family home located in the City of Napa at \_\_\_\_\_ **Street** (the "**Property**"), and has been approved for participation in the Program.

City or its agent has prepared construction drawings, and a scope of work for the [Junior Unit/Converted ADU] ("**ADU**") to be constructed on the Property.

NOW THEREFORE, Contractor and Owner, for the consideration specified herein, hereby agree as follows:

1. Scope of Contract. Contractor shall perform all of the work and furnish all of the materials shown on and in accordance with the Contract Documents (defined below) for the construction of the ADU on the Property identified above (the "**Work**").

The following documents (the "**Contract Documents**") are part of this Contract and are incorporated by reference herein:

1) Work write-up dated \_\_\_\_\_, 20\_\_ ("Work Write-Up")

City of Napa ♦



- 2) Contractor's Bid Breakdown
- 3) City of Napa Notice to Proceed
- 4) List of Subcontractors and Major Material Suppliers

2. City of Napa as Contract Administrator. Under the terms of that certain Junior Unit Initiative Affordable Housing Loan Agreement dated as of \_\_\_\_\_, 20\_\_ and executed by and between Owner and the City (the “**Loan Agreement**”), the City has agreed to provide Owner with financing for construction of the ADU in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Loan**”). [In addition, in accordance with the Loan Agreement, City has agreed to provide Owner with a grant in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Accessibility Grant**”) to fund installation of accessibility improvements in either the ADU or in the remainder of the home in which the ADU will be constructed. [In addition, in accordance with the Loan Agreement, City has agreed to provide Owner with a grant in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Design Grant**”) to fund design services for the creation of the ADU. [In addition, in accordance with the Loan Agreement, City has agreed to provide Owner with a grant in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the “**Engineering Grant**”) to fund engineering services for the creation of the ADU.]

In connection with the administration and monitoring of compliance with the Contract Documents and the Loan Agreement, City has agreed to perform various services and functions related to the Work as more fully detailed in the Loan Agreement and Sections 16 and 17 herein.

3. Contract Sum: The contract sum shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“**Contract Sum**”). The Contract Sum is equal to the sum of the Loan amount (specified in Section 2 above), the Grant amount (specified in Section 2 above), and \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“**Owner’s Contribution**”) in additional funds to be provided by Owner through other sources. In no event shall City be obligated to pay Contractor more than the sum of the Loan amount and the Grant amount, and in no event shall Owner be obligated to pay Contractor more than the amount of the Owner’s Contribution.

4. Payments to the Contractor: Voucher System with 10% Retention: Owner will pay Contractor for "work in place" based on a voucher system, and the Owner authorizes the City as Contract administrator to administer the voucher system in accordance with this Contract.

Under this system, when Work has been completed to the reasonable satisfaction of the Owner, the Contractor shall provide City with an invoice for specific Work Write-Up items in the amount specified on the Contractor's Cost Breakdown for such item. Adjustments to the cost breakdown or payment schedule may be considered by the City upon written request from Contractor or Owner.

Upon receipt of Contractor's invoice for Work Write-Up items, the City shall examine the Work Write-Up items that are the subject of the submitted invoice for compliance with terms of this Contract. If the City determines that the Work Write-Up items have been completed in accordance with the terms of this Contract, the City will provide the Contractor with a completed payment voucher and lien release form for the Work Write Up items that are the subject of the submitted invoice. The Contractor and the Owner shall sign the voucher, and Contractor shall sign the lien release form and return the signed voucher and lien release form to the City. Within five (5) working days of City's receipt of the fully executed voucher and lien release form from the Contractor, the City will make the payment to the Contractor.

A 10% retention will be withheld from each payment until thirty-five (35) days after all of the following conditions have been met:

- (1) A Notice of Completion has been issued and recorded by the City and Owner.
- (2) The Contractor has furnished to the City satisfactory releases of liens by the Contractor
- (3) City has verified that no liens have been filed against the Property by any subcontractors, laborers, or material suppliers.
- (4) Owner has stated in writing that he/she accepts the Work as finished and proper pursuant to the Work Write-Up and any change orders thereto.

5. Withholding Payments: Payments otherwise due Contractor may be withheld by the City because of defective work not remedied, liens filed, expiration of insurance coverage, Contractor's damage to others not settled, or failure to make payments properly and in full to subcontractors, material suppliers, or laborers. All moneys so withheld shall be retained with no interest accruing, until the impediment to payment has been fully corrected.

6. Time of Commencement and Completion: No Work shall begin until the Notice to Proceed has been issued by the City and the Owner and received by the Contractor. The Contractor shall commence Work within ten (10) calendar days of receiving the Notice to Proceed. Work shall be completed within sixty (60) calendar days after it has commenced.

7. **LIQUIDATED DAMAGES FOR DELAYS**: Since it is impractical or extremely difficult to assess accurately the damage which may be caused by the delay of the Contractor in fully completing the Work , and since actual damages to Owner and the City as a result of such delay may be large, it is agreed that the sum of **One Hundred Dollars (\$100.00) per day** for each day in which full and satisfactory completion of the Work is delayed beyond the completion date as stipulated in this Contract or as modified by any addenda hereto is the amount of such liquidated damage. The determination of the

dates when completion was due and when completion occurred shall be made by a designated official of the City of Napa, and the decision shall be binding on all parties. Liquidated damages shall run until the Work is completed satisfactorily and in full, or in the event of termination under Sections 24 or 25 of this Contract, the subsequent contractor on the job. The aggregate amount of liquidated damages shall be payable by the Contractor and his/her sureties to the Owner for the delays of the Contractor and shall be the sole and exclusive remedy of the Owner for such delays . Nothing in this Section is intended to affect any other claims or rights of action the Owner may have against Contractor for damages other than those caused by delay in completion of the Work.

The City may withhold from the final payment the amount of liquidated damages determined to be due the Owner as a result of delay and/or delays caused by the Contractor. Failure on the part of the City to withhold any such liquidated damages shall not be construed as a waiver of Owner's rights under the terms of this Contract.

**CONTRACTOR AND OWNER ACKNOWLEDGE THAT EACH HAS READ AND UNDERSTANDS THE PROVISIONS OF THIS SECTION, AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.**

**CONTRACTOR'S INITIALS:      OWNER'S INITIALS:**

\_\_\_\_\_

\_\_\_\_\_

8. Unavoidable Delays: The time during which Contractor is delayed in performing the Work by the acts or negligence of the Owner, or by the Acts of God, or by other events or happenings which the Contractor could not have reasonably foreseen or provided for, or by stormy or inclement weather which delays the performance of the Work, or by strikes or like trouble among laborers which delay performance of the Work, and which are not caused by, or the continuance of which is not due to any unreasonable acts or conduct on the part of the Contractor, shall be added to the time for completion pursuant to Section 6 of this Contract.

9. Insurance: The Contractor shall purchase and maintain comprehensive public liability insurance protecting the Owner for not less than \$1,000,000.00 in the event of bodily injury, including death, and \$500,000.00 in the event of property damage which may arise out of or result from the performance of the Work. Prior to the start of construction, Contractor shall supply the City with a Certification of Insurance naming the City of Napa and the Owner as additional insureds and an endorsement providing that the insurance will not be cancelled without 30 days' notice to City.

The Contractor shall also maintain Worker's Compensation Insurance as required by the State of California. Contractor shall supply the City with a certification of

insurance before the start of the Work. Failure by Contractor to maintain required insurance coverage shall be grounds to withhold payments in accordance with Section 5, and may result in termination of this Contract in accordance with Section 24.

The Owner shall maintain fire insurance for the full Contract sum for the entire time the Work is in progress.

10. Vacation of Premises and Use of Utilities: The Owner shall vacate the following portion of the Property before commencement of the Work: \_\_\_\_\_.

The Owner shall allow the Contractor access to, and shall pay for Contractor's use of all existing utility services, including gas, electricity, water and sewer, required in the conduct of the Work. If the required utility services are not available, the Contractor shall assume responsibility for, and pay for all fees necessary for the provision of such services for the conduct of the Work.

11. Royalties and Patents: Contractor shall pay all royalties and license fees associated with \_\_\_\_\_. Contractor shall defend all suits or claims for infringement of any patent rights and shall hold Owner harmless from loss on account thereof.

12. Surveys, Permits and Regulations: If applicable, Owner shall furnish all surveys unless otherwise specified. If applicable, easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. Permits and fees necessary for the completion of the Work shall be secured and paid for by the Contractor. Contractor shall comply with all Codes and regulations bearing on the Work whether or not covered by the Work write up, specifications, or drawings. Contractor shall supply a copy of the applicable permits prior to application for the first progress payment, and a copy of the signed, final permits with the application for final payment.

13. Equal Employment Opportunity: Contractor assures that Contractor will comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and will not discriminate against any employee or applicant for employment because of race, creed, color, disability, sex, sexual orientation, gender identity, national origin, age, religion, Vietnam Era Veteran's Status, political affiliation, or any other non-merit factors. Contractor will ensure that applicants and employees are treated without regard to race, creed, color, disability, sex, sexual orientation, gender identity, national origin, age, religion, Vietnam Era Veteran's Status, political affiliation, or any other non-merit factors.

Failure of Contractor to comply substantially and in good faith with the terms of this Section or the Standard Equal Employment Opportunity Construction Contract Specifications set forth in (41 CFR 60-4.3) and the Standard Equal Opportunity Clause set forth in (41 CFR 60-1.4) shall be construed as material breach of this Contract, and at the election of the City, the Contractor may be terminated from this Contract, and a

new contractor procured. Any additional costs or damages involved in obtaining and completing the Work with a new contractor shall be damages owing and due from Contractor to Owner.

14. Protection of Work, Property and Persons: Contractor shall follow all applicable laws and regulations and shall use reasonable methods at the job site, and in the area adjoining the job site which is under Contractor's control, to safeguard against injury, damage or loss to the person and/or property of third parties, including Owner. All damages which result from the negligent or improper discharge of the duty aforementioned shall be paid by the Contractor.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "Indemnitees") and Owner 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 (all of the foregoing collectively "Claims") arising directly or indirectly, in whole or in part, as a result of or in connection with this Contract, the Work, or any failure to perform any obligation as and when required by this Contract. Owner's indemnification obligations set forth in this Section: (i) shall survive the expiration or earlier termination of this Contract, and (ii) shall not extend to Claims to the extent arising from the sole active negligence or sole willful misconduct of the Indemnitees or Owner. City and Owner do not and shall not waive any rights against Contractor that they may have by reason of any indemnity and hold harmless provision set forth in this Contract because of the acceptance by City or Owner, or the deposit with City or Owner by Contractor, of any of the insurance policies required herein.

15. Conformity with Law and Safety: The Contractor shall assume sole and complete responsibility for job site conditions for the duration of the Work including, but not limited to, the safety and health conditions on the work site. This requirement shall apply continuously and shall not be limited to normal working hours. Contractor shall comply with all applicable provisions of law including the standards, rules, regulations and orders established by the California Division of Industrial Safety. Contractor shall furnish and use safety devices and safeguards and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the work site safe and healthful. Contractor shall take all steps necessary to ensure that any hazardous condition is corrected promptly either by the Contractor or by assigning such responsibility to the appropriate subcontractor and ensuring that the corrections are completed. The City, design engineer, construction manager and their officers and employees shall not have control over, be in charge of, or have responsibility for, construction or safety means, methods, techniques, or procedures, as these are solely the responsibility of the Contractor.

16. Substitutions and Samples: Substitutions of materials, products and methods specified in the Contract Documents may occur provided the substitutions are the same in quality and utility to those specified. Any savings involved in the substitutions shall be passed on to the Owner. All substitutions must first be approved in writing by the City and Owner, which shall first receive samples, cut sheets and/or drawings from the Contractor of items proposed to be substituted.

17. Additions or Changes in Work: Any changes to the Work Write-Up, whether by means of additions, changes or deletions, must first be authorized by the written approval of both Owner and the City. Approved additions, changes or deletions to the Work Write-Up shall not relieve or release the Contractor from the provisions of this Contract, nor from any guarantee made pursuant to this Contract. The Contractor and Contractor's surety or sureties shall not be relieved or released from any surety or guarantee bond previously entered into.

All such additions, changes or deletions to the Work Write-Up shall not increase or decrease the total Contract Sum specified in Section 3 herein by more than twenty-five percent (25%), and shall be executed subject to all the terms of this Contract unless expressly provided otherwise in writing. Values of all changes, additions or deletions to the Work Write-Up shall be in accordance with the fair market value of the proposed work as agreed upon by Owner, City, and Contractor.

18. Cleaning Up: Contractor shall keep the premises free from accumulation of waste material, debris, and rubbish, and at the completion of this Contract shall surrender the premises to Owner free and clear of all debris, rubbish, implements, equipment and surplus materials and leave the building and site broom-clean unless otherwise specified in the Contract Documents.

19. Warranty and Correction of Work: Contractor shall re-execute any work that fails to conform to the requirements of this Contract when such defect appears during the progress of the Work.

Contractor warrants and guarantees the Work for one (1) year from the date of completion of final payment under this Agreement. Any defects due to faulty materials or workmanship which appear within that period shall be promptly remedied by the Contractor upon notice from Owner or the City. If the Contractor fails to correct the defects within five (5) business days after being so notified, Owner may remedy the defects by whatever reasonable means necessary, including contracting with another contractor to perform the Work. Whatever costs and damages are incurred by Owner shall be repaid Owner in full by Contractor. As used in this Section, "Work" shall include the work performed by subcontractors as well as work performed by Contractor.

Owner shall be furnished with all manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under this Contract,

regardless of time.

**Roof Warranty:** All complete roof replacements shall be warrantied for a period of no less than five (5) years, unless otherwise specified. Owner shall receive written confirmation of warranty in a document separate and in addition to the warranty contained in this Section.

**20. Assignment of Contract:** The Contractor shall not assign this Contract by operation of law or otherwise without the prior written consent of Owner and the City. The request for assignment must be addressed to: City of Napa, c/o City of Napa Housing Division, 1115 Seminary Street, P.O. Box 660, Napa, CA 94559-0660.

**21. Qualifications of Contractor:** Contractor acknowledges that Contractor was invited to bid for the Work because of Contractor's good standing with the Contractors State License Board, required bonding and insurance coverage, and experience in work and activities relating to specifications in this Contract.

**22. Subcontracts:** Before execution of this Contract, the Contractor shall furnish the City a true and correct listing of all subcontractors, indicating the type of work contemplated, and the estimated subcontract amount. Any changes in subcontractors under this Contract must first be authorized by the written approval of the City.

**23. Arbitration:** Should any dispute arise between Owner and the Contractor over the terms of this Contract or from breach thereof, said dispute may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall not be a condition precedent to any right of legal action by either party against the other.

**24. Option to Terminate by Owner:** Should Contractor, after seven (7) days have expired following a written notice to perform from the City or Owner to Contractor, fail, refuse or neglect to perform any provisions of this Contract, Owner, subject to written approval from the City, may terminate this Contract, take possession of all materials, tools, and equipment remaining on Owner's property and finish said work by the appointment of another contractor. In the event of such termination, all payments presently due Contractor under this Contract may be withheld by the City until the work has been completed by a subsequent contractor by such other means as the Owner elects, and the job has been so certified completed. Any and all costs so incurred to complete the job may be deducted from the Contract sum then or thereafter due Contractor. Such action shall be without prejudice to any other remedy Owner may have then or in the future.

**25. Option to Terminate by Contractor:** Should performance of this Contract be stopped by any public authority or act of God for a period of thirty (30) days or more, through no

fault of the Contractor, Contractor may stop work or terminate this Contract and recover from the Owner payment for all Work executed according to the Contract Documents, and Contractor shall stand the loss for the uncompleted portion of this Contract. Should performance be stopped through act or negligence of Owner or should Contractor fail to receive any payment due within seven (7) days after written notice of Contractor to pay, Contractor may stop Work, terminate this Contract and recover from Owner payment for all Work executed according to the work and material estimates herein and any damage sustained.

## 26. Miscellaneous.

26.1 Attorneys' Fees and Costs. In any action brought to enforce or interpret this Contract, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This Section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

26.2 Governing Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws. The parties agree that any controversy arising under or in relation to this Contract shall be filed and heard in the Superior Court of Napa County, California or in the Federal District Court for the Northern District of California.

26.3 Headings; Construction. The titles of the sections and subsections of this Contract are inserted for convenience of reference only and shall be disregarded in interpreting the provisions of this Contract. The language of this Contract shall be construed as a whole according to its fair meaning and not strictly for or against either Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Napa shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

26.4 No Implied Waiver. Any waiver by City or Owner of any term or provision of this Contract must be in writing. No waiver shall be implied from any delay or failure by City or Owner to take action on any breach or default hereunder or to pursue any remedy allowed under this Contract or applicable law. No failure or delay by City or Owner at any time to require strict performance by Contractor of any provision of this Contract or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

26.5 Amendments. This Contract may be amended only by a written instrument executed by all of the parties hereto.



26.6 Entire Agreement; Exhibits. This Contract, together with the Contract Documents contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto.

26.7 Notices. Except for any notice, demand or communication required under applicable law to be given in another matter, all notices, demands and communications to be sent pursuant to this Contract 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 Parties in accordance with this Section. All notices demands or communications shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

**City:** City of Napa  
1115 Seminary Street  
Napa, CA 94559  
Attention: Housing Manager

**Owner:** At the Property address.

**Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26.8 Severability. If any provision of this Contract is held by court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions of this Contract shall not in any way be affected or impaired thereby.

26.9 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Contract is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

26.10 Counterparts. This Contract may be executed in multiple counterparts, each of which is deemed to be an original, and all of which taken together shall constitute one and the same instrument.

*SIGNATURES ON FOLLOWING PAGE*

City of Napa ♦



IN WITNESS WHEREOF, the Parties hereto have executed this Contract effective as of the date first written above.

Contractor:

Owner:

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

Name: \_\_\_\_\_

Address

\_\_\_\_\_  
License No.

Acknowledged by City of Napa as Contract Administrator

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_