



**CITY OF HEALDSBURG
CITY COUNCIL/REDEVELOPMENT SUCCESSOR AGENCY
REGULAR MEETING AGENDA**

City Hall Council Chamber
401 Grove Street
Healdsburg, CA 95448
(707) 431-3317

Meeting Date: February 6, 2017
Time: 6:00 PM
Date Posted: February 3, 2017

1. CALL TO ORDER/ROLL CALL

A. Pledge of Allegiance

B. Approval of Agenda

C. Approval of Minutes – January 17, 2017 Special and Regular Meetings

2. ANNOUNCEMENTS/PRESENTATIONS

A. Badge Pinning - Fire Engineer Amanda Newhall

3. COUNCIL REPORTS ON MATTERS OF INTEREST OCCURRING SINCE PREVIOUS REGULAR MEETING/EXPENSE REIMBURSEMENT REPORTS

4. CITY MANAGER REPORTS

A. Update on Fire Department Activities

B. Update on Latino Community outreach

5. PUBLIC COMMENTS ON NON AGENDA ITEMS

This time is set aside to receive comments from the public regarding matters of general interest not on the agenda, but related to City Council/RSA business. Pursuant to the Brown Act, however, the City Council cannot consider any issues or take action on any requests during this comment period. Speakers are encouraged to limit their comments to 3 minutes maximum so that all speakers have an opportunity to address the City Council/RSA Board. Members from the public wishing to speak on a Consent Agenda item should notify the Mayor during Public Comments.

6. CONSENT CALENDAR

The following items listed on the Consent Calendar are considered routine and action will be taken by the City Council by a single motion. A Councilmember, staff or the public may request that an item be removed from the Consent Calendar and action taken separately. In the event an item is removed, it may be considered as the first scheduled item in the agenda under Old or New Business.

A. Approval of Old Rossi Place Parcel Map

Adopt a Resolution 1) approving the Old Rossi Place Parcel Map; 2) accepting Old Rossi Place and Trentadue Way in fee for public use, subject to improvement, as shown on the Old Rossi Place Parcel Map; and 3) authorizing the City Manager to execute the Subdivision Improvement Agreement

B. Fire Vehicle Exhaust Removal System Grant

Adopt a resolution accepting the 2015 Assistance to Firefighters Grant in the amount of \$60,544; awarding a Professional Services Agreement for a Direct Source Vehicle Capture Exhaust System to Weidner Fire in an amount not to exceed 63,730; increasing budget appropriations to cover the agreement and 10% contingency; and authorizing the City Manager to execute the agreement and to approve change orders up to ten percent (10%) of the original contract amount

C. Appointments to the Redwood Empire Municipal Insurance Fund (REMIF) Board of Directors

Adopt a Resolution appointing Assistant City Manager Ippoliti as the City of Healdsburg's representative on the Redwood Empire Municipal Insurance Fund (REMIF) Board of Directors and Mayor McCaffery and City Manager Mickaelian as Alternates and rescinding all previous appointments

D. Appointments to Northern California Power Agency (NCPA) Commission and Transmission Agency of Northern California (TANC)

(1) Adopt a Resolution appointing a Commissioner and Alternates to the Northern California Power Agency (NCPA) Commission and rescinding all previous appointments; and

(2) Adopt a Resolution appointing a Commissioner and Alternates to the Transmission Agency of Northern California (TANC) Commission and rescinding all previous appointments

E. Measure V Facility Improvement Project

Adopt a resolution accepting the Measure V Facility Improvements Project ("Project") as complete and authorizing staff to file a Notice of Completion with the Sonoma County Recorder's Office

7. PUBLIC HEARINGS

A. Public Hearing to consider adoption of a resolution revising development impact fees for Accessory Dwelling Units

Adopt a Resolution approving revised development impact fees for Accessory Dwelling Units

8. OLD BUSINESS

A. Consideration of an Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

Adopt a resolution approving the amended and restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

B. Approval of a Lease Agreement with Burbank Housing Development Corporation for the rehabilitation and management of property located at 721-723 Center Street (APN 002-042-016)

Adopt a resolution approving a Lease Agreement (“Agreement”) with Burbank Housing Development Corporation for the rehabilitation, operation and maintenance of property located at 721-723 Center Street (APN 002-042-016) and authorizing the City Manager to execute the Agreement and related documents

9. NEW BUSINESS

A. Review of Community Housing Committee Makeup and Work Plan

1. Consider adopting a Resolution which rescinds Resolution No. 116-2015 in its entirety and reconfigures the Community Housing Committee and outlines its roles and responsibilities.
2. By motion, appoint a Council Subcommittee to interview applicants for the Community Housing Committee.

10. WRITTEN COMMUNICATIONS

A. Written Communication from Planning and Building Director Nelson regarding Planning Commission actions taken on January 24, 2017

No action required.

11. CLOSED SESSIONS

None.

12. ADJOURN CITY COUNCIL / RSA MEETING

SB 343 - DOCUMENTS RELATED TO OPEN SESSION AGENDAS: *Any writings or documents provided to a majority of the City Council/Redevelopment Successor Agency Board regarding any item on this agenda after the posting of this agenda and not otherwise exempt from disclosure, will be made available for public review in the City Clerk's Office located at City Hall, 401 Grove Street, Healdsburg, during normal business hours. If supplemental materials are made available to the members of the City Council/Redevelopment Successor Agency Board at the meeting, a copy will be available for public review at the City Hall Council Chambers, 401 Grove Street, Healdsburg, CA 95448.*

These writings will be made available in appropriate alternative formats upon request by a person with a disability, as required by the Americans with Disabilities Act.

DISABLED ACCOMMODATIONS: *The City of Healdsburg will make reasonable accommodations for persons having special needs due to disabilities. Please contact Maria Curiel, City Clerk, at Healdsburg City Hall, 401 Grove Street, Healdsburg, California, 431-3317, at least 72 hours prior to the meeting, to ensure the necessary accommodations are made.*

**CITY OF HEALDSBURG
CITY COUNCIL
SPECIAL MEETING MINUTES
January 17, 2017 – 5:00 P.M.
City Hall Council Chamber
401 Grove Street, Healdsburg, CA 95448**

CALL TO ORDER/ROLL CALL

Mayor McCaffery called to order the special meeting of the City Council of the City of Healdsburg at 5:00 P.M., noting that the following Councilmembers were present/absent:

Present: Councilmembers: Hagele, Mansell, Naujokas and Mayor McCaffery

Absent: Councilmembers: None

APPROVAL OF AGENDA

The agenda was approved as submitted by unanimous consensus of the Councilmembers present.

PUBLIC COMMENTS

None.

CLOSED SESSION

The City Council recessed to meet in closed session to discuss the following:

A. Pursuant to Government Code Section 54957.6 - Conference with Labor Negotiators

Agency Negotiators: City Manager Mickaelian and Assistant City Manager Ippoliti

Employee Organizations: HPOA, IAFF, IBEW and Mid-management and Professional Employees Association

No action was during or following the closed session, only direction was given to staff.

ADJOURNMENT

There being no other business to discuss, the special meeting was adjourned at 5:50 P.M.

APPROVED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Minutes Acceptance: Minutes of Jan 17, 2017 5:00 PM (Approval of Minutes)

**CITY OF HEALDSBURG
CITY COUNCIL/REDEVELOPMENT SUCCESSOR AGENCY
REGULAR MEETING MINUTES
January 17, 2017
City Hall Council Chamber
401 Grove Street, Healdsburg**

CALL TO ORDER/ROLL CALL

Mayor/Chairperson McCaffery called to order the concurrent meeting of the City Council and Redevelopment Successor Agency of the City of Healdsburg at 6:03 P.M. with the following Councilmembers present:

Present: Councilmembers/: Hagele, Mansell, Naujokas and Mayor McCaffery
Board Members

Absent: Councilmembers/: None
Board Members

APPROVAL OF AGENDA

The agenda was revised to add an item under Announcements/Presentations entitled, Standing Together for Women Day proclamation.

On a motion by Councilmember Naujokas, seconded by Councilmember Hagele, approved the January 17, 2017 City Council and Redevelopment Successor Agency meeting agenda as revised. The motion carried on a unanimous voice vote. (Ayes 4, Noes 0, Absent -None)

APPROVAL OF MINUTES

On a motion by Vice Mayor Mansell, seconded by Councilmember Naujokas, approved the January 3, 2017 regular meeting minutes as submitted. The motion carried on a unanimous voice vote. (Ayes 4, Noes 0, Absent -None)

**ANNOUNCEMENTS/PRESENTATIONS – HUMAN TRAFFICKING AWARENESS
MONTH PROCLAMATION**

Mayor McCaffery, with Council concurrence, issued a proclamation declaring January 2017 as Human Trafficking Awareness Month in the City of Healdsburg and presented the proclamation to Debbie Van Vleck.

Debbie Van Vleck, Human Trafficking Task Force, thanked the Council for the proclamation and presented statistics on the devastating effects of human trafficking especially on children.

ANNOUNCEMENTS/PRESENTATIONS – STANDING TOGETHER FOR WOMEN DAY PROCLAMATION

Mayor McCaffery, with Council concurrence, issued a proclamation declaring January 21, 2017 as Standing Together for Women Day in the City of Healdsburg and presented the proclamation to Kathleen Johnson.

Kathleen Johnson, representing Sonoma County Stands Together for Women, thanked the Council for the proclamation and invited everyone to attend the rally planned for January 21st in downtown Santa Rosa and added that similar rallies will be happening across the country.

ANNOUNCEMENTS/PRESENTATIONS - TURKEY TROT FUNDRAISER UPDATE

Skip Brandt, Healdsburg Running Company, introduced Andy Esquivel and Adam Ray, who would be speaking about the Turkey Trot Fundraiser and the Live Like Drew race.

Andy Esquivel thanked the community for the phenomenal support he and his family has received and for supporting his cause to honor his son's memory noting that the Turkey Trot was just one fundraiser. The goal is to continue the fundraising to establish an endowment fund in honor of Drew's memory for a substantial scholarship to be awarded to a Healdsburg High School student on an ongoing basis.

Adam Ray, event producer, thanked the Council for allowing them to operate in Healdsburg and presented a check of the proceeds of this year's race to Rotary.

Skip Brandt thanked the City for the Foss Creek pathway and presented the Council with water bottles. He announced the "Life in a Day" event planned for January 27th and the "Love Run" fundraiser on February 11th for the Healdsburg Reserve Fire Fighters Association.

COUNCIL REPORTS ON MATTERS OF INTEREST OCCURRING SINCE PREVIOUS REGULAR MEETING/EXPENSE REIMBURSEMENT REPORTS

Councilmember Naujokas stated he was lucky to live in this community and commended City staff for stepping up and keeping everybody safe during the storm and for everyone that stepped up to help those who lost their homes. Councilmember Naujokas reported he attended the State of the County breakfast and Corazon Healdsburg's fundraiser dinner. Councilmember Naujokas stated he participated in the Parks and Recreation Commission interviews and commented that all of the applicants were very qualified and represent the soul of the community.

Vice Mayor Mansell spoke about the pride in the community during a crisis and reported that she met with a lot of citizens casually checking in and that she had the opportunity to interview the

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applicants for the Transportation Advisory Commission and thanked everyone for their willingness to serve. Vice Mayor Mansell further reported she attended the Corazon fundraiser and that she was grateful to be part of this community.

Councilmember Hagele reported he attended the State of the County breakfast and thanked staff for the response to the recent storm. Councilmember Hagele further reported he attended the Corazon dinner and was inspired to explore partnerships to do outreach to the Hispanic community and the underserved population to encourage them to be part of the process. Councilmember Hagele stated he participated in the interviews of the Parks and Recreation Commission applicants and that he would be attending the New Mayors and Councilmembers Conference in Sacramento.

Mayor McCaffery reported he interviewed the Senior Advisory Commission applicants and that he attended the Marin Sonoma Mosquito and Vector Control District Board meeting, the State of the County breakfast and the Mayors and Councilmembers special meeting to recommend an appointment to the Coastal Commission. After several votes, Sara Glade Gurney and Chris Rogers were nominated to the appointment.

CITY MANAGER REPORTS

None

PUBLIC COMMENTS ON NON AGENDA ITEMS

Chris Herrod stated he attended the Corazon Healdsburg dinner and that a lot of the attendees were inspired by the multiculturalism and the need to build bridges in this town. He asked that the Council add to the next agenda the establishment of a Latino Affairs Commission as proposed by Tim Meinken during the Council debate in the fall.

Mayor McCaffery inquired if it would be appropriate to discuss this proposal during the goal setting session.

City Manager Mickaelian stated that if there was Council consensus it will be added to the agenda.

Arnold Herrod stated there should be more opportunities for kids in Healdsburg.

Colleen Carmichael thanked the City for the assistance to secure blankets and cots for the emergency homeless shelter that was opened at St. Paul's during the recent storms.

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Ariel Kelley, Board Chair for Corazon Healdsburg, thanked the Council for attending the dinner and spoke about the need to procure additional translation headsets if the City wants to include the Spanish speakers in the conversations. She challenged the City Council to look into why some sectors of the community are not participating and what can be done about it. For starters, she stated that additional headsets needed to be acquired.

Mel Amato stated his household only received one survey in the mail for the use of Measure V funds and encouraged Council to figure out how to include more forms in the mailing or send a survey to each individual in a household.

CONSENT CALENDAR

None.

PUBLIC HEARINGS

None.

OLD BUSINESS - RESOLUTION CALLING A SPECIAL MUNICIPAL ELECTION AND APPOINTMENT OF INTERIM COUNCILMEMBER

City Manager Mickaelian recalled that as directed by Council, staff agendized for Council's consideration a resolution calling for a special election for the purpose of electing one Councilmember to fill the current vacancy with a term that will expire December 2018. A separate action was also agendized for the appointment of Gary Plass to the City Council on an interim basis.

There were no public comments.

Councilmember Hagele reiterated his support for appointing one of the four candidates that ran for office in November and that if there was no consensus on an appointment, he was supportive of holding the special election.

Councilmember Naujokas spoke about the feedback he received from the community about concerns with the cost of the special election. Councilmember Naujokas stated he was still supportive of holding a special election because the community is fractured and there needs to be a healing process and holding a special election would be best for the community.

Vice Mayor Mansell stated that at the last meeting she wanted to solicit letters of interest in order to save the costs of the election; however, now she could support calling for a special election to give everyone an opportunity to be heard. The cost of the election is an investment in trust.

Mayor McCaffery stated that he was also supportive of holding a special election.

On a motion by Councilmember Naujokas, seconded by Councilmember Hagele, adopted Resolution No. 3-2017 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG, CALIFORNIA, (1) CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 6, 2017 FOR THE ELECTION OF ONE CITY COUNCIL MEMBER TO FILL THE CURRENT VACANCY WITH A TERM THAT WILL EXPIRE DECEMBER 2018; (2) REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA TO CONSOLIDATE A SPECIAL MUNICIPAL ELECTION TO BE HELD ON JUNE 6, 2017, WITH ANY OTHER ELECTION HELD ON THE SAME DAY, IN THE SAME TERRITORY, OR IN TERRITORY THAT IS IN PART THE SAME PURSUANT TO SECTION 10403 OF THE ELECTIONS CODE; (3) APPROVING GUIDELINES FOR CONDUCTING SAID ELECTION; AND (4) INCREASING THE GENERAL FUND APPROPRIATIONS BY \$33,100 TO COVER THE COST OF THE SPECIAL ELECTION. The motion carried on a unanimous roll call vote. (Ayes 4, Noes 0, Absent – None)

CONSIDERATION OF INTERIM APPOINTMENT

Mayor McCaffery recalled that at the last meeting, it was the Council's consensus to appoint Gary Plass to the Council seat on an interim basis.

Councilmember Naujokas spoke about the reasons for his desire to comment and vote on the appointment separately. Councilmember Naujokas stated Mr. Plass has a lot of experience that, he, as a new comer could benefit from; however, he enjoyed the current Council interaction and good rapport and hoped that Mr. Plass was not going to change that.

Councilmember Hagele stated that from the consistency side and recent experience, it was beneficial to appoint Mr. Plass to the interim position and added that at the end of the day the Council had to look at what is best for Healdsburg.

Vice Mayor Mansell stated she appreciated the fact that Mr. Plass wanted to serve and that they did not have to agree on everything just have to be civil. Vice Mayor Mansell was supportive of the interim appointment of Gary Plass.

Mayor McCaffery stated he was also supportive of the appointment.

On a motion by Councilmember Hagele, seconded by Councilmember Naujokas, appointed Gary Plass to fill the Council vacancy on an interim basis until a replacement is elected. The motion carried on a unanimous roll call vote. (Ayes 4, Noes 0, Absent – None)

City Clerk Curiel administered the Oath of Office, following which; Councilmember Plass joined the Council on the dais.

OLD BUSINESS – DIRECTION ON PROPOSED AMENDMENTS TO THE CITY’S MUNICIPAL CODE IN RESPONSE TO PASSAGE OF THE ADULT USE OF MARIJUANA ACT (AUMA)

Planning and Building Director Nelson discussed the need to adopt a baseline of local regulations to allow limited cultivation of marijuana for personal recreational use and prohibit commercial marijuana businesses in the City consistent with AUMA (Proposition 64). Director Nelson summarized the provisions of Proposition 64, as follows:

- Under State law, legalizes limited marijuana possession, cultivation, and use by adults over 21
- Allows City to regulate and tax marijuana, including a complete ban on outdoor cultivation (but not indoor cultivation) and marijuana-related businesses
- Designates State agencies to license and regulate marijuana industry (State guidelines are not yet available)
- Exempts medical marijuana from some taxation
- Establishes packaging, labeling, advertising, and marketing standards and restrictions for marijuana products
- Prohibits marketing and advertising of marijuana directly to minors

Director Nelson also summarized the following local regulations related to marijuana adopted since 2007:

- 2007 Medical marijuana dispensaries are prohibited in the City
- 2014 Cultivation of medical marijuana on private property is permitted for use by qualified patients, consistent with state law
- 2016 City Council adopted urgency ordinances as an interim measure to establish a 45 day moratoria on cultivation related to recreational marijuana, in response to passage of AUMA
- 2016 Planning Commission recommended the Council approve a draft ordinance prepared in response to AUMA that allows limited cultivation of marijuana for personal recreational use and prohibits marijuana related businesses
- 2017 City Council adopts ordinances extending the moratoria on recreational marijuana cultivation for 10 months and 15 days, to allow time for preparation and adoption of a permanent ordinance

Director Nelson reported that on December 13, 2016, the Planning Commission reviewed and recommended approval of the draft ordinance to the City Council, which:

- Limits recreational marijuana cultivation to 6 plants, indoors only (including within an accessory structure)

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- Requires all cultivation to be screened from public view indoors or behind 6 foot fencing
- Prohibits cultivation or use near sensitive locations, such as schools
- Currently prohibits marijuana businesses, as contemplated by AUMA
- Revises current regulations to prohibit cultivation in side yards

The Planning Commission also discussed prohibiting the offering of samples of marijuana products, akin to tasting rooms, which will be included in the draft ordinance considered by the City Council.

Director Nelson recommended that, by motion, the Council direct staff to prepare a draft ordinance which amends the City's Municipal Code in response to passage of the Adult Use of Marijuana Act as recommended by the City's Planning Commission.

Discussion ensued regarding outdoor cultivation, the total number of plants that would be allowed, the reasons for proposing different distances from sensitive areas for cultivation and consumption, and the conflict with federal laws.

Mayor McCaffery stated that in the proposed baseline ordinance the word "specifically" is used in many instances and asked whether it would be more appropriate to use the word "generally".

Discussion ensued about the fact that the proposed ordinance is a baseline until guidelines are adopted by the State; and the need to be very specific as to the applicability of the regulations.

In response to Councilmember Plass' inquiry, Chief of Police Burke stated that only a few complaints are received regarding marijuana mostly during the grow season because of the odor.

Councilmember Plass pointed out that the medical marijuana regulations in place are working for the most part.

Vice Mayor Mansell stated she was supportive of creating as many safeguards as possible in the interim to give City staff and the Council time to study the issue.

In response to Councilmember Naujokas' inquiry, it was noted that retail sales of marijuana edibles was prohibited in the proposed ordinance regardless of the amount.

Erin spoke in support putting a prohibition in place until the state regulations are in place and informed Council of a wine and weed symposium planned in Healdsburg in August. She asked that Council revisit the ordinance in a year and not to ignore the industry.

Councilmember Naujokas expressed interest in looking at the issue in a more comprehensive approach, such as a licensing program if someone wanted to grow more than 6 plants; and stated

it would be hypocritical to only allow certain types of intoxication, i.e. alcohol and should consider allowing marijuana related businesses provided certain criteria is met.

In response to Councilmember Naujokas' inquiry about section D9, City Attorney Zutler suggested further defining the terms used in order to avoid confusion about what was actually prohibited.

Councilmember Plass stated he was supportive of directing staff to prepare the ordinance.

Councilmember Hagele stressed the importance of getting input on what the community wants before something is finalised. Councilmember Hagele stated he was supportive of adopting baseline regulations at this time with the understanding that the issue would be revisited once the state guidelines are known or the conflict with Federal laws is resolved.

Mayor McCaffery expressed interest in revisiting the issue from a business perspective and added he was supportive of adopting baseline regulations at this time.

Councilmember Plass discussed the reasons why outdoor cultivation was limited to 3, mainly odor complaints.

Mayor McCaffery summarized Council's consensus to clarify that free tastings/sampling would also be prohibited and further define Section 9D.

On a motion by Councilmember Plass, seconded by Councilmember Naujokas, directed staff to prepare an ordinance for introduction and first reading to amend the City's Municipal Code in response to the passage of the Adult Use of Marijuana Act as recommended by the Planning Commission plus the additions and amendments noted above. The motion carried on a unanimous roll call vote. (Ayes 5, Noes 0, Absent – None)

NEW BUSINESS – DISCUSSION COMMERCIAL INCLUSIONARY HOUSING REQUIREMENT

Community Housing and Development Director noted for the record that copies of correspondence received regarding the matter had been distributed to the City Council.

Community Housing and Development Director Massey provided background information on the Housing Action Plan and the Plan's objective to create 200 additional affordable housing units over the next 6 years. In an effort to identify solutions to meet this objective, staff assessed a number of potential programs to create additional affordable housing, such as forming an Enhanced Infrastructure Financing District (EIFD); establishing a General Commercial Impact

Linkage fee; or adopting a Commercial Inclusionary Housing Ordinance. It was determined that adoption of a Commercial Inclusionary Housing Ordinance was the best option because:

- All new commercial establishments create additional jobs that in turn increase demand for affordable housing
- Similar to the existing Inclusionary Housing Ordinance for residential development, this ordinance would enable the City to require new lodging establishments to construct for-sale affordable units
- The requirement may be applied to a range of commercial uses including hotels, commercial retail, industrial, etc.
- It enables the City to identify alternative means of compliance such as payment of fee, off-site housing construction, or acquisition of existing market rate units
- This method may more fully off-set affordable housing impact of new lodging establishments

Director Massey pointed out that lodging establishments tend to have greater affordable housing impacts because they require a higher number of employees than other commercial uses and their employees tend to be paid lower wages, falling within the lower household income brackets.

Director Massey stated that as part of the preparation of the proposed ordinance, staff is proposing that a nexus study be prepared that would:

- Establish the maximum number and level of income of units required to be constructed per hotel room
- Determine the type and size of new lodging establishments subject to the requirement
- Identify alternative means of compliance such as offsite construction, payment of fees, etc. which will provide flexibility to the City in that the builder may:
 - Build deed restricted for-sale affordable units
 - Pay a fee which is anticipated be comparable to the cost to construct the unit, or
 - Build deed restricted affordable rental units if the City offers a negotiated and agreed upon incentive

Director Massey discussed the proposed adoption process, which included: (1) the preparation of a Nexus Study and Feasibility Analysis demonstrating the need for affordable housing units generated by every hotel room constructed and assessing ability of new lodging establishments to meet this requirement; (2) a public hearing at the Planning Commission level to consider

public input and make a recommendation to the Council; and (3) a public hearing at the Council level to consider public input and two readings of the Ordinance.

An alternative way to adopt the proposed ordinance is through a ballot measure that is brought before the voters.

Discussion ensued regarding the Council's discretion to broaden the applicability of the commercial inclusionary fee.

Public Comments

Warren Watkins read into the record a letter dated January 17, 2017 in opposition to the proposed hotel-housing linkage fee because: there has been no community outreach, concerns that the hotel-housing proposal will intensify the "tourism problem"; and the proposal is a piecemeal approach when a comprehensive plan is needed to balance tourism and maintain the residents' quality of life and access to housing.

Larry Smith stated that preparing an ordinance that links a particular industry (hotels) to the need or number of housing units without public input on whether that is appropriate is putting the cart before the horse. He opined a public forum was needed to receive public input and determine whether there is a need.

Bruce Abramson inquired about what other hotels are being planned that will be coming in, in a year or two, and how this would be applied to future projects.

City Manager Mickaelian summarized the projects that are in the pipeline and noted that he could not speculate on what might be proposed in the future.

Ariel Kelley spoke about similar fees adopted by other municipalities which were based on square footage not on a number of housing units per x number hotel rooms. She added she was surprised to see the proposed number of units required per hotel room which would deter the development of new hotels. She opined community input was critical before the ordinance is drafted.

Jim Heid spoke in support of considering the proposal slowly and carefully and expressed concern that by linking the fee to the lodging industry it will paralyze the infill development in the downtown which could lead to projects only being developed on the periphery that are exceptionally large and exceptionally expensive.

Merrilyn Joyce stated the City's economy needs to be looked at in a much more diverse way because the tourism industry is not sustainable. She added she wanted to see a study done that

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included the environmental, social, and economic costs and benefits of hotels and tourism related businesses on the different segments of the community.

Councilmember Plass stated the discussion regarding housing was timely; however, in light of the outcome of the last election, the Council needs to take a step back and get more community input. Councilmember Plass suggested referring the matter to the Housing Committee for their review and input before proceedings with the preparation of a nexus study.

Councilmember Hagele stated he was not supportive of proceeding with the study at this time and suggested that Council should first discuss the role of the Housing Committee and once that is established; have the Committee, with public input, make recommendations to staff. Councilmember Hagele further suggested the Committee recommend revisions to the Housing Action Plan to delete reference to Measure R and focus on local preference.

Vice Mayor Mansell stated she was not supportive of moving forward with the nexus study or spending funds on any other studies at this time; and added she was supportive of reconstituting the Housing Committee to make recommendations on how to address the worker housing problem.

Councilmember Naujokas concurred with Vice Mayor Mansell's comments and suggested discussing ways to proactively mitigate the negative impacts of the hospitality industry, such as encouraging tourist visits without cars by partnering with SMART or other ways to get tourists here. Councilmember Naujokas added that high rents downtown is also something to consider and discuss.

Mayor McCaffery stated that although premature, commended staff for bringing forth the commercial inclusionary housing ordinance concept and concurred that at this time the focus should be on reforming the Community Housing Committee and defining their role and scope of work, which could include further review of the concept of a commercial inclusionary housing ordinance, development of ADUs and other sources of funds for affordable housing.

Individual Councilmembers discussed their individual opinions on what the role of the Community Housing Committee should be and their desire to focus at this time on redefining the make-up and scope of the Committee.

Vice Mayor Mansell suggested that the Council consider Jon Worden's recommendations when determining the composition and role of the Community Housing Committee.

Following the discussion, it was the Council's consensus to not proceed with the nexus study and agenda discussion regarding the Community Housing Committee for the February 6th meeting.

**NEW BUSINESS - APPOINTMENTS OF COUNCILMEMBERS TO VARIOUS
 BOARDS AND COMMISSIONS FOR 2017**

Following a brief discussion regarding the positions on the various boards and commissions, the following Councilmember appointments were made to the various Boards and Commissions:

<u>Board/Commission/Committee</u>	<u>Representative</u>
Healdsburg Library Advisory Board	Mayor McCaffery
Senior Advisory Commission Liaison	Councilmember Naujokas
Economic Development Steering Committee	Councilmember Hagele, Representative Councilmember Plass, Alternate
Northern California Power Agency (NCPA)	Councilmember Plass, Commissioner Councilmember Hagele, Alternate
Transmission Agency of Northern California (TANC)	Councilmember Plass, Commissioner Councilmember Hagele, Alternate
Redwood Empire Municipal Insurance Fund (REMIF)	Mayor McCaffery, liaison (staff has been appointed as the representative)
Mayors' and Councilmembers' Association City Selection Committee	Mayor McCaffery
Association of Bay Area Governments (ABAG)	Councilmember Mansell, Delegate
Sonoma County Transportation Authority/ Regional Climate Protection Authority	Councilmember Mansell, Representative Councilmember Naujokas, Alternate
Chamber of Commerce Board	Councilmember Naujokas
Marie Sparks Volunteer of the Year Com.	Mayor McCaffery
League of California Cities General Assembly	Councilmember Naujokas, Delegate Councilmember Hagele, Alternate
Mayors' and Councilmembers' Legislative Committee	Councilmember Naujokas, Representative Councilmember Plass, Alternate
Transportation Adv. Commission Liaison	Councilmember Mansell
Indian Gaming Local Community Benefit Com.	Mayor McCaffery, Representative
North County Clean Water Coalition	Councilmember Mansell
Health Action Committee	Councilmember Mansell, Representative Councilmember Naujokas, Alternate
Marin/Sonoma Mosquito & Vector Control Dist.	Mayor McCaffery
Sonoma County Waste Management Agency	Public Works Director Salmi, Representative Councilmember Mansell, Alternate
Healdsburg High School Scholarship Committee	Mayor McCaffery and Vice Mayor Mansell

Community Housing Committee	To Be Determined
Russian River Watershed Association	Councilmember Naujokas, Representative Mayor McCaffery and Public Works Director Salmi, Alternates
Northern Sonoma County Air Pollution Control District Board of Directors	Councilmember Mansell, Representative Councilmember Plass, Alternate

NEW BUSINESS - PARKS AND RECREATION COMMISSION APPOINTMENTS

City Manager Mickaelian informed the Council that a letter of resignation was received today from Commissioner Hernandez and that if Council determined there were enough qualified applicants, it could fill Mr. Hernandez position in addition to the three vacancies.

Councilmember Naujokas reported he and Councilmember Hagele interviewed seven applicants and all were very highly qualified.

Councilmember Hagele recommended that John Lambert, Juan Mota, Ron Doble, and Ariel Kelley be appointed to the Parks and Recreation Commission.

Discussion ensued regarding the term assignments.

On a motion by Councilmember Plass, seconded by Vice Mayor Mansell, appointed John Lambert, Ron Doble and Ariel Kelley to full terms that will expire January 1, 2020 and Juan Mota to the unexpired term that will end January 1, 2019. The motion carried on a unanimous voice vote. (Ayes 5, Noes 0, Absent – None)

NEW BUSINESS - SENIOR CITIZENS ADVISORY COMMISSION APPOINTMENTS

Mayor McCaffery reported that he interviewed four (4) applicants for three vacancies and that one candidate did not meet the requirement of being at least 55 years of age. Mayor McCaffery recommended that the three qualified applicants be appointed to the Commission.

On a motion by Councilmember Plass, seconded by Vice Mayor Mansell, appointed Larry Smith and Mary Fitzgerald to full terms that will expire December 11, 2019 and Denise Hunt to the unexpired term that will end December 31, 2017. The motion carried on a unanimous voice vote. (Ayes 5, Noes 0, Absent – None)

NEW BUSINESS - TRANSPORTATION ADVISORY COMMISSION APPOINTMENTS

Vice Mayor Mansell reported she and Councilmember Naujokas interviewed four applicants for three positions on the Transportation Advisory Commission and recommended that Richard Peacock and Matthew Wells be appointed for full terms and Jerome Levine to the unexpired term.

On a motion by Councilmember Plass, seconded by Councilmember Hagele, appointed Richard Peacock and Matthew Wells to full terms that will expire December 31, 2020 and Jerome Levine to the unexpired term that will end December 31, 2019. The motion carried on a unanimous voice vote. (Ayes 5, Noes 0, Absent – None)

Councilmember Naujokas informed Council about comments received from the current commissioners about the need to receive guidance from the Council.

City Manager Mickaelian stated that one way of connecting with the Commissions was to hold more joint meetings and/or work sessions about goals and priorities.

Vice Mayor Mansell added that interest was also expressed to interact with the other Commissions/Committees.

City Manager Mickaelian stated staff could look into commission training for all the commissions/committees.

Council expressed interest in holding joint meetings and commission training.

NEW BUSINESS - CITY SELECTION COMMITTEE AND MAYORS' AND COUNCILMEMBERS' ASSOCIATION APPOINTMENTS

Following a brief discussion, it was the Council's consensus to support the following appointments:

City Selection Committee Appointments:

1. **Bay Area Air Quality Management District** - Teresa Barrett, Petaluma
2. **Golden Gate Bridge, Highway & Transportation District** - Gina Belforte, Rohnert Park
3. **Remote Access Network (RAN) Board** - Jake Mackenzie, Rohnert Park

Sonoma County Mayors' and Councilmembers' Board of Directors Appointments:

1. **ABAG Regional Planning Committee** - Julie Combs, Santa Rosa
3. **Child Care Planning Council** - Julie Combs, Santa Rosa
4. **North Bay Division, League of California Cities** – David Hagele, Healdsburg
5. **Sonoma County Agricultural Preservation & Open Space District Citizens Advisory Committee**

On a motion by Councilmember Plass seconded by Councilmember Hagele, supported the appointment of Dominic Foppoli, Windsor. The motion carried on a roll call vote with Vice Mayor Mansell dissenting. (Ayes 4, Noes - Mansell, Absent – None)

On a motion by Mayor McCaffery, seconded by Vice Mayor Mansell, supported the appointment of Neysa Hinton, Sebastopol. The motion carried on a roll call vote with Councilmember Naujokas dissenting. (Ayes 4, Noes – Naujokas, Absent – None)

6. **SMART/non-SCTA member**

On a motion by Mayor McCaffery, seconded by Vice Mayor Mansell, supported the appointment of Debora Fudge, Windsor. The motion carried on a unanimous roll call vote. (Ayes 5, Noes – 0, Absent – None)

NEW BUSINESS - PROFESSIONAL SERVICES AGREEMENTS RELATED TO THE CITY HALL ADDITION AND ALTERATION PROJECT

Assistant City Manager Ippoliti reviewed the proposed Professional Services Agreements related to the City Hall Additional and Alteration Project with Gelfand Partners Architects for architectural administration and engineering services in an amount not to exceed \$171,780; Kleinfelder, Inc. for plan review of the rammed aggregate pier plans, geotechnical and special inspection services in an amount not to exceed \$89,721; and Alameida Architecture for on-site construction management in an amount not to exceed \$100,800.

In response to Vice Mayor Mansell's inquiry, Assistant City Manager Ippoliti stated that the improvements to the Council Chamber involved the HVAC system and noise reduction. Staff will be looking at possible improvements to the sound system and bring forth a proposal for Council to consider.

Vice Mansell expressed interest in reusing as many materials of the existing building as possible.

There were no public comments.

In response to Mayor McCaffery's inquiry, Assistant City Manager Ippoliti stated the cost of the three professional services agreements was included in the approved budget.

On a motion by Councilmember Plass, seconded by Councilmember Hagele, adopted Resolution No. 4-2017, entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING THREE AGREEMENTS RELATED TO THE CITY HALL ADDITION AND ALTERATION PROJECT: THE FIRST FOR ARCHITECTURAL AND ENGINEERING SERVICES TO GELFAND PARTNERS ARCHITECTS IN AN AMOUNT NOT TO EXCEED \$171,780, THE SECOND FOR GEOTECHNICAL AND SPECIAL INSPECTION SERVICES TO KLEINFELDER, INC. IN AN AMOUNT NOT TO EXCEED \$89,721, AND THE THIRD TO ALAMEIDA ARCHITECTURE FOR ON-SITE CONSTRUCTION ADMINISTRATION IN AN AMOUNT NOT TO EXCEED \$100,800 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS." The motion carried on a unanimous roll call vote. (Ayes 5, Noes 0, Absent – None)

WRITTEN COMMUNICATIONS

None.

CLOSED SESSIONS

None.

ADJOURNMENT

There being no other City Council business to discuss, on a motion by Councilmember Plass, seconded by Vice Mayor Mansell adjourned the meeting at approximately 9:10 P.M.

APPROVED:

ATTEST:

 Shaun F. McCaffery, Mayor

 Maria Curiel, City Clerk



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Approval of Old Rossi Place Parcel Map

PREPARED BY: Brent Salmi, Public Works Director

STRATEGIC INITIATIVE(S):
Economic Diversity & Innovation

RECOMMENDED ACTION(S):

Adopt a Resolution 1) approving the Old Rossi Place Parcel Map; 2) accepting Old Rossi Place and Trentadue Way in fee for public use, subject to improvement, as shown on the Old Rossi Place Parcel Map; and 3) authorizing the City Manager to execute the Subdivision Improvement Agreement

BACKGROUND:

The Planning Commission, on June 28, 2016, adopted a resolution finding that the Old Rossi Place Subdivision Tentative Map was consistent with the General Plan and the Grove Street Neighborhood Plan based on facts and findings and based on specific conditions of approval.

DISCUSSION/ANALYSIS:

The developer has prepared and submitted the Old Rossi Place Parcel Map based on the approved tentative map. The City Engineer has reviewed the parcel map and has determined that the map is in conformance with the Subdivision Map Act and is in substantial conformance with the approved Tentative Map.

The Developer has executed a Subdivision Improvement Agreement, has posted the required bonds and insurance for the public improvements.

The subdivision creates four lots and a remainder parcel as well as two streets, Old Rossi Place and Trentadue Way, that are being dedicated in fee for public use. Pursuant to Section 66477.1 of the State Subdivision Map Act, the legislative body of the approving agency must accept or reject any offer(s) of dedication.

ALTERNATIVES:

There are no grounds for the City Council to deny approval of the Parcel Map, however, the City Council may choose to reject the offer of dedication of these streets. This action would, however, be contrary to the Grove Street Neighborhood Plan that envisioned a public street system in the Plan area.

FISCAL IMPACT:

There are no significant costs related to this action although acceptance of the streets for public use will increase future City maintenance obligations.

ENVIRONMENTAL ANALYSIS:

Approval of final subdivision maps is categorically exempt per Section 15268, Ministerial Projects, of the California Environmental Quality Act.

ATTACHMENT(S):

Resolution

Subdivision Agreement

CITY OF HEALDSBURG

RESOLUTION NO. ___ - 2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING THE OLD ROSSI PLACE PARCEL MAP; ACCEPTING OLD ROSSI PLACE AND TRENTADUE WAY IN FEE FOR PUBLIC USE, SUBJECT TO IMPROVEMENT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT

WHEREAS, the Planning Commission City of Healdsburg, on June 28, 2016, adopted a resolution finding that the Old Rossi Place Subdivision Tentative Map was consistent with the General Plan and the Grove Street Neighborhood based on facts and findings and based on specific conditions of approval; and

WHEREAS, the developer has prepared a parcel map based on the approved Tentative Map; and

WHEREAS, the City Engineer has reviewed the parcel map and has determined that the map is in conformance with the Subdivision Map act and is substantial conformance with the approved Tentative Map; and

WHEREAS, the subdivision creates four lots and a remainder parcel as well as two streets, Old Rossi Place and Trentadue Way that are being dedicated in fee for public use; and

WHEREAS, pursuant to Section 66477.1 of the Subdivision Map Act, the legislative body of the approving agency must accept or reject any offer(s) of dedication; and

WHEREAS, the Developer has executed the Subdivision Improvement Agreement and has posted the required bonds and insurance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby approves the Old Rossi Place Parcel Map; accepts Old Rossi Place and Trentadue Way in fee for public use, subject to improvement; and authorizes the City Manager to execute the Subdivision Improvement Agreement.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Healdsburg this 6th day of February, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Attachment: Resolution (1474 : Old Rossi Place Parcel Map)

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1474 : Old Rossi Place Parcel Map)

**CITY OF HEALDSBURG
AGREEMENT FOR SUBDIVISION IMPROVEMENTS**

OLD ROSSI PLACE SUBDIVISION

THIS AGREEMENT FOR SUBDIVISION IMPROVEMENTS (hereinafter referred to as this "Agreement") is made and entered into this 10 day of NOVEMBER 2016, by and between Dennis E. Carvalho and William A. Lerner (hereinafter referred to as the "Developer") and the City of Healdsburg, a municipal corporation in the County of Sonoma, State of California (hereinafter referred to as "City"). ("City" shall also be deemed to include the City Council of Healdsburg and any departments of the City of Healdsburg, as the context may indicate.)

RECITALS:

- A. Developer has presented to City for approval the Old Rossi Place Subdivision (hereinafter called "Map"), pursuant to provisions of the Subdivision Map Act of the State of California and the Healdsburg City Code ("City Code").
- B. Developer has requested approval of the Map prior to the construction and completion of the public improvements, which are a part of, appurtenant to, or outside of the limits of the subdivision (hereinafter referred to as "Subdivision") as approved or conditionally approved on the tentative map for this Subdivision and as required by Chapter 17.04 of the City Code, all in accordance with the Subdivision construction plans as approved by and on file with the City Engineer of City, as amended from time to time (hereinafter referred to as the "Construction Plans").
- C. Private works of improvement ("Private Improvements") are those improvements shown on the Construction Plans that are specifically designated as "private" on said plans.
- D. Public works of improvements ("Public Improvements") are those improvements located within the public right of way or a public easement as shown on the Construction Plans that are not specifically designated as "private" on said plans including the electric system improvements to be constructed by Developer as described in Paragraph 7 below.
- E. Developer promises to install and complete, at Developer's own expense, the Public Improvements as required by City in connection with the Subdivision, and the City intends to accept Developer's offer(s) of dedication of the Public Improvements in consideration for Developer's satisfactory performance of the terms and conditions of this Agreement;
- F. Developer has secured this Agreement by the Public Improvement security set forth in Paragraph 1, below, which security is required by the Subdivision Map Act and the relevant sections of the City Code.
- G. An estimate of the cost for completion of the Public Improvements as shown on the Construction Plans for this Subdivision has been made by the Developer and has been approved by the City Engineer, as set forth in Paragraph 3 below.
- H. Developer recognizes that, by approving the Map, the City has conferred substantial rights upon Developer, including the right to sell, lease, or finance lots within the Subdivision, subject to the requirements of this Agreement. As a result, the City will be damaged to the extent of the cost of installation of the Public Improvements by the Developer's failure to perform its obligations under this Agreement, including, but not limited to, Developer's obligation to complete construction of the Public Improvements by the time established in this Agreement. The City shall be entitled to all remedies available to it pursuant to this Agreement.

the law, in the event of a default by the Developer. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the Developer shall be within the sole discretion of the City.

I. City has determined the Public Improvements constitute a public work subject to California prevailing wage requirements.

NOW, THEREFORE, for and in consideration of anticipated approval and recordation of the Map and the dedications therein offered, and in order to insure satisfactory performance by Developer of its obligations under this Agreement, the Subdivision Map Act and the City Code, the parties agree as follows:

1. PUBLIC IMPROVEMENT SECURITY

Concurrently with the execution of this Agreement, Developer shall furnish City with the following security in a form satisfactory to the City Attorney:

A. Faithful Performance

Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or any instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 3 below and sufficient to assure City that the Public Improvements will be satisfactorily completed.

B. Labor and Materials

Either a cash deposit, a corporate surety bond issued by a company duly and legally licensed to conduct a general surety business in the State of California, or an instrument of credit equivalent to one hundred percent (100%) of the estimate set forth in Paragraph 3 below and sufficient to assure City that Developer's contractors, subcontractors, and other persons furnishing labor, materials, or equipment shall be paid therefor.

C. Alterations in Plans and Specifications

Developer shall enter into an agreement with all sureties providing security according to this paragraph, which shall specify that any alteration or alterations made in the plans and specifications that are a part of this Agreement or any provision hereof shall not operate to release the surety or sureties from liability on any bond or bonds attached hereto and made a part hereof. Any security shall have an initial term of two (2) years. Further, the surety or sureties shall consent to any such alterations, and the sureties to said bonds shall waive the provisions of Section 2819 of the Civil Code of the State of California. Developer shall increase the dollar amount of bonds it has securing the Public Improvements to reflect any alteration that results in an increase in the cost of the unfinished Public Improvements above the estimate as set forth in Paragraph 3 below.

D. Release of Security

The Developer shall complete all Public Improvements in accordance with the Construction Plans for this Subdivision prior to acceptance by the City and release of the required Public Improvement securities as provided in this paragraph. The Public Improvement security for faithful performance shall not be reduced unless otherwise approved by the City Engineer. The security for labor and materials will be released in accordance with Section 66499.7 of the Government Code, as the same may be amended from time to time.

Any reductions authorized to be made in the amount of the Public Improvement security shall be affected by a refund from any cash deposits made or a partial release of any surety bond or instrument of credit, within the limitations established by the Subdivision Map Act or local ordinance. Any security shall be in form and substance, and issued by an institution, satisfactory to City, and shall incorporate, either expressly or impliedly, the terms of Government Code §66499 et seq., which provides for recovery of enforcement costs. Developer covenants to keep in place during the entire period for which security is required in this Agreement the type and amounts of securities specified in subsections A and B above. Should any type or amount of such security be, or become, compromised, in the opinion of City, whether or not such compromise results from the actions or omissions of the Developer, upon request of City, Developer shall provide additional and/or replacement security.

2. MAINTENANCE SECURITY

A. Required Security

The guarantee and conditions specified in Paragraphs 13 and 14 of this Agreement shall be secured by a maintenance security (the form of which may be any of those allowed in Paragraph 1 herein, which shall be delivered by the Developer to the City prior to the acceptance of the Public Improvements by the City and before the release of other securities.

Said security shall be for a period of twelve (12) months from the date of acceptance of the Public Improvements by City, or longer if required pursuant to Paragraph 14, below, and shall be in the amount of ten percent (10%) of the estimated total cost of the Public Improvements.

B. Release of Maintenance Security

Said security, including any replacement security, shall remain in force until a written Release of Security is issued by the City Engineer. The following conditions must be satisfied before a written Release of Security shall be issued to release the Maintenance Security.

(1) Not earlier than ten (10), nor later than twelve (12), months following acceptance of the Public Improvements by City, Developer shall, at Developer's expense, provide City with unobstructed access (remove manhole covers, open meter boxes, etc.) to allow City to inspect all Public Improvements.

(2) Not later than twelve (12) months following acceptance of the Public Improvements by City, Developer shall repair or reconstruct any defective Public Improvements in accordance with Paragraph 14 of this Agreement, including any items identified in the City's review of the sewer main video and the City's re-inspection of the Public Improvements as provided above.

(3) If the period of time required to achieve satisfactory completion of the above conditions extends beyond twelve (12) months following acceptance of the Public Improvements by City, then City has the right to require, and Developer shall provide, additional security to extend the period of Maintenance Security until such time as the City Engineer approves completion of the above conditions. Approval of the above conditions shall be evidenced by a Release of Security issued by the City Engineer.

3. ESTIMATED COSTS AND COMPLETION TIME

Developer will commence construction of the Public Improvements within one hundred eighty (180) days following the date on which the City executes this Agreement. Developer shall complete said work not later than two (2) years following the date of execution of this Agreement, unless the completion date is extended in writing by the City Engineer.

4. INSURANCE REQUIREMENTS

Developer shall procure and maintain for the life of this Agreement (including the one (1) year guarantee period as described in Paragraph 14), insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, its contractor, agents, representatives, employees or subcontractors. Said insurance shall be maintained in full force and effect until the written Release of Security is issued by the City Engineer. Additionally, completed operations coverage shall be maintained in full force and effect for three years after the acceptance date of the public improvements. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office form number CG0001 covering Commercial General Liability on an "occurrence" basis.
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

B. Minimum Limits of Insurance

Developer shall maintain limits no less than:

- (1) Comprehensive General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$2,000,000 per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and litigation.

Attachment: Subdivision Agreement (1474 : Old Rossi Place Parcel Map)

D. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(a) The City, its officers, agents, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer, and with respect to liability arising out of activities performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10, 11 85 or later revised), or as a separate owner's policy.

(b) For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

(2) Workers' Compensation and Employer Liability Coverage

The insurer shall agree to waive all rights of subrogation against the City, its officers, agents, officials, employees and volunteers for losses arising from work performed by the Developer pursuant to this Agreement.

(3) All Coverages

(a) Insurance is to be placed with insurers with a current A.M. Best rating of "A:VII" or better, and who are either "admitted" by the California Department of Insurance or who are listed on the "List of Eligible Surplus Line Insurers" as maintained by the California Department of Insurance. (Note: The List of Eligible Surplus Line Insurers is also known as the "LESLI List").

(b) Developer shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. Initial certificates and endorsements are to be received and approved by the City before work commences. Updated certificates and endorsements are to be provided to the City prior to each policy expiration date. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(c) Developer and/or Developer's general contractor shall include all subcontractors as insureds under their policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(d) Developer hereby grants to City a waiver of any right to subrogation that any insurer of Developer may acquire against the City by virtue of the payment of any loss under such insurance. This provision applies regardless of whether the City has requested or received a waiver of subrogation endorsement from the insurer.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage.

limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(f) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782 of the Civil Code.

5. PERMITS AND FEES IN COMPLIANCE WITH CITY ORDINANCES

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of the Private and Public Improvements, give all necessary notices and pay all fees and taxes required by law.

All development, connection, and impact fees will be paid at the time provided for by the City Code.

6. COST OF ENGINEERING AND INSPECTION

Developer shall be required to pay all engineering and inspection fees, deposits and charges in accordance with the City's Master Fee Schedule.

7. ELECTRIC SYSTEM IMPROVEMENTS

A. The Developer shall construct, at the Developer's expense, all substructure improvements to meet City Electric Standards to serve the Subdivision.

B. The estimated costs of constructing the City's portion of the Electric System Improvements do not include the costs of, and City will not perform the necessary tasks of, trenching, excavation, equipment pads, boxes, lids, conduit, backfill, compaction, paving, or other tasks and equipment necessary for the installation of the substructure required for the Electric System Improvements, including providing any imported backfill that may be required, which shall be performed by and at the expense of the Developer. As and to the extent that such trenching is to be used jointly by Developer or others for installation of other public utility systems, it shall be the responsibility of the Developer to coordinate such joint use, and to allocate the respective costs of the same.

C. Developer shall reimburse the City for its actual costs of material and installation of the City's portion of the Electrical System Improvements.

E. City shall use reasonable diligence in timely completing installation of the City's portion of the Electric System Improvements so as not to be the sole cause of delay in completion of the overall project, but shall not be responsible for delays beyond its control or without its fault including, but not limited to, all recognized causes of *force majeure*, strikes or other labor disturbances, delay in obtaining material, limitations of manpower availability taking into account other demands on the City's manpower, or any delays or interferences caused by Developer or its contractors or any lower tier subcontractors.

8. COMMENCEMENT OF CONSTRUCTION

Work shall not commence on any portion of the Public Improvements specified in this Agreement or as required by the City until the following items as prescribed by this Agreement have been satisfied.

1. Approval by the City Engineer of the Construction Plans.

2. Security and insurance certificate(s) approved by the City Attorney.
3. Approval of all required electrical work including any undergrounding.
4. Payment of deposit for City's portion of the electric system improvements.
5. Payment of engineering and inspection fees, deposits and charges.

Work shall commence upon the issuance by the City of a permit or other grant of approval for development of the parcel

9. PERFORMANCE OF WORK

Developer will do and perform, or cause to be done and performed, at Developer's own expense, in a good and workmanlike manner, and furnish all required materials, all to the satisfaction of the City Engineer, all of the work and Public Improvements within and without the development, in accordance with tentative map conditions of approval for this Subdivision, the Construction Plans, the City Code, the most recent edition of the Healdsburg Public Works Standard Specifications and Details (the Healdsburg Public Works Standard Specifications and Details are hereinafter referred to as the "City Public Works Standards"), the Development Agreement, and with any changes that are necessary or required to complete the work to the satisfaction of the City Engineer.

Developer will do and perform, or cause to be done and performed, inspection of all Private Improvements by a California licensed civil engineer or other qualified special inspector (hereinafter referred to as "Special Inspector"). Prior to acceptance of the Public Improvements, the Special Inspector shall provide a letter of review to the City evidencing that all Private Improvements have been constructed in accordance with the Construction Plans and all other governing regulations.

10. TIME OF ESSENCE/TIME FOR PERFORMANCE

Time is of the essence for this Agreement; therefore, Developer hereby agrees to complete the Public Improvements and satisfy all provisions of this Agreement within the time periods provided in Paragraph 3. Any extensions of time shall not relieve or reduce the surety's liability on the security provided to insure performance of this Agreement. The City shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

In the event that the Developer fails to satisfy all provisions of this Agreement, including satisfactory completion of the Public Improvements within the required time periods, City services performed in connection with this Subdivision shall be suspended, including but not limited to, Public Works engineering review, Public Works inspections, Building Department inspections, Electric Utility inspections, and issuance and final approval of building permits. These City services shall be resumed, in total or in part, only after the Developer has prepared and the City Engineer has approved a written proposal for the timely completion of the Public Improvements and the provisions of this Agreement.

11. SUPERINTENDENCE BY DEVELOPER

Developer shall give personal superintendence to the work or have a competent foreman or superintendent on the work at all times during progress, with authority to act for Developer.

12. INSPECTION BY CITY

Developer shall at all times maintain proper facilities, and provide safe access for inspection by City to all parts of the Public Improvements and to the shops wherein the work is in preparation throughout its construction. The City Engineer shall have the authority to reject all materials and workmanship that are not in accordance with the tentative map conditions of approval for this Subdivision, the Construction Plans, the City Code, the City Public Works Standards, and/or the Development Agreement, and all such materials and/or work shall be removed promptly by Developer and replaced to the satisfaction of the City without any expense to the City.

13. REPAIRS AND REPLACEMENTS

Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all Public Improvements or other improvements adjacent to the work which have been destroyed, damaged or are rejected by the City Engineer, and Developer shall replace or have replaced, repair or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs of any and all property destroyed, damaged or not acceptable to the City Engineer by reason of any work done or being done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any persons whomsoever, or by any combination of such owners. Any such repair or replacement shall be equal or better than the existing improvements and shall be completed in accordance with Construction Plans, City Code, the Development Agreement, and City Public Works Standards and are subject to the approval of the City Engineer.

Should the Developer fail to act within fifteen (15) days of destruction, damage, or written notification of rejection by the City Engineer of any Public Improvements or other improvements damaged by the work, or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work, and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus fifty percent (50%) for normal overhead charges ("indirect costs") associated with the cost of performing such work.

14. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK

The Developer shall guarantee the Public Improvements constructed by him and all supplies, materials, and devices incorporated in, or attached to, the work, or otherwise delivered to the City as part of the work pursuant to this Agreement to be free of defects in materials and workmanship for a period of one (1) year (except for those manufactured products where extended warranties have been provided, in which case the extended warranty period shall apply) following the date of acceptance of the Public Improvements by the City. The Developer shall agree to make, at his own expense, any repairs or replacements or to reconstruct defects in material, or workmanship, or both, which become evident within said guarantee period. The Developer shall further agree to indemnify and hold harmless the City and City staff against and from all claims and liability arising from damage and injury due to said defects. Developer further covenants and agrees that when defects in design, workmanship, or materials actually appear during the one-year guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected. Should the Developer fail to act promptly or in accordance with the written order of the City or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified or before the Developer has acted, the City may, at its option, do the necessary work and the Developer and his surety shall be liable to the City for the direct cost of such work (including the cost of materials, engineering, inspection, testing and superintendence) plus fifty percent (50%) for indirect costs.

15. USE OF PUBLIC IMPROVEMENTS

At all times prior to the City's acceptance of the Public Improvements, the use of any or all Public Improvements, including streets, shall be at the sole and exclusive risk of Developer.

The issuance of any building or occupancy permit by City for dwellings located within the Subdivision shall not be construed in any manner to constitute a partial or final acceptance or approval of any or all such Public Improvements by City. Developer agrees that City's Building Official may withhold the issuance of building or occupancy permits when the work or its progress may substantially and/or detrimentally affect public health, safety, or welfare, as determined by said Building Official. Any and all damages resulting from prosecution of the work shall be repaired by Developer at Developer's expense. Developer shall not create or construct any obstruction of the public right of way or public easements unless otherwise approved by the City Engineer. The Developer shall ensure that all materials and equipment are stored outside of the public right of way and public easements.

16. PUBLIC SAFETY. Developer must at all times conduct the Work in accordance with Construction Safety Orders of the Division of Industrial Safety, State of California and City Public Works Standards, to ensure the least possible obstruction to traffic and inconvenience to the general public, and adequate protection of persons and property in the vicinity of the work.

No pedestrian or vehicle access way may be closed to the public without first obtaining permission of the Engineer.

Should the Developer fail to provide public safety as specified or if, in the opinion of the City Engineer, the warning devices furnished by the Developer are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Developer's operations and the Developer will be liable to the City for all costs incurred including, but not limited to, administrative costs.

17. RECORD DRAWINGS

Upon completion of the Public Improvements, and prior to City acceptance of the Public Improvements, the Developer shall provide or cause to be provided record drawings of the Construction Plans. The final record drawings shall be completed on mylar in accordance with City Public Works Standards, including surveying in place all accessible improvements and providing AutoCAD file to the satisfaction of the City Engineer.

18. NOTICE OF BREACH AND DEFAULT

If Developer refuses or fails to make expected progress toward completion of the Public Improvements, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Developer should be adjudged bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, any such occurrences shall be deemed a material breach of this Agreement. If Developer, or any of Developer's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, including the provisions of this Paragraph, such violation(s) shall constitute a default of this Agreement, and City may serve written notice of such default on Developer and Developer's surety. Any such notice of default shall be deemed "served" upon delivery, in the event of personal service, or upon deposit when delivery is by the U.S. Postal Service or other commercial courier, as described in Paragraph 24, below.

19. DUTY OF SURETY UPON NOTICE OF DEFAULT

In the event that City serves a Notice of Default upon Developer's surety, Developer's surety shall have the duty to take over and complete the Public Improvements herein specified; provided, however, that if the surety, within five (5) calendar days after serving such notice by City, fails to provide City with a written acknowledgment that the surety will take over and complete such Public Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Developer and Developer's surety. Developer and Developer's surety shall be liable to the City for any cost or damages occasioned to the City thereby, including those costs and expenses described in Government Code §66499.4; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Public Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

20. TITLE TO IMPROVEMENTS

Developer warrants that it has the right, power and authority to, and in executing this Agreement does hereby, offer to dedicate, convey, and transfer to City fee title to and ownership of all Public Improvements as provided in the Construction Plans, without lien, encumbrance or other burden. Clear title to, and ownership of, said Public Improvements constructed hereun

21. ACCEPTANCE OF PUBLIC IMPROVEMENTS BY CITY

City shall only accept those Public Improvements that have been constructed, installed, maintained, replaced, and/or repaired in accordance with all applicable federal, state, county and local laws, regulations and standards, including the tentative map conditions of approval for **this Subdivision, Construction Plans and City Public Works Standards**. The determination of compliance with applicable federal, state, county and local laws, regulations and standards, including the tentative map conditions of approval for this Subdivision, Construction Plans and City Public Works Standards shall be made by the City Engineer in his/her discretion. The offer of dedication of Public Improvements by the Developer can be accepted only by resolution of the City Council, and only upon 100% completion of the Public Improvements.

22. DEVELOPER NOT AGENT OF CITY/NO ASSIGNMENT

Neither Developer nor any of Developer's agents, contractors, or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. This Agreement shall not be assigned by Developer without the prior written consent of City. Any attempted assignment without such prior written consent shall be null and void.

23. HOLD-HARMLESS AGREEMENT

Developer hereby warrants that the design and construction of the Public Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. Developer agrees to indemnify, defend with counsel acceptable to City, and hold harmless City, its officers, officials, employees, agents, and volunteers, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action of every kind, nature and description (collectively "Liability") directly or indirectly arising from any act or omission of Developer, his employees, agents, or independent contractors in connection with Developer's actions and obligations hereunder, except such Liabilities caused by the sole negligence or willful misconduct of City, provided as follows:

(a) That City does not, and shall not, waive any rights against Developer that it may have by reason of the "Hold Harmless" provisions of this Agreement, by virtue of accepting this Agreement, by accepting any deposit made by Developer, or by approving any of the insurance policies described in Paragraph 4 hereof.

(b) That the Hold-Harmless provisions of this Agreement shall apply to all damages and claims for damages of every kind suffered or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Paragraph, regardless of whether City has prepared, supplied or approved of any portion of the Construction Plans, or regardless of whether insurance policies as required in this Agreement shall have been determined to be applicable to any such damages or claims for damages.

(c) In the event that legal action is initiated by either party to this Agreement, and said action seeks damages for breach of this Agreement or seeks to specifically enforce the terms of this Agreement, and, in the event judgment is entered in said action, the prevailing party shall be entitled to recover its attorneys' fees and court costs. If City is the prevailing party, City shall also be entitled to recover its attorneys' fees and costs in any action against Developer's surety on the bonds provided under Paragraphs 1 and 2 hereof.

(d) With respect to third party claims against the Developer, the Developer waives any and all rights of any type to express or implied indemnity against the City.

24. NOTICE

All notices herein required shall be in writing, and delivered in person to the addressee's normal place of business, or sent by registered mail, or other commercial courier where date and place of delivery can be confirmed, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of Healdsburg
Attn: City Engineer
401 Grove Street
Healdsburg, CA 95448

Notices required to be given to Developer shall be addressed to each of the following:

Dennis Carvalho and Bill Lerner
1434 County Manor Drive
Santa Rosa, CA 95401

Notices required to be given to the Developer's surety shall be as provided in the approved security instruments. Any party may change such address by notice in writing to the other parties and thereafter notices shall be addressed and transmitted to the new address.

25. SUCCESSORS IN INTEREST

All of the terms, covenants and conditions contained here shall continue, and bind all successors-in-interest of Developer.

26. SEVERABILITY.

Every provision of this Agreement is intended to be severable. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

27. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF HEALDSBURG,
a Municipal Corporation

DEVELOPER: William^ALerner
Dennis^ECarvalho

X Dennis Carvalho
X William A Lerner

Attachment: Subdivision Agreement (1474 : Old Rossi Place Parcel Map)

BY: _____

BY:

6.A.b

David Mickaelian, City Manager

BY: _____

ATTEST: _____

Maria Curiel, City Clerk

APPROVED AS TO FORM: _____

Robin Donoghue, City Attorney

Page 1 of 12

Attachment: Subdivision Agreement (1474 : Old Rossi Place Parcel Map)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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)SS
COUNTY OF Sonoma)

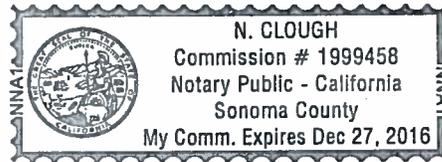
On 11/10/2016 before me, N. Clough, Notary Public, personally appeared Dennis E. Carvalho and William A. Berner

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 [Handwritten Signature]



This area for official notarial seal.

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the documents.

- INDIVIDUAL
- CORPORATE OFFICER(S) TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:

Name of Person or Entity _____

Name of Person or Entity _____

OPTIONAL SECTION - NOT PART OF NOTARY ACKNOWLEDGEMENT

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: City of Healdsburg Agreement for Subdivision Improvements

NUMBER OF PAGES 12 DATE OF DOCUMENT 11/10/2016

SIGNER(S) OTHER THAN NAMED ABOVE David Micalleian, Maria Cereal and Robin Donoghue

Reproduced by First American Title Company 11/2007

Attachment: Subdivision Agreement (1474 : Old Rossi Place Parcel Map)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Fire Vehicle Exhaust Removal System Grant

PREPARED BY: Debra Nelson, Administrative Analyst

STRATEGIC INITIATIVE(S):

Quality of Life

Infrastructure & Facilities

RECOMMENDED ACTION(S):

Adopt a resolution accepting the 2015 Assistance to Firefighters Grant in the amount of \$60,544; awarding a Professional Services Agreement for a Direct Source Vehicle Capture Exhaust System to Weidner Fire in an amount not to exceed 63,730; increasing budget appropriations to cover the agreement and 10% contingency; and authorizing the City Manager to execute the agreement and to approve change orders up to ten percent (10%) of the original contract amount

BACKGROUND:

On June 28, 2016 staff submitted an application for a grant intended to provide funding directly to fire departments in order to enhance the safety of the public and firefighters with respect to fire and fire-related hazards. The grant application was submitted under the FY 2015 Assistance to Firefighters Grants. The Federal Emergency Management Agency (“FEMA”) Grant Programs Directorate, in consultation with the U.S. Fire Administration carries out the Federal responsibilities of administering the grant.

On July 22, the City received notice that the grant had been approved in the amount of \$76,964 with a five percent (5%) City match requirement. A City match is the portion the City must come up with from non-grant funds.

The grant will provide funding for the equipment and installation of a direct source vehicle capture exhaust removal system within a one year period of performance. The new system is designed to directly capture vehicle exhaust fire engine tailpipes, reducing the risk of exposure to firefighters, staff and the public.

DISCUSSION/ANALYSIS:

The request for proposals for the equipment and installation of the exhaust removal system was advertised in accordance with all applicable procedures. Two proposals were received. The City reviewed the submitted proposals and found Weidner Fire to be the lowest responsible bidder with the not to exceed amount of \$57,936.

The other bid was received from Air Exchange with the not to exceed amount of \$75,854.

In addition to the proposal amount, staff is requesting the Council approve a 10% contingency amount for the unexpected items that may come up during installation. The Weidner Fire bid of \$57,936 plus a 10% contingency of \$5,794 totaling \$63,730 is below the grant project award of \$76,964, leaving a remaining grant balance of \$12,753. The City will have the option to apply to FEMA for a project addendum to use the remaining funds. At which time, staff will return to Council for approval. If no addendum is approved, the remaining funds will revert back to FEMA.

FEMA Grant amount	\$73,300
City 5% match requirement	\$3,664
Approved Grant Project Amount	\$76,964
Weidner Fire project bid	\$57,936
Plus 10% contingency	\$5,794
Appropriation Request Amount	\$63,730
Less 5% City match requirement	- \$3,186
Total FEMA Request	\$60,544
Project grant funds remaining	\$12,753

Staff is asking that Council approve an Agreement with Weidner Fire in the amount not to exceed \$57,936, accept the grant funds from FEMA in the amount of \$60,544, and appropriate funds in the amount of \$63,730 to cover the agreement as well as the 10% contingency and the required 5% match of \$3,186.

ALTERNATIVES:

The City Council could reject the FEMA Funding and direct Staff to postpone this project until a later date; however the City would need to reapply for the grant. Council may need to direct staff to find an alternate funding source.

FISCAL IMPACT:

This project was not anticipated in the Council approved fiscal year 2016-17 budget. Appropriations for the entire contract cost plus the 10% contingency will be needed, with an offsetting increase in revenue covering the grant request portion of \$60,544. The remaining 5% is the required City’s match in the amount of \$3,186, and will reduce the unreserved, unappropriated General Fund balance accordingly.

ENVIRONMENTAL ANALYSIS:

If the Council chooses to accept the grant and award the contract, the project is subject to Environmental and Historical Preservation (“EHP”) review. The grant funded project is required to comply with the Federal EHP regulations, laws and Executive Orders as applicable. The EHP review process involves the submission of a screening form that includes detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so that FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. The EHP review process is required to be completed prior to release of funds for the proposed project.

ATTACHMENT(S):

Resolution
Proposal

CITY OF HEALDSBURG

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE 2015 ASSISTANCE TO FIREFIGHTERS GRANT IN THE AMOUNT OF \$60,544, AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR A DIRECT SOURCE VEHICLE CAPTURE EXHAUST SYSTEM TO WEIDNER FIRE IN AN AMOUNT NOT TO EXCEED \$57,936, INCREASING BUDGET APPROPRIATIONS by \$63,730 TO COVER THE AGREEMENT AND CONTINGENCY, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND TO APPROVE A CONTRACT CONTINGENCY UP TO TEN PERCENT OF THE ORIGINAL CONTRACT AMOUNT

WHEREAS, on June 28, 2016 staff submitted an application for a grant intended to provide funding directly to fire departments in order to enhance the safety of the public and firefighters with respect to fire and fire-related hazards; and

WHEREAS, the City has successfully been approved for award of the 2015 Assistance to Firefighter Grant in the amount up to \$76,964 with a five percent (5%) match requirement; and

WHEREAS, the grant will fund the installation of a Direct Source Vehicle Capture Exhaust Removal System; and

WHEREAS, the request for proposal was advertised on the City website in accordance with applicable procedures and it was also emailed to interested contractors; and

WHEREAS, Weidner Fire was found to be the lowest responsible bidder with a not to exceed bid amount of \$57,936.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby:

1. Accepts the 2015 Assistance to Firefighters Grant in the amount of \$60,544.
2. Awards the Professional Services Agreement for the installation of a Direct Source Capture Exhaust System to Weidner Fire, the lowest responsible bidder, in the amount of \$57,936, upon approval of the Environmental and Historical Preservation review.
3. Increases the budget appropriations by \$63,730 to cover the agreement, contingency and local match.
4. Authorizes the City Manager to execute a professional services agreement with a not to exceed amount of \$57,936 and approve change orders up to 10% of the original contract amount.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Healdsburg this 6th day of February, 2017 by the following vote:

AYES: Councilmembers: ()

NOES: Councilmembers: ()

ABSENT: Councilmembers: ()

ABSTAINING: Councilmembers: ()

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1467 : Fire Department Vehicle Exhaust Removal System Grant)



135 WEST 7065 SOUTH
Midvale, UT 84047
tel: 801.565.9595
fax: 801.565.9598
weidnerfire.com
sales@weidnerfire.com

QUOTATION

Page: 1

Quotation For:

City of Healdsburg
401 Grove Street
Healdsburg CA 95448-4402
Ph: (707) 431-3317 Fx: (707) 431-3321

Quotation#: 1111922
Revision#:
Date: 01/16/17

Attn: Debra Nelson E-Mail: dnelson@healdsburg.ca.us
Ref: MagneGrip

Please Address Order To:

Weidner Fire
135 West 7065
Midvale UT 84047

FOB: Shipping Point
Delivery: 5-6 Weeks ARO
Salesman: John Rech
Validity: 30 DAYS
Terms: NET 30 DAYS

We are pleased to propose the following items for your consideration. If you have any questions, please call our office at (801) 565-9595.

Item	Qty	Part#/Description	Unit Price	Total Price
MATERIALS/EQUIPMENT				
1	2	SSRM-601 MagneGrip 60ft. straight suctionrail with crab, hose and nozzle	7,802.35	15,604.70
2	1	SSRM-301 MagneGrip 30ft. straight suctionrail with crab, hose and nozzle	5,676.25	5,676.25
3	2	520042-01 MagneGrip Crab Assembly, with hose, balancer & Nozzle installed on rail	3,011.50	6,023.00
4	1	CF363-7.5 "CF" Series Fan/Motor, 7.5 HP-3PH, 4400 cfm @ 6"sp with rain cap & hardware	4,181.90	4,181.90
5	1	500181-07 MagneGrip Wireless Control Panel for 7.5 HP 3 PH motor wireless reciever	1,368.00	1,368.00
6	5	540558-01 Transmitter, Acutek Autostart	185.25	926.25
7	1	Taxes 8.75%	2,995.16	2,995.16
8	1	Approximate Freight	2,200.00	2,200.00
DIRECT LABOR DESCRIPTION				
9	68	MagneGrip straight suctionrail installed ***** CONTINUED ON PAGE 2 *****	110.00	7,480.00

Attachment: Proposal (1467 : Fire Department Vehicle Exhaust Removal System Grant)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Appointments to the Redwood Empire Municipal Insurance Fund (REMIF) Board of Directors

PREPARED BY: Maria Curiel, City Clerk

STRATEGIC INITIATIVE(S):
Effective & Efficient Government

RECOMMENDED ACTION(S):

Adopt a Resolution appointing Assistant City Manager Ippoliti as the City of Healdsburg's representative on the Redwood Empire Municipal Insurance Fund (REMIF) Board of Directors and Mayor McCaffery and City Manager Mickaelian as Alternates and rescinding all previous appointments

BACKGROUND:

The City of Healdsburg is a member of the Redwood Empire Municipal Insurance Fund (REMIF), which is a self-insured joint powers authority established in 1976 to handle the insurance claims, benefit programs, and risk management needs of its member cities.

As a member, the City of Healdsburg is entitled to appoint a member and an alternate to REMIF's Board of Directors. The appointment of the City of Healdsburg's representatives on the Board requires formal action by City Council resolution.

DISCUSSION/ANALYSIS:

At its last meeting the Council informally appointed Mayor McCaffery as the City Council's liaison to the REMIF's Board of Directors.

The proposed resolution (attached) makes the formal the appointment of Mayor McCaffery as Alternate to the REMIF Board and following past practice the resolution also appoints Assistant City Manager Ippoliti as the City's representative and City Manager Mickaelian as Alternate.

ALTERNATIVES:

Council could opt to appoint a Councilmember or another staff member as the representative and alternate.

FISCAL IMPACT:

No fiscal impact is anticipated as a result of the proposed appointments.

ENVIRONMENTAL ANALYSIS:

The subject matter of this resolution involves administrative activities of the City that will not result in direct or indirect changes in the environment. Therefore, the adoption of this resolution is not a “project”, as defined in the California Environmental Quality Act (“CEQA”) and does not require environmental review, pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines), sections 15060(c)(3) and 15378(b)(5).

ATTACHMENT(S):

Resolution

CITY OF HEALDSBURG

RESOLUTION NO. ____-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPOINTING ASSISTANT CITY MANAGER IPPOLITI AS THE CITY OF HEALDSBURG'S REPRESENTATIVE ON THE REDWOOD EMPIRE MUNICIPAL INSURANCE FUND (REMIF) BOARD OF DIRECTORS AND MAYOR MCCAFFERY AND CITY MANAGER DAVID MICKAELIAN AS ALTERNATES AND RESCINDING ALL PREVIOUS APPOINTMENTS

WHEREAS, the City of Healdsburg is a member of the Redwood Empire Municipal Insurance Fund (REMIF); and

WHEREAS, as a member of REMIF the City of Healdsburg is entitled to have representation on the REMIF Board of Directors.

NOW, THEREFORE, BE IT RESOLVED, that Assistant City Manager Ippoliti is hereby appointed as the City of Healdsburg's representative on REMIF's Board of Directors and Mayor McCaffery and City Manager Mickaelian as Alternates, to serve at the pleasure of this Council; and

BE IT FURTHER RESOLVED, that all appointments to the REMIF Board of Directors made prior to this Resolution are hereby rescinded, including but not limited to Resolution No. 27-2015.

PASSED, APPROVED, AND ADOPTED this 6th day of February, 2017 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1488 : REMIF appointments)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Appointments to Northern California Power Agency (NCPA) Commission and Transmission Agency of Northern California (TANC)

PREPARED BY: Maria Curiel, City Clerk

STRATEGIC INITIATIVE(S):
Effective & Efficient Government

RECOMMENDED ACTION(S):

- (1) Adopt a Resolution appointing a Commissioner and Alternates to the Northern California Power Agency (NCPA) Commission and rescinding all previous appointments; and
 - (2) Adopt a Resolution appointing a Commissioner and Alternates to the Transmission Agency of Northern California (TANC) Commission and rescinding all previous appointments
-

BACKGROUND:

The City of Healdsburg is a member of the Northern California Power Agency (NCPA) and the Transmission Agency of Northern California (TANC), which were created by a JPA to primarily procure power and transmit same for the City.

As members of these Agencies, the City of Healdsburg is entitled to have representation on the Commissions that oversee the Agencies. The appointments require formal action by City Council resolution.

DISCUSSION/ANALYSIS:

City Council Resolution Nos. 7-2015 and 8-2015 appointed Councilmember Plass as Commissioner, and Mayor McCaffery, City Manager Mickaelian, and Utility Director Crowley as Alternates on NCPA and TANC Commissions. At its last meeting, the Council informally voted to appoint Councilmember Plass as the Commissioner and Councilmember Hagele as Alternate, respectively, on both NCPA and TANC Commissions. The proposed resolutions (attached) formally make the Commissioner and Alternate appointments.

Additionally, following past practice, Staff recommends that the City Manager and Utility Director be also appointed as Alternates to the TANC and NCPA Commissions and that the

NCPA General Manager be appointed as Alternate to the TANC Commission. The proposed resolutions provide for the proposed Alternate appointments and also rescind the existing appointments and resolutions

ALTERNATIVES:

Council could opt to not appoint City Manager Mickaelian or Utility Director Crowley as Alternates on NCPA and TANC Commissions; or the NCPA General Manager to the TANC Commission. In the event that the Council chooses this option, the proposed resolutions will need to be revised.

FISCAL IMPACT:

The cost to attend the meetings has been included in the adopted operating budget.

ENVIRONMENTAL ANALYSIS:

The subject matter of this resolution involves administrative activities of the City that will not result in direct or indirect changes in the environment. Therefore, the adoption of this resolution is not a “project”, as defined in the California Environmental Quality Act (“CEQA”) and does not require environmental review, pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines), sections 15060(c)(3) and 15378(b)(5)

ATTACHMENT(S):

Resolution - NCPA

Resolution - TANC

CITY OF HEALDSBURG

RESOLUTION NO. ___-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPOINTING A COMMISSIONER AND ALTERNATES TO THE NORTHERN CALIFORNIA POWER AGENCY (NCPA) AND RESCINDING ALL PREVIOUS APPOINTMENTS

WHEREAS, the City of Healdsburg is a member of the Northern California Power Agency (NCPA); and

WHEREAS, as a member of NCPA the City of Healdsburg is entitled to have representation on the NCPA Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby appoints Gary Plass as the City of Healdsburg’s Commissioner to the Northern California Power Agency (NCPA), to serve at the pleasure of this Council; and

BE IT FURTHER RESOLVED, that in the following order of precedence, depending upon availability, Councilmember David Hagele, City Manager David Mickaelian and Utility Director Terry Crowley, are hereby appointed as Alternate Commissioners of the City of Healdsburg to NCPA, to serve at the pleasure of the City Council and in the absence or inability of the Commissioner to act; and

BE IT FURTHER RESOLVED, that all appointments of Commissioner and Alternate Commissioners made prior to this Resolution are hereby rescinded, including but not limited to Resolution No. 7-2015.

PASSED, APPROVED, AND ADOPTED this 6th day of February, 2017 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution - NCPA (1487 : NCPA and TANC appointments)

CITY OF HEALDSBURG

RESOLUTION NO. ___-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPOINTING A COMMISSIONER AND ALTERNATES TO THE TRANSMISSION AGENCY OF NORTHERN CALIFORNIA (TANC) COMMISSION AND RESCINDING ALL PREVIOUS APPOINTMENTS

WHEREAS, the City of Healdsburg is a member of the Transmission Agency of Northern California (TANC); and as a member of TANC the City of Healdsburg is entitled to have representation on the TANC Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby appoints Gary Plass as the City of Healdsburg’s Commissioner on the TANC Commission, to serve at the pleasure of this Council; and

BE IT FURTHER RESOLVED that in the following order of precedence, depending upon availability, Councilmember Hagele, City Manager David Mickaelian, Utility Director Terry Crowley, and Northern California Power Agency (NCPA) General Manager or his/her designee, are hereby appointed as Alternate Commissioners of the City of Healdsburg to the TANC Commission, to serve at the pleasure of the City Council and in the absence or inability of the Commissioner to act; and

BE IT FURTHER RESOLVED that NCPA's General Manager is hereby authorized to appoint, in the absence of said Commissioner and Alternates, NCPA Staff as Alternate Commissioners, and to participate in the work of the Committees of TANC on behalf of the City of Healdsburg; and

BE IT FURTHER RESOLVED that Resolution No. 8-2015 is hereby rescinded as well as any and all appointments of Commissioner and Alternate Commissioners made to the TANC Commission prior to this Resolution.

PASSED, APPROVED, AND ADOPTED this 6th day of February, 2017 by the following vote:

AYES: Councilmembers:()

NOES: Councilmembers:()

ABSENT: Councilmembers:()

ABSTAINING: Councilmembers:()

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution - TANC (1487 : NCPA and TANC appointments)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Measure V Facility Improvement Project

PREPARED BY: Heather Ippoliti, Assistant City Manager

STRATEGIC INITIATIVE(S):
Infrastructure & Facilities

RECOMMENDED ACTION(S):

Adopt a resolution accepting the Measure V Facility Improvements Project (“Project”) as complete and authorizing staff to file a Notice of Completion with the Sonoma County Recorder’s Office

BACKGROUND:

One of the City Council’s initiatives in the Strategic Plan deals with the City's infrastructure. A key priority is to develop a Comprehensive City Facility Condition Assessment (“Assessment”), and a Long Range Maintenance Plan for City owned facilities in an effort to eradicate deferred maintenance.

In March 2015, Staff presented Council with the Assessment and a schedule of immediate maintenance issues at nine City facilities. In June 2015, Council appropriated Measure V funding to address the maintenance issues at five of the facilities. Staff contracted with Alameida Architecture to provide construction documents to address the immediate deficiencies and, on May 2, 2016, the Council awarded the Project to Kevin Mack Construction.

DISCUSSION/ANALYSIS:

The Project scope of work consisted of:

- Senior Center - (133 Matheson Street) – kitchen improvements, replacement of the HVAC system, roofing preservation and isolated re-roofing, and fire alarm installation.
- Fire Station (600 Healdsburg Avenue) - replacement of the HVAC system with isolated restoration roof repairs.

- Public Works Operations Dry Creek Chemical Building (550 Westside Road) - addition of an air conditioning unit.
- Healdsburg Community Center - miscellaneous customer enhancements (concrete removal, landscape upgrade), painting of entire center, demolition of portable units on the south-side of the center, rental portable upgrades.

Initially, the Project also included work at the police station. However, that portion was over budget and therefore delayed until fiscal year 2016-17.

City Council awarded a 10% contingency for unforeseen issues. That entire amount was utilized for additional floor replacement, cabinet staining, a new electrical panel and grease trap at the Senior Center, and increased concrete work to rectify trip hazards at the Community Center.

The total cost of the project was \$782,249.

ALTERNATIVES:

The Contract Documents contemplate the filing of the Notice of Completion once the improvements installed are to the satisfaction of the City. The City Council may direct staff to not file the Notice of Completion. In this instance any outstanding amounts due to the Contractor would be due and payable 35 days after the recorded Notice of Completion is received by the City.

FISCAL IMPACT:

The Project was funded by Measure V proceeds. There is no additional fiscal impact related to the proposed action.

ENVIRONMENTAL ANALYSIS:

Pursuant to Title 14, the California Code of Regulations, Section 15302(c) of the California Environmental Quality Act (“CEQA”) guidelines, approval of this resolution is an administrative activity of the City that will not result in direct or indirect physical changes to the environment.

ATTACHMENT(S):

Resolution
Notice of Completion
Certificate of Completion

CITY OF HEALDSBURG

RESOLUTION NO. ___-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG ACCEPTING THE MEASURE V FACILITY IMPROVEMENTS PROJECT AS COMPLETE AND AUTHORIZING STAFF TO FILE A NOTICE OF COMPLETION WITH THE SONOMA COUNTY RECORDER'S OFFICE

WHEREAS, in March 2015 staff presented Council with the schedule of immediate issues found at nine City facilities; and

WHEREAS, City Council in conjunction with the Strategic Plan awarded staff Measure V funding to improve City facilities and infrastructure at five of the nine facilities; and

WHEREAS, the said work and improvements consisted of HVAC upgrades, roof repairs, kitchen upgrades, exterior painting and customer enhancements; and

WHEREAS, the scope of work was over budget for the Police Station, which will be rebid in fiscal year 2016-17; and

WHEREAS, the Project was awarded to Kevin Mack Construction who completed the work January 31, 2017; and

WHEREAS, the Assistant City Manager recommended that the City Council accept the Project as complete and take appropriate action to finalize the Project; and

WHEREAS, the acceptance of the Project as complete is exempt from the provisions of the California Environmental Quality Act pursuant to Title 14, the California Code of Regulations, Section 15302.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby:

1. Accepts the Project as complete, authorizes staff to file a Notice of Completion with the County Recorder's Office.
2. Authorizes staff to release any retention due and payable Kevin Mack Construction within thirty-five (35) days after the recordation of the Notice of Completion subject to any retention requirements permitted by law.
3. Finds pursuant to Title 14, the California Code of Regulations, Section 15302(c) of the California Environmental Quality Act ("CEQA") guidelines, accept the Project as

complete is an administrative activity of the City that will not result in direct or indirect physical changes to the environment.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Healdsburg this 6th day of February, 2017 by the following vote:

AYES: Councilmembers: ()

NOES: Councilmembers: ()

ABSENT: Councilmembers: ()

ABSTAINING: Councilmembers: ()

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1477 : Measure V Facility Improvement Project)

Recording Requested by:
Healdsburg City Clerk

When Recorded Return to:
Healdsburg City Clerk
401 Grove Street
Healdsburg, Ca. 95448

CITY OF HEALDSBURG - NOTICE OF COMPLETION

Project Title:	Measure V Improvement Project
Site Address or Location:	1557 Healdsburg Avenue, 133 Matheson Street, 550 Westside Road, 601 Healdsburg Avenue, Healdsburg CA 95448
Property Owner:	City of Healdsburg
Address:	401 Grove Street, Healdsburg CA 95448
Nature of Owner's Interest	Property Improvements

NOTICE IS HEREBY GIVEN THAT I, HEATHER IPPOLITI, ASSISTANT CITY MANAGER of the City of Healdsburg, California, on February 6, 2017 did file with the City Clerk of the City of Healdsburg, my Notice of Completion of the following described work the contract for doing which was heretofore awarded to KEVIN MACK CONSTRUCTION, on May 26, 2016, in accordance with the City Clerk and approved by the City Council of said City;

That said work and improvements were actually completed on January 31, 2016;

That acceptance of the said work and improvements was ordered by City Council Resolution No. ____ - 2016 on February 6, 2017.

That said work and improvements consisted of HVAC upgrades, roof repairs, kitchen upgrades, exterior painting and customer enhancements collectively known at the Project as more specifically described in the plans and specifications approved by the City Council of the City of Healdsburg.

I, HEATHER IPPOLITI, ASSISTANT CITY MANAGER, of the City of Healdsburg do hereby certify, under penalty of perjury, that the foregoing is true and correct.

DATED:

ATTEST:

Shaun McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Notice of Completion (1477 : Measure V Facility Improvement Project)

CITY OF HEALDSBURG CERTIFICATE OF COMPLETION

Project Title:	Measure V Improvement Project
Site Address or Location:	1557 Healdsburg Avenue, 133 Matheson Street, 550 Westside Road, 601 Healdsburg Avenue, Healdsburg CA 95448
Property Owner:	City of Healdsburg
Address:	401 Grove Street, Healdsburg CA 95448

I, HEATHER IPPOLITI, ASSISTANT CITY MANAGER of the City of Healdsburg, California, on February 6, 2017 have determined and hereby certify that:

- Measure V Improvement Project, awarded to KEVIN MACK CONSTRUCTION, by the City Council on May 26, 2016 had been substantially completed by KEVIN MACK CONSTRUCTION in accordance with the project plans and specifications;
- Said work and improvements were actually completed on January 31, 2017.
- That said work and improvements consisted of HVAC upgrades, roof repairs, kitchen upgrades, exterior painting and customer enhancements collectively known at the Project as more specifically described in the plans and specifications approved by the City Council of the City of Healdsburg.

I, HEATHER IPPOLITI, ASSISTANT CITY MANAGER, of the City of Healdsburg do hereby certify, under penalty and perjury, that the foregoing is true or correct.

DATED:

ATTEST:

HEATHER IPPOLITI,
ASSISTANT CITY MANAGER

MARIA CUIREL, CITY CLERK

Attachment: Certificate of Completion (1477 : Measure V Facility Improvement Project)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Public Hearing to consider adoption of a resolution revising development impact fees for Accessory Dwelling Units

PREPARED BY: Brent Salmi, Public Works Director

STRATEGIC INITIATIVE(S):
Economic Diversity & Innovation
Fiscal Responsibility

RECOMMENDED ACTION(S):

Adopt a Resolution approving revised development impact fees for Accessory Dwelling Units

BACKGROUND:

In September 2016, the Governor signed amendments to the State Government Code (“GC”) Section 65852.2 (aka, SB1069) and related legislation that require local agencies to reduce regulatory constraints for accessory dwelling units (“ADU’s”). The City recently adopted new land use standards to address these legislative changes, however, SB1069 also included limits on development fees that local agencies can charge for ADU’s. The main change was the limitation of utility connection fees or capacity charges to a fee based on the proportionate size of the accessory dwelling unit compared to the primary structure or a fee based on the ADU’s number of plumbing units.

SB1069, also, prohibits local agencies from requiring separate utility services for ADU’s. Traditionally, the City of Healdsburg has not required separate utility services for ADU’s, leaving the installation of separate services to the property owner’s discretion.

DISCUSSION/ANALYSIS:

At present, impact fees for a single family residential dwelling unit are charged per residential unit irrespective of building square footage, number of bedrooms, number of bathrooms, or water meter size. Current fees are as follows:

\$ 5,834 - Water System Capacity
9,676 - Sewer System Capacity
975 - Electric Development Fee

2,991 - Streets & Traffic Controls
 2,057 - Park System
3,222 - Storm Drain System
\$24,755 - TOTAL

Currently, accessory dwelling unit development impact fees are charged at 50% of the single family residential dwelling fees (City Council Resolution 167-84) excepting Water System Capacity and Sewer System Capacity fees which are charged as Multi-Family Residential (August 5, 2013 - Water and Wastewater Capacity Charge Study adopted by City Council Resolution 98-2013). These fees are as follows:

\$ 3,500.00 - Water System Capacity
 8,708.00 - Sewer System Capacity
 975.00 - Electric Development Fee
 1,495.50 - Streets & Traffic Controls
 1,028.50 - Park System
1,611.00 - Storm Drain System
\$ 17,317.50 - TOTAL

With the passage of SB1069 water and sewer system capacity fees can be levied either based on the proportionate size of the ADU to the primary dwelling unit or based on plumbing fixture units. Staff recommends using the plumbing fixture units method. This method is recommended because the City does not impose additional capacity fees when bedrooms or bathrooms are added to existing single family dwelling units. If ADU's are treated in a consistent manner, the only impact related to an ADU is the addition of the kitchen.

In an effort to standardize these fees, it is estimated that the typical ADU will have a kitchen consisting of a sink and dishwasher and a single bathroom with a tub, shower, toilet and lavatory. The Uniform Plumbing Code fixture unit calculation for water supply and disposal is as follows:

<u>Fixture</u>	<u>Water Fixture Units</u>	<u>Disposal Fixture Units</u>
Tub	4	2
Shower	2	2
Toilet	2.5	3
Lavatory	1	1
Kitchen Sink	1.5	2
Dishwasher	1.5	2
Total Bath	9.5	8
Total Kitchen	3.0	4
ADU Total	12.5	12.0
Kitchen Percentage of Total	24%	33%

As concluded above, the kitchen constitutes the only impact of an ADU on the water and sewer systems. As such, the Water System Capacity Fee should be 24% of the single family dwelling unit fee and the Sewer System Capacity Fee should be 33% of the single family dwelling unit fee, \$1,400 and \$3,193, respectively.

Streets and Traffic Controls Impact Fee

It's recommended that the Streets and Traffic Controls Fee for an ADU be based on the proportionate size of the ADU relative to the primary dwelling unit times the Streets and Traffic Controls Impact fee for a single family dwelling unit, i.e. ADU square footage / Primary Unit square footage x \$2,991.

Park System Impact Fee

It's recommended that the Park System Impact Fee for an ADU be based on the proportionate size of the ADU relative to the primary dwelling unit times the Park System Impact fee for a single family dwelling unit, i.e. ADU square footage / Primary Unit square footage x \$2,057.

Drainage System Impact Fee

Single family dwellings are charged a flat fee of \$3,222 regardless of the lot size, structure size or related hard surfaces. Commercial, industrial and multi-family developments are charged \$1.32 per square foot of impervious surface. It is recommended that this basic formula be used for ADU's, but that it only be applied to the footprint area of a new detached ADU. ADU's included within or attached to an existing single family structure or the conversion of an existing accessory structure would be exempt. For example, an 850 s.f. single story ADU (the largest allowed by City code) would have a drainage system impact fee of \$1,122.

Electric System Connection Fee

Electric development fees are based upon the size (amperage) of the residential service panel and assessed only when a new residential unit is built. Similar to the water and sewer services, if the ADU is served through the existing primary residence's electric service panel, staff recommends that no development fee be applied. If, the owner chooses to have a separate electric service installed, then a development fee for the new meter or ADU would be charged based upon the new electric panel's size and therefore proportional to the demand placed upon the electric system. Since electric development fees for new electric services are currently charged proportional to the new load, no change in fee is recommended.

ALTERNATIVES:

The City Council can direct staff to modify the method of calculation on any or all of the fees as long as the final adopted fees conform to the requirements of SB1069. The Council could also decide to waive the fees if a covenant is recorded to assure the ADU's long term affordability. However, should the City Council consider the waiving of any of the fees, the Council must be aware that such a fee waiver would trigger the requirement for prevailing wage provisions to be implemented. The prevailing wage provisions will likely contribute to increased cost of construction that would exceed the value of the fee waiver.

Alternatively, the Council could direct staff to explore the creation of an affordable housing impact fee loan program to help offset the cost of the fees.

FISCAL IMPACT:

The proposed fee revisions likely better represent the actual fiscal impact of an ADU and, thusly, will have no detrimental effect on the various enterprise funds or their related operations.

ENVIRONMENTAL ANALYSIS:

The proposed fee revisions are statutorily exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15273(a) which exempts the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares and other charges by public agencies.

ATTACHMENT(S):

Resolution

CITY OF HEALDSBURG

RESOLUTION NO. ____-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING ACCESSORY DWELLING UNIT DEVELOPMENT IMPACT FEES

WHEREAS, in September 2016, the Governor signed amendments to the State Government Code Section 65852.2 (aka, SB1069) and related legislation that require local agencies to reduce regulatory constraints for accessory dwelling units (“ADU’s”); and

WHEREAS, SB1069 also limits the manner in which development fees can be imposed on ADU’s; and

WHEREAS, single family dwelling units are assessed fixed development fees irrespective of the number of bedrooms, bathrooms or the square footage of the structure; and

WHEREAS, the construction of additional bedrooms and/or bathrooms to a single family dwelling unit does not trigger the imposition of additional development fees; and

WHEREAS, being consistent with the practice of how fees are imposed on single family dwellings, the only impact of an ADU is the addition of the kitchen; and

WHEREAS, SB1069 allows sewer and water system capacity fees to be calculated based on plumbing fixture units; and

WHEREAS, it is assumed that the typical ADU will have a kitchen consisting of sink and dishwasher and a single bathroom having a tub, shower, toilet and lavatory. The Uniform Plumbing Code fixture unit calculation is as follows:

<u>Fixture</u>	<u>Water Fixture Units</u>	<u>Disposal Fixture Units</u>
Tub	4	2
Shower	2	2
Toilet	2.5	3
Lavatory	1	1
Kitchen Sink	1.5	2
Dishwasher	1.5	2
Total Bath	9.5	8
Total Kitchen	3.0	4
ADU Total	12.5	12.0
Kitchen Percentage of Total	24%	33%

Attachment: Resolution [Revision 2] (1475 : Accessory Dwelling Unit Fees)

Resolution No. ____-2017
Page 2

WHEREAS, 24% of the single family Water System Capacity Fee is \$1,400 and 33% of the Sewer System Capacity Fee is \$3,193; and

WHEREAS, Streets and Traffic Controls Impact Fee is 50% of the single family dwelling unit or \$1,495.00; and

WHEREAS, the development of an ADU will decrease the outdoor space available for the primary residence and the ADU and will, therefore, place a higher demand for park space. As such, the Park System Impact is 50% of the single family dwelling unit fee or \$1,082.50; and

WHEREAS, Drainage System Impact fees shall be based on the square footage of the ADU footprint multiplied by \$1.32 per square foot (SF). An ADU constructed within or attached to an existing single family structure or the conversion of an existing permitted accessory structure would be exempt; and

WHEREAS, SB1069 prohibits the levying of utility connection fees for water, sewer and electric if the ADU is connected to the existing primary unit services. Connection fees will only be levied if the owner opts to have separate services installed; and

WHEREAS, these fee revisions are statutorily exempt from California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15273(a) which exempts the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares and other charges by public agencies.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby adopts the following development impact fees for Accessory Dwelling Units:

Water System Capacity Fee:	\$1,400
Sewer System Capacity Fee:	\$3,193
Electric Development Fee:	\$ 975
Streets & Traffic Controls Impact Fee:	ADU square footage / primary unit square footage x \$2,991
Park System Impact Fee:	ADU square footage / primary unit square footage x \$2,057
Drainage System Impact Fee:	\$1.32/SF of Detached ADU Footprint

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Healdsburg this 6th day of February, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

Attachment: Resolution [Revision 2] (1475 : Accessory Dwelling Unit Fees)

Resolution No. ____-2017
Page 3

ABSENT:Councilmembers:

ABSTAINING:Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution [Revision 2] (1475 : Accessory Dwelling Unit Fees)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Consideration of an Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

PREPARED BY: Brent Salmi, Public Works Director

STRATEGIC INITIATIVE(S):
Quality of Life
Effective & Efficient Government

RECOMMENDED ACTION(S):

Adopt a resolution approving the amended and restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency

BACKGROUND:

The Sonoma County Waste Management Agency (“SCWMA”) was formed in 1992 to address state legislation requiring Cities and Counties to divert a minimum of 50% of their waste from landfill disposal by 2000. The SCWMA’s core programs currently include Wood Waste and Yard Debris (organic material) processing, Household Hazardous Waste (“HHW”) collection and proper disposal, solid waste education and outreach, and state-required solid waste planning and reporting. The SCWMA’s term was originally set for 25 years, but all members, including the City, agreed to extend the term an additional year, so the current term expiration is February 11, 2018. If the SCWMA is not extended or replaced, the services the SCWMA provides must be assumed by its members within their jurisdictions.

DISCUSSION/ANALYSIS:

The SCWMA Board of Directors, City and County staff, and governing Councils and Boards have been discussing the future of SCWMA programs for over three years. During that time, the efficacy of SCWMA programs has been examined by third parties and determined to have greater value performed by the SCWMA than with each jurisdiction performing the tasks individually. For the past several months, SCWMA staff and Counsel have drafted an Amended and Restated Joint Exercise of Powers Agreement, have shared that draft with all City Attorneys and County Counsel, incorporated feedback into a finalized draft agreement (Attachment C). The SCWMA Board approved this draft for distribution to SCWMA member agencies on December 21, 2016.

The Amended and Restated agreement retains the existing core programs (organics, HHW, education/outreach, and planning/reporting), while introducing the following noteworthy provisions:

- Continuing with the current composting program (directing green waste and wood waste to out of county compost facilities) and allowing members to opt into a potential future organics management program
- Allowing for HHW collection and processing to continue at the Central Disposal Site and adding flexibility to establish additional sites elsewhere in the county
- Allowing members to opt out of additional, non-core programs, and requiring that only participating members incur any additional costs for implementing those programs
- Removing the 25 year term (the SCWMA would remain in existence until dissolved), but requiring that a review of SCWMA programs be performed every ten years during a public meeting to determine whether any agreement amendments are necessary. Removing the 25 year term also provides the Agency the ability to bond against future revenues to facilitate the construction of new facilities like a compost facility
- Retaining the unanimous vote requirement for the acquisition of interest in real property with a value of greater than \$250,000
- Requiring a supermajority vote (8/10) for the adoption of the SCWMA annual budget or budget amendments, authorization of expenditures of \$250,000 or more to a single source within a single fiscal year, and incurrence of debt from public or private lending or financing sources in an amount of \$250,000 or more
- Removing provisions requiring the County to provide sites for composting and HHW at the Central Landfill

The Agency was sued over composting at the Central Landfill and the settlement does not allow composting at that location any longer. It's the primary issue that the Agency has to resolve once the JPA renewal is complete. There is a desire to have a composting facility in the County, and there is a need to find the appropriate location with willing neighbors.

A comparison of the existing and proposed SCWMA agreements is included as Attachment B. For the attached Amended and Restated Joint Exercise of Powers Agreement for the SCWMA to become effective, all participating members must approve the agreement in the same form. The agreement has been reviewed thoroughly by attorneys representing all Sonoma County cities, town, and the County, and all legal concerns were addressed in this final draft. The SCWMA Board of Directors reviewed and approved for distribution the attached agreement for the SCWMA at the December 21, 2016 SCWMA Board of Directors meeting.

Any changes to the agreement proposed by this Council would need to be approved by all other participating members, including members who may have already approved this agreement. Staff requests that any proposed changes be made with the understanding that arriving at this agreement language has required many, many hours of collective negotiations from City, Town, County, and SCWMA staff, and that even minor changes will require additional analysis and consideration by all participating members.

ALTERNATIVES:

Approval of the agreement would continue the City's participation in the services provided by the SCWMA, including organic material management, household hazardous waste collection and disposal, solid waste education and outreach, and regional solid waste planning and reporting. Not approving this agreement would require the City to provide the abovementioned services to City residents and businesses.

FISCAL IMPACT:

There are no additional funding impacts expected from the approval of the Amended and Restated Joint Exercise of Powers Agreement for the SCWMA, as the funding sources for that agency (tipping fee surcharges, grants, and agreement-defined contributions) are not expected to change in the FY 2017-18 Fiscal Year.

In the event of non-participation, additional costs for City implementation of SCWMA programs range from about \$15,000 to \$450,000 per year.

ENVIRONMENTAL ANALYSIS:

The proposed action is Categorically Exempt per California Environmental Quality Act section 15320, Changes in Organization of Local Agencies where the changes do not change the geographic area in which previously existing powers are exercised.

ATTACHMENT(S):

Resolution

Attachment A Memo summarizing AR JPA Agreement

Attachment B Comparison of Original JPA and A&R JPA

Attachment C SCWMA-A&R JPA Agreement

CITY OF HEALDSBURG

RESOLUTION NO. ___ - 2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HEALDSBURG APPROVING THE AMENDED AND
RESTATED JOINT EXERCISE OF POWERS AGREEMENT
FOR THE SONOMA COUNTY WASTE MANAGEMENT
AGENCY

WHEREAS, the Cities of Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and Windsor and County of Sonoma (“Membership”) entered into a certain agreement for the joint exercise of powers in the form of the Sonoma County Waste Management Agency (“SCWMA”) to deal with waste management issues originally in February 1992; and

WHEREAS, the Membership of the SCWMA amended the Joint Powers Authority (“JPA”) agreement in the First Amendment on January 24, 1996; and

WHEREAS, the Membership of the SCWMA amended the JPA agreement in the Second Amendment January 29, 2014; and

WHEREAS, the original term of the JPA agreement was 25 years and would expire on February 11, 2017; and

WHEREAS, the Membership of the SCWMA extended the term of the JPA agreement for one additional year, to February 11, 2018; and

WHEREAS, the Board of Directors of the SCWMA has analyzed the functions and programs of the SCWMA in great detail and determined that approving the attached Amended and Restated Joint Exercise of Powers Agreement for the SCWMA provides more benefits to the Membership than the alternatives examined.

NOW, THEREFORE, BE IT RESOLVED that City Council of the City of Healdsburg approves of this Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency and authorizes the Mayor to execute the Amended and Restated Joint Exercise of Powers Agreement for the Sonoma County Waste Management Agency.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Healdsburg this 6th day of February, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1476 : SCWMA JPA Renewal)



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: Patrick Carter
From: Ethan Walsh
 Agency Counsel
Date: January 13, 2017
Re: Amended and Restated Joint Exercise of Powers Agreement

I. Introduction

This memorandum summarizes the key provisions of the Amended and Restated Joint Powers Agreement (“the “JPA Agreement”) that the Sonoma County Waste Management Agency (“Agency”) Board directed staff to pass on to the Members, for consideration by their legislative bodies. I have also enclosed a document that compares some of the key provisions of this Agreement to the Original Joint Powers Agreement, as it has been amended to date.

II. Key Terms of Draft Agreement

A. Core Programs. (Section 4) The Agency’s core programs include: (1) Household Hazardous Waste Recycling Program; (2) Composting Program; (3) Education Program; and (4) Reporting Program.

1. Household Hazardous Waste Program: (Section 4.A) This section largely tracks the language in the current JPA agreement and allows that the HHW Program will continue as is. The one significant change is that the description of this program allows that while the program is currently operated at the Central Landfill, that location may be moved as deemed necessary or appropriate by the Board. This language is intended to give the Board flexibility to relocate the program if needed during the life of the Agency.

2. Composting Program: (Section 4.B) This Section contains the most significant changes to any of the Core Programs.

i. *Current Program:* (Section 4.B.i) The draft JPA Agreement provides that the Agency may continue to operate its current composting program, which consists of the collection and processing of yard waste, residential food waste and wood waste at the Central Landfill and Transfer Stations (Section 4.B.i). This language is intended to ensure that the Agency has the authority to continue operating its current program of hauling compostable materials received from member agencies for so long as this service is needed.

ii. *Withdrawal from Current Program:* (Section 4.B.ii) This section allows that members can withdraw from the current program with ninety (90) days written notice to the Agency. We recognize that some of the member



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ATTORNEYS AT LAW

agencies are exploring different options for composting, and may want to enter into an alternative arrangement separate from the other members. This withdrawal provision is intended to give all members the flexibility to transition to a different option, while still allowing the other members to continue with the existing program for as long as necessary. The compost program is funded from tipping fees collected from compost delivered to the Central Landfill and Transfer Stations. So if an individual member withdraws, that member will no longer be charged for composting. Further, the Agency is only charged for the compost materials delivered to the various out of county composting facilities utilized as part of the current program. These factors allow for a fairly straight forward transition if a member or members withdraw from the Current Program. A member that has withdrawn may rejoin the Current Program, but only if approved by a majority vote of the Board.

iii. *Alternative Composting Programs:* (Section 4.B.iii) This section provides the Agency with the authority to develop an alternative program for composting to serve all or some of the Agency's members. However, any alternative program would have to be developed through a separate agreement between the participating members, or through an additional amendment to the JPA Agreement. This gives the Agency the ability to take the lead in developing a composting solution for the region, and the flexibility to either implement a program itself, or allow member agencies to develop a program or programs to meet their needs.

3. Education Program. (Section 4.C) The Agency will continue to operate its education program as it has in the past. The new language is not intended to change the Agency's existing program.

4. Reporting Program. (Section 4.D) The Agency will continue to serve as a Regional Agency and conduct mandated reporting for the member agencies as required under the Integrated Waste Management Act. The language in this section regarding civil penalties, contingency plans, and members' duties and responsibilities is taken from the First Amendment to the current JPA Agreement, which originally established the Agency as a regional agency for reporting purposes. This language does not make changes to the Agency's existing reporting program.

B. Additional Programs: (Section 5) The Agreement allows that the Agency can develop and implement additional regional programs related to waste diversion for the member agencies. These types of programs could include the development of ordinances or programs on a regional basis that would further the Agency's waste diversion goals. However, these programs would only be implemented in jurisdictions that actually approved the program or ordinance. This section allows the Agency to continue to develop and implement programs similar to the plastic bag ban, but also allows individual members to retain their legislative



BEST BEST & KRIEGER
ATTORNEYS AT LAW

authority to decide whether or not they want to adopt these programs in their jurisdiction. Further, funding for any of these additional programs would be incorporated into the Agency budget, so that the Board members can ensure that the Agency is not spending an undue amount of resources on these additional programs.

Additionally, once an Additional Program is developed, if some, but not all of the members choose to participate in that program and have the Agency implement that program for them, those members will need to pay the Agency for the cost of implementation. This would not include the cost of developing the additional program, which would be shared by all members and would be paid for out of the Agency fee charged against solid waste received in the County. It would also not include the indemnification of individual members from a challenge to the additional program. So, if the Agency developed a model ordinance and that model ordinance was adopted by members as an additional program, the Agency would still indemnify the individual member against any legal challenges to that ordinance, even if not all members choose to participate in the program.

C. Term: (Section 6.B) This section provides that the Agency shall remain in existence until it is dissolved (i.e., no fixed term). This is in contrast to the Original Agreement, which included a 25 year term, at the end of which the Agency would be dissolved. The JPA agreement does include a separate section providing that the Agency shall conduct a public meeting every ten years to review the terms of the Agreement, and the Executive Director and Agency Counsel will make a recommendation on whether any amendments to the Agreement are needed. (Section 8.H) This section does not require the Members to make any amendments, nor does it prevent the Members from making amendments at another time.

D. Directors and Alternates: (Section 7.B) The Board composition will remain the same, with each member having one spot on the Board, and the members having the option of appointing an elected official or staff member, at their discretion.

E. Supermajority Vote Items. (Section 8.F) The Board will need an 8/10 to approve any of the following items: (i) Approval or amendment of the Agency budget; (ii) incurrence of debt greater than \$250,000; (iii) expenditures in an amount greater than \$250,000; and any increases or adoption of new fees. Additionally, the Board will need unanimous approval of acquisition of any interest in real property with a value of greater than \$250,000. These sections are changed from the original agreement, which required a unanimous vote for major project expansions, approval of the budget, and capital expenditures of greater than \$50,000.

F. Withdrawal of Members. (Section 10.E) The draft JPA Agreement provides that any Member may withdraw from the Agency upon one hundred eighty (180) days written notice to the Agency and the other Members, provided that the withdrawal can only be effective at the end of a given Fiscal Year. The Agreement provides that in the event a Member withdraws, the Agency will have no obligation to disburse any property or assets to the withdrawing member, and the Agency shall have no further obligation to the withdrawing Member.



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ATTORNEYS AT LAW

G. Dissolution of the Agency. (Section 10.G) The draft JPA Agreement includes a provision allowing for the dissolution of the Agency. The Agency can be dissolved by a unanimous vote of the Board and approval of the Members' governing boards, provided that the Agency will not be dissolved until all its debts and liabilities are eliminated. If the Agency has remaining assets after all debts and liabilities are eliminated, those are divided amongst the members on a pro rata basis, based on the population of the member agencies.

H. Agreements with Individual Member Agencies. (Section 12.G) In addition to including the Agency's authority to continue to collect the Waste Management Fees, Composting Fees, and any fees adopted in the future to fund its programs, the amended and restated JPA Agreement grants explicit authority for the Agency to enter into individual agreements with member agencies to make available some or all of the Core Programs and Additional Programs in exchange for direct compensation. This is intended to grant the Agency more explicit authority to enter into arrangements similar to the Agency's existing relationship with the City of Petaluma.

I. Provisions Removed from the Current JPA Agreement. The current JPA Agreement includes certain provisions that require the County to provide sites for the operation of the composting operation and household hazardous waste sites at the Central Landfill. These provisions are not included in the new draft JPA Agreement. The County and Agency both recognized that the current JPA Agreement does not have sufficient detail regarding the terms pursuant to which the Agency can use the Central Landfill, and therefore entered into separate License Agreements that govern the use of property at the Central Landfill. Given that the Agency has separate, detailed agreement that govern the Agency's use of the County's property, it is unnecessary to include those provisions as a term of the JPA. Further, the Agency should retain flexibility to relocate both the composting and household hazardous waste recycling programs as necessary. Rather than specifying a location for these programs, the draft JPA Agreement gives the Agency additional discretion by not committing to a specific location.

COMPARISON OF KEY JPA TERMS

Terms	Original JPA Agreement	Amended and Restated JPA Agreement
Core Programs	(1) Household hazardous waste (2) Wood waste (3) Yard waste (4) Public education and (5) Regional reporting of waste diversion	Core programs are essentially the same: (1) Household hazardous waste (2) diversion of organic materials (includes yard waste and wood waste) (3) Public education (4) Regional reporting
Additional Programs	Agency can implement "non-core programs", including adoption of ordinances. Participants may elect to either participate or not participate in non-core programs.	Agency has the authority to implement Additional Programs related to its overarching purpose of increasing waste diversion in the Member's jurisdictions. Additional programs may include adoption of <u>model</u> ordinances to be considered by individual jurisdictions, implementation of the programs adopted by model ordinances, and development or participation in regional plans related to waste diversion.
Composting Program	County is required to provide a site free at the Central Landfill for wood and yard waste composting. (Sec. 5) All Members are required to cause all wood waste and yard waste to go to Central Landfill for treatment.	Agency will continue to operated its current composting program, which consists of hauling organic waste from the Central landfill and transfer stations to out-of-county facilities. Members can withdraw from the current composting program with 90 days written notice. Agency will additionally work on developing an alternative program for composting or other forms of organic materials diversion. Any new composting program will be implemented through separate agreements between the parties, and each Member will have the option to participate, address composting in some other manner.
Household Hazardous Waste Program	County is required to provide a site free at the Central Landfill for HHW acceptance. The HHW program is available to residents of all member agencies.	Acknowledges that the HHW program is currently operated at the Central Landfill pursuant to a license agreement with the County, but allows that the Location may move, or additional locations may be added from time to time.

Terms	Original JPA Agreement	Amended and Restated JPA Agreement
Adoption of Ordinances	The Agency has the authority to adopt ordinances to implement programs related to waste diversion. Each agency can decline to participate in the program adopted by ordinance.	The Agency can develop additional programs, which may include <u>model</u> ordinances. If the Agency choose to implement the terms of model ordinances, it can enter into individual agreements with members, and agree to indemnify the member for implementation of the ordinances.
Cost of Additional Programs	While each member can decide whether or not to participate in "non-core" programs, non-participation does not reduce a member's fiscal participation.	The cost of development of additional programs will be paid out of general Agency funds. If the Agency develops an additional program, and some but not all of the members participate, then each member that participates will be responsible for the costs of implementing the program in its own jurisdiction.
Board Representation	10 member Board of Directors. One vote per jurisdiction. Board members are elected officials or staff, as determined by member governing boards.	Same
Voting Requirements	Unanimous vote required for budget approval, capital expenditure over \$50,000, and major program expansions. All other votes are majority.	8/10 vote required for approval or amendment of the budget, incurrence of debt of \$250,000 or more, expenditures of \$250,000 or more, any increase or imposition of new fees. Unanimous vote required for acquisition of real property valued at \$250,000 or more. All other votes are majority.
Term of JPA Agreement	JPA agreement has a 25 year term (has been extended by one year).	JPA agreement will continue in effect until the Agency is dissolved by the action of the Members. However, the Agency Executive Director conduct a public meeting at least once every 10 years to review the Agreement, to see whether updates are necessary.

Attachment: Attachment B Comparison of Original JPA and A&R JPA (1476 : SCWMA JPA Renewal)

Terms	Original JPA Agreement	Amended and Restated JPA Agreement
Withdrawal of Members	Not addressed.	Allows that any member can withdraw from the Agency with a minimum of 180 days written notice, with the withdrawal effective at the end of the fiscal year in which the 180 notice period ends. Withdrawing members do not receive a distribution of assets or have any further obligations to the Agency
Dissolution of Agency	Not addressed.	Agency may be dissolved by the unanimous approval of the Members' boards. The Agency shall not be dissolved until all debts and liabilities have been eliminated and paid in full. The remaining assets of the Agency will be distributed to the members on a proportionate basis, based on each member's population at the time of dissolution.

Attachment: Attachment B Comparison of Original JPA and A&R JPA (1476 : SCWMA JPA Renewal)

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
FOR THE SONOMA COUNTY WASTE MANAGEMENT
AGENCY**

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (“Agreement”) is made and entered into as of March 1, 2017 (“**Effective Date**”), by and among the County of Sonoma, a political subdivision of the State of California, the City of Cotati, a California municipal corporation, the City of Cloverdale, a California municipal corporation, the City of Healdsburg, a California municipal corporation, the City of Petaluma, a California municipal corporation, the City of Rohnert Park, a California municipal corporation, the City of Santa Rosa, a California municipal corporation, the City of Sebastopol, a California municipal corporation, the City of Sonoma, a California municipal corporation, and the Town of Windsor, a California municipal corporation (collectively “**Members**” and each individually a “**Member**”).

RECITALS

A. The Members are authorized and empowered to contract with each other for the joint exercise of powers pursuant the Joint Exercise of Powers Act (Government Code Section 6500 *et seq.*) (the “**JPA Act**”).

B. The California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000 *et seq.*) (the “**Integrated Waste Management Act**”) requires Members to divert recyclable and recoverable materials from the waste stream and to cooperate to achieve certain waste diversion goals.

C. On or before September 9, 1992, the Members entered into that certain Agreement between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal With Waste Management Issues (Wood Waste, Yard Waste, Household Hazardous Waste, and Public Education) (the “**Original Agreement**”) to enable the Members to jointly exercise their powers to address issues related to the management of wood waste, yard waste and household hazardous waste and to provide public education related to waste diversion within the Members’ jurisdictions.

D. The Original Agreement created a separate public entity known as the Sonoma County Waste Management Agency (the “**Agency**”) to implement the purposes of the Original Agreement.

E. On January 24, 1996, the Members entered into that certain First Amendment to Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues (the “**First Amendment**”).

F. On March 27, 2014, the Members entered into that certain “Second Amendment to Agreement Between the Cities of Sonoma County and Sonoma County for a Joint Powers Agency to Deal with Waste Management Issues (the “**Second Amendment**”).

G. The Members desire to continue to jointly exercise common powers and authority through the Agency and to amend and restate the terms of Original Agreement as amended by the First Amendment and the Second Amendment, as with respect to the terms and provisions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, the Members hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

A. "Agreement" means this Amended and Restated Sonoma County Waste Management Agency Joint Exercise of Powers Agreement.

B. "Agency" shall mean the Sonoma County Waste Management Agency, which is a separate entity created by this Agreement pursuant to the provisions of California Government Code sections 6500 *et seq.*

C. "Board of Directors" or "Board" shall mean the governing body of the Agency as established by Section 7 of this Agreement.

D. "Bylaws" shall mean the bylaws adopted by the Board of Directors pursuant to Section 9.05 of this Agreement to govern the day-to-day operations of the Agency.

E. "Director" and "Alternate Director" shall mean a Director or Alternate Director appointed by a Member pursuant to Section 7.B of this Agreement.

F. "First Amendment" shall have the meaning set forth in Recital E.

G. "Fiscal Year" shall mean that period of 12 months established as the Fiscal Year of the Agency pursuant to Section 12.B of this Agreement.

H. "Food Waste" shall mean a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption; and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as, cafeterias in prisons, schools and hospitals), and residential food scrap collection. Food waste does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.

I. “Hazardous Waste” shall mean waste as defined in Section 40141 of the Public Resources Code and Section 25117 Health and Safety Code that is, waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following: (i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; (ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

J. “Household Hazardous Waste” shall mean waste materials determined by the California Department of Resources Recycling and Recovery, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be of such a nature that they must be listed as hazardous in state statutes and regulations, and which are toxic/ignitable/corrosive/reactive, or carcinogenic/mutagenic/teratogenic; and are discarded from householders as opposed to businesses.

K. “Integrated Waste Management Act” shall mean the California Integrated Waste Management Act of 1989, set forth at California Public Resources Code Section 40000 *et seq.*, including all laws and regulations supplemental thereto, as they may be amended from time to time.

L. “JPA Act” shall mean the Joint Exercise of Powers Act, set forth at California Government Code, sections 6500, *et seq.*, including all laws and regulations supplemental thereto, as they may be amended from time to time.

M. “Member” or “Members” shall mean the agencies as listed in the preamble of this Agreement, above.

N. “Original Agreement” shall have the meaning set forth in Recital C.

O. “Regional Agency” shall mean the designation of the Agency as a “Regional Agency” by the California Integrated Waste Management Board in compliance with Public Resources Code Section 40975.

P. “Residential Food Waste” shall mean Food Waste generated by people residing within the Members’ jurisdictions who own or occupy single family homes or residential structures with no more than four separate residential living units.

Q. “Second Amendment” shall have the meaning set forth in Recital F.

R. “Wood Waste” shall mean solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, process or storage of raw wood materials, or construction and demolition activities.

S. “Yard Waste” shall mean any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including but not limited to, yard clippings, leaves, tree trimmings, pruning, brush, and weeds.

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2. PURPOSE

A. Amended and Restated Agreement. The purpose of this Agreement is to modify and amend the Original Agreement with respect to the purposes, membership, governance, administration and operation of the Agency, and to allow the Agency to continue operations for an extended term as set forth herein. The terms and provisions of this Agreement replace the Original Agreement as amended by the First Amendment and the Second Amendment in its entirety. Unless expressly stated herein, this Agreement does not affect any of the Agency's contracts, debts, revenues, claims, obligations, policies, procedures or bylaws that pre-date this Agreement, which will continue to remain in full force and effect in accordance with their terms and/or applicable law.

B. Continuation of the Sonoma County Waste Management Agency as a Separate Public Entity. The Members created the Agency as a distinct public entity, separate and apart from the Members, pursuant to and in accordance with the provisions of the JPA Act. It is the intent of the Members that under this Agreement the Agency shall continue as a distinct public entity under the JPA Act and other applicable law.

C. Core Programs. The Agency has the authority to provide the following core programs to the Members: (1) Provide for the recycling and disposal of Household Hazardous Waste from the Members' jurisdictions (the "Household Hazardous Waste Program"); (2) provide services and programs to provide for or facilitate the diversion of organic material, including but not limited to Yard Waste and Wood Waste (the "Organic Materials Program"); (3) provide education regarding recycling, composting and other methods of waste diversion to Members and the public (the "Education Program"); and (4) conduct, prepare and submit all monitoring and reporting as a Regional Agency as required pursuant to the Integrated Waste Management Act (the "Reporting Program"). The Agency may not add to or eliminate these core programs except by amendment of this Agreement. The Core Programs are further described in Section 4 of this Agreement.

D. Additional Programs. The Agency may conduct additional planning activities and development of regional programs that are related to the furtherance of increasing waste diversion within the Members' jurisdictions, provided that implementation of any regional program or plan developed by the Agency within any individual Member's jurisdiction shall be subject to the review and approval of the Member's governing body. The Additional Programs are further described in Section 5 of this Agreement.

3. POWERS

A. General Powers. The Agency shall have the powers common to the Members to this Agreement that are necessary or convenient to the implementation and ongoing operation of the Core Programs and Additional Programs, as well as other powers accorded to it by law, subject to the restrictions set forth herein.

B. Specific Powers. The Agency is authorized in its own name to perform all acts necessary for the exercise of common powers to carry out this Agreement, including but not

limited to the following:

- i. To make and enter into contracts;
- ii. To employ agents and employees;
- iii. To obtain legal, financial, accounting, technical and other services as needed to carry out its purposes;
- iv. To acquire, construct, manage, maintain and operate any buildings, works, or improvements;
- v. To acquire, hold, lease or dispose of property;
- vi. To incur debts, liabilities, and obligations;
- vii. To impose, levy, collect or cause to be collected, to receive and use charges and fees as provided by law;
- viii. To accumulate operating and reserve funds and invest the same as allowed by law for the purposes of the Agency.
- ix. To apply for, accept and receive all permits, grants, loans or other aids from any federal, state or local public agency;
- x. To receive donations of property, funds, services and other forms of financial assistance from any person, entity or agency;
- xi. To invest money that is not needed for immediate necessities, as the Board determines to be advisable, in the same manner and upon the same conditions that apply to other local agencies as specified in Section 53601 of the Government Code.
- xii. To sue and be sued in its own name;
- xiii. To promulgate, adopt and enforce any by-laws, rules, regulations, policies and procedures in accordance with Section 5 of this Agreement as may be necessary and proper to implement and effectuate the terms, provisions and purposes of this Agreement; and
- xiv. To carry out any power necessary or incidental to the foregoing powers in

the manner and according to the procedures provided for under the law applicable to the Members to this Agreement and to perform all other acts necessary or proper to fully carry out the purposes of this Agreement.

C. Restriction on Exercise of Powers. Pursuant to the JPA Act, all common powers exercised by the Agency shall be exercised in a manner consistent with, and subject to, the restrictions and limitations upon the exercise of such powers as are applicable to the County of Sonoma.

4. CORE PROGRAMS

A. Household Hazardous Waste Program. Pursuant to a license agreement between the Agency and the County of Sonoma, the Agency operates a program at the Sonoma County Central Landfill (the “**Central Landfill**”) for the collection and storage of Household Hazardous Waste. The Agency separately contracts with an operator to collect, sort, store, package and transfer the Household Hazardous Waste collected by designated haulers and other entities approved by the Agency, and from members of the public who are residents of a Member. Hazardous Waste generated by small quantity generators may be accepted, but shall be funded entirely by the generators using the service. The Household Hazardous Waste Program shall continue to exist and operate in compliance with all applicable laws, rules and regulations and in substantially the same manner as on the Effective Date of this Agreement, provided that the Agency Board shall be permitted to change the location of the program or add additional locations from time to time, as deemed necessary or convenient by the Agency Board, and to make other changes to the program as necessary to ensure continued compliance with all applicable laws, rules and regulations.

B. Organic Materials Program. The Agency has the authority to operate a program for the diversion of organic material, including but not limited to yard waste and wood waste.

i. *Current Program.* As of the Effective Date, the Agency operates a program for the collection and processing of Yard Waste, Residential Food Waste and Wood Waste received at the Central Landfill or the Annapolis, Guerneville, Healdsburg and Sonoma Transfer Stations (collectively, the “**Transfer Stations**”) from any source within the jurisdictions of the members that participate in the program (the “**Current Composting Program**”). The Current Composting Program is and shall continue to be funded by a tonnage disposal fee levied against Yard Waste, Residential Food Waste and Wood Waste received at the Central Landfill and the Transfer Stations. The Agency shall continue to operate the Current Composting Program, provided that the Agency may from time to time change the locations at which the Yard Waste, Residential Food Waste and Wood Waste are received, until such time that: (i) The Agency and/or individual Members have developed and implemented an alternative program or programs that provides for the diversion of organic material, including, at a minimum, Yard Waste, Residential Food Waste and Wood Waste, for all of the Members as contemplated in Section 4.B.iii below, or (ii) each of the Members has withdrawn from the Current Composting Program, as permitted under Section 4.B.ii below.

ii. *Withdrawal from Current Program.* Any of the Members may withdraw from the Current Composting Program upon ninety (90) days written notice to the Agency. Upon withdrawal from the Current Program, the withdrawing Member shall no longer be permitted to deliver Yard Waste, Residential Food Waste and Wood Waste to the Central Landfill or Transfer Stations for processing. A Member that has withdrawn from the Current Composting Program or is not participating as of the Effective Date, may rejoin the Current Composting Program if such request to rejoin is approved by the Agency Board. Even if all Members withdraw from the Current Program, the Agency shall retain the authority set forth in subsection iii below, even if that authority is not exercised. The withdrawal of all Members from the Current Program shall not constitute an elimination of the Organic Materials Program requiring an amendment to this Agreement.

iii. *Alternative Organic Materials Programs.* The Agency shall have the authority, at the direction of the Agency Board, to solicit information and/or request proposals for alternative programs for diversion of organic materials to serve some or all of the Members. The Agency shall serve as a resource to its Members in developing solutions for the diversion of organic materials that will serve the region, either through the development of a single regional organic materials program or multiple programs serving individual Members or groups of Members, including providing advice and expertise to such Members, as directed by the Agency Board. The Agency shall further have the ability to develop and implement an alternative organic materials program that serves the Members or a portion of the Members, provided that any such program shall be implemented through a separate agreement or amendment to this Agreement, and shall be approved by the governing board of each participating Member, and any Member that is not participating in such a future organic materials program shall not have any obligations, financial or otherwise, pursuant to such future organic materials program.

C. Education Program. The Agency provides information and education to individuals using the Agency's services and individuals who live or work in the Members' jurisdictions in order to maximize use of the Agency's programs, encourage recycling and other forms of waste diversion, and otherwise further the purpose and goals of the Agency. The Education Program shall continue to exist and the Agency shall continue to operate such program in compliance with all applicable laws, rules and regulations in furtherance of the Agency's purposes and goals, as directed by the Agency Board.

D. Reporting Program.

i. *Regional Agency.* The Agency is and shall continue to be a Regional Agency for purposes of Section 40971 of the Integrated Waste Management Act, and the Members are member agencies of the Regional Agency, and shall conduct all reporting required for a Regional Agency in accordance with the Integrated Waste Management Act.

ii. *Civil Penalties.* In the event any civil penalties are levied against the Agency pursuant to the Integrated Waste Management Act, the Agency shall research the

cause for which civil penalties are being levied. Research may include, but is not limited to, any of the following: Review of landfill disposal origin data, review of hauler origin data, performance of a solid waste disposal study, performance of a solid waste characterization study and/or performance of a solid waste diversion study. Agency shall cooperate with Members, the responsible Member(s) and regulators to identify corrective steps that might be taken prior to assessment of penalties, if any. The Agency shall assign responsibility for payment of any civil penalties as follows: (a) The Agency shall pay the entire penalty, or (b) an individual Member is responsible for the assessment of the civil penalty and the entire penalty shall therefore be imposed upon that member for payment of the penalty; or (c) multiple Members, but not all Members, are responsible for the assessment of the penalty and the penalty therefore shall be allocated equally upon those responsible Members, or (d) the Agency and the individual Members which are also responsible for the penalty shall pay the penalty in amounts proportionate to their responsibility for the penalty. Before apportioning a penalty to one or more Members pursuant to this Section, the Agency shall provide written notice to such Members that explains the basis for apportionment of responsibility for the penalty, and shall provide an opportunity for a hearing before the Agency Board prior to assessment of any such penalty.

iii. *Contingency Plan.* Should the Agency be dissolved for any reason, or should a Member withdraw from this Agreement, each Member or the former Member shall be responsible for complying with the requirements of the Integrated Waste Management Act within their respective jurisdictional boundaries in accordance with the programs set out in the Agency's documents.

iv. *Members' Duties and Responsibilities.* Each Member is responsible for implementing and meeting the mandated diversion requirements within its jurisdictional boundaries.

5. ADDITIONAL PROGRAMS

A. Authority to Develop Additional Programs. The Agency has the authority to develop and implement Additional Programs that are related to the Agency's overarching purpose of increasing waste diversion in the jurisdictions of the Members. The types of Additional Programs authorized under this section include, but are not limited to, development of model ordinances related to waste diversion which may be considered by the legislative bodies of the Members; implementation of waste diversion programs in Member jurisdictions that are adopted pursuant to such model ordinances; development of or participation in regional plans or efforts to reduce the amount of recyclable, compostable or hazardous materials in the region's solid waste stream; and researching and disseminating information to the Members regarding methods to reduce solid waste and increase waste diversion in the region.

B. Approval by Members Prior to Implementation in Specific Jurisdictions. The implementation of any Additional Programs developed pursuant to this Section 5 in individual jurisdictions, including but not limited to ordinances, regulations or similar legislative actions,

shall be subject to the approval of such Member prior to implementation of such program in the Member's jurisdiction. The Agency additionally may enter into agreements with individual Members to implement and/or participate in the enforcement of such programs.

C. Costs of Implementation of Additional Programs. In the event that individual Members approve an additional program developed by the Agency pursuant to this Section and desire that the Agency implement and/or participate in the enforcement of such program within the Member's jurisdiction, each individual Member shall bear the reasonable cost of the Agency's implementation and/or enforcement of any additional program in their respective jurisdictions. The reasonable cost of implementation and/or enforcement within a Member's jurisdiction shall be determined by the Agency and shall be paid by the Member in accordance with the terms of an agreement entered into between the Agency and Member pursuant to Subsection 5.B, or if all Members participate in the additional program such costs of implementation may be paid directly by the Agency. The costs of implementation and/or enforcement of an additional program which shall be borne by individual Members based on this Subsection 5.C specifically exclude the cost of development of the additional program, including but not limited to staff, consultant and legal costs incurred in the research, preparation and drafting of the additional program, environmental analysis required prior to the adoption of the program, including but not limited to analysis in accordance with the California Environmental Quality Act (Public Resources Code §§21000 *et seq.*), and the cost to indemnify, defend and hold harmless individual members that are made party to any claim, suit or similar proceeding challenging the validity of the additional program.

D. Additional Programs Included in Budget. The cost of development and/or implementation of any Additional Programs pursuant to this Section 5 shall be included in the Agency Budget.

6. EFFECTIVE DATE AND TERM

A. Effective Date. This Agreement shall become effective on March 1, 2017, or the date upon which all authorized representative of all the Members have executed this Agreement, whichever is later. Such date shall be the "Effective Date" for purposes identified herein.

B. Term. The Agreement shall remain effective until the Agency is dissolved pursuant to the provisions set forth in Section 10.F, subject to the rights of individual Members to withdraw from the Agency.

7. AGENCY BOARD

A. Board of Directors. The Agency is governed and administered by a Board of Directors ("Board") that is composed of one voting seat per Member.

B. Directors and Alternates. Each Member shall appoint one Director and at least one Alternate Director to the Board. One of the Alternate Directors, as directed by the Member,

shall serve and assume the rights and duties of the Director when the Director is unable to attend a Board meeting. The Primary and Alternate Directors shall be either an elected or appointed members of the Member's governing body, or an employee of the Member. Directors and Alternate Directors shall serve at the pleasure of the Member appointing them and they may be removed at any time, with or without cause, in the sole discretion of the Member. Each Director and Alternate Director shall hold office until their successor is selected by the Member and the Agency has been notified of the succession. In the event that a Director or Alternate Director loses their position as a member of their appointing body's governing body or as a Member employee, that Director or Alternative Director position shall become vacant and the governing body of that Member shall appoint a new Director or Alternative Director.

C. Agency Officers. The Board of Directors shall select, from among themselves, a Chair who shall be the presiding officer of all Board of Directors meetings, a Vice Chair who shall serve in the absence of the Chair and a Chair Pro Tempore who shall serve in the absence of both the Chair and the Vice Chair. In addition, the Board of Directors shall appoint a Clerk (who need not be a Director) to be responsible for keeping the minutes of all meetings of the Board and posting agendas.

D. Board Committees. The Board of Directors may from time to time appoint one or more advisory committees or establish standing or ad hoc committees to assist in carrying out the purposes and objects of the Authority. The Board shall determine the purpose and need for such committees.

E. No Personal Liability of Board Members. Under the JPA Act, no Director shall be personally liable for any debts, obligations or liabilities of the Agency, nor subject to any personal liability or accountability by reason of the Agency's incurrence of debts, obligations or liabilities.

8. BOARD MEETINGS AND VOTING

A. Regular Meetings. The Board shall hold its regular meetings pursuant to a meeting schedule as established by resolution of the Board, but may cancel such regular meetings as it deems necessary or appropriate.

B. Special Meetings. Special meetings of the Board may be called by the Chair or as provided for in the Rules of Governance adopted by the Board.

C. Call, Notice and Conduct of Meetings. All meetings of the Board shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code section 54950 *et seq.*

D. Quorum. Five Board members shall constitute a quorum of the Board.

E. Voting—Regular Items. An affirmative vote of at least a majority of the Board members attending a meeting is required for the Agency to take any action.

F. Super-Majority Vote Items. A super-majority vote, which for purposes of this Agreement constitutes a vote of 8/10 of all members of the Board (currently 8 of 10 members) is required for the Agency to take action on any of the following items:

- i. Approval or amendment of the Agency Budget;
- ii. Incurrence of debt from public or private lending or financing sources in an amount of \$250,000 or more;
- iii. Authorization of expenditures of \$250,000 or more to a single source within a single fiscal year;
- iv. Any increase in fees or imposition of any new fees.

G. Unanimous Vote Items. A unanimous vote is required for the Agency to acquire any interest in real property with a value of \$250,000 or more.

H. Public Meeting for Periodic Review of Agreement. The Board shall conduct a public meeting not less than once every ten (10) years following the Effective Date to review the terms and conditions of this Agreement and discuss whether any amendments to this Agreement are necessary or advisable. At such public meeting the Executive Director and Agency Counsel shall make a report to the Board recommending any amendments to the Agreement, and if directed by the Board shall draft proposed amendments to this Agreement for consideration by the governing boards of each Member. This section shall not preclude the Members from making amendments of this Agreement at other times as deemed necessary or appropriate by the Members, in accordance with Section 13.B of this Agreement.

9. OPERATIONS AND MANAGEMENT.

A. Executive Director. The Agency may appoint an Executive Director, from time-to-time as and when it deems appropriate. If appointed, the Executive Director shall serve at the pleasure of the Board of Directors and his or her duties and responsibilities shall be set forth via a vote of the Board.

B. Legal Counsel and Other Officers. The Agency may appoint Agency Legal Counsel who shall serve at the pleasure of the Board via a vote of the Board. Subject to the limits of the Agency's approved budget, the Board shall also have the power to appoint and contract via a vote of the Board for the services of other officers, consultants, advisers and independent contractors as it may deem necessary or convenient for the business of the Agency, all of whom shall serve at the pleasure of the Board.

C. Treasurer, Controller and Annual Audit. The Sonoma County Auditor-Controller-Treasurer-Tax Collector shall act as the Treasurer and Controller for the Agency. The Treasurer and Controller shall perform all usual and customary duties of their offices for the Agency, including but not limited to receiving all deposits, issuing warrants per direction, and other duties specified in Government Code section 6505.5. The Board may transfer the responsibilities of the Treasurer and/or Controller to any other person or entity as the law may provide at the time (see e.g., Government Code section 6505.5). The Board shall cause an independent annual audit to be made by a certified public accountant, or public accountant, in compliance with Government Code section 6505.

D. Employees and Management. In addition to, or in lieu of, hiring employees, the Agency may engage one or more Members to manage any or all of the business of the Agency or to provide employees to manage any or all of the business of the Agency on terms and conditions acceptable to the Board of Directors. Any Member so engaged shall have such responsibilities and shall be compensated as set forth in the agreement for such Member’s services entered into by and between such Member and the Agency, which agreement shall be approved by the Board. Notwithstanding the foregoing, the Director appointed by the Member providing such services shall not vote on the agreement to provide such services.

E. Other Agency Services. The Agency may further engage one or more Members to provide additional services and resources as necessary or desirable for the administration of the Agency, including but not limited to building use, administrative services, purchasing, human resources, purchasing and other administrative services. Any Member so engaged shall have such responsibilities and shall be compensated as set forth in the agreement for such Member’s services entered into by and between such Member and the Agency, which agreement shall be approved by the Board. Notwithstanding the foregoing, the Director appointed by the Member providing such services shall not vote on the agreement to provide such services.

F. Rules of Governance. The Board shall adopt Rules of Governance governing the conduct of meetings and the day-to-day operations of the Agency, which Rules of Governance may be amended from time to time.

G. Conflict of Interest Code. The Board shall adopt and file a Conflict of Interest Code pursuant to the provisions of the Political Reform Act of 1974.

10. RELATIONSHIP OF AGENCY AND ITS MEMBERS

A. Separate Public Entity. In accordance with California Government Code Sections 6506 and 6507, the Agency shall be a public entity separate and apart from the parties to this Agreement.

B. Name. The Agency may change its name at any time through adoption of a resolution of the Board of Directors.

C. Liabilities. In accordance with Government Code section 6508.1, the debts, liabilities and obligations of the Agency shall not be debts, liabilities or obligations of the individual Members unless the governing board of a Member agrees in writing to assume any of the debts, liabilities or obligations of the Agency. A Member who has not agreed to assume an Agency debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Members agree to assume the debt, liability or obligation of the Agency.

D. Indemnity. Funds of the Agency may be used to defend, indemnify, and hold harmless the Agency, each Member, each Director, and any officers, agents and employees of the Agency for their actions taken within the course and scope of their duties while acting on behalf of the Agency. To the fullest extent permitted by law, the Agency agrees to save, indemnify, defend and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are attributable in whole or in part to the Agency's programs. Notwithstanding the foregoing, the sole negligence, gross negligence, or intentional acts of any Member is exempted from the indemnification provided by this Section 10.D.

E. Withdrawal of Members. Any Member shall have the ability to withdraw by providing a minimum of one hundred eighty (180) days written notice of its intention to withdraw to the Agency and the other Members, which withdrawal shall be effective only at the end of the Fiscal Year in which the one hundred eighty (180) day written notice period is completed. Subject to the terms of any lease or license agreement, any Member who withdraws from the Agency shall retain any real property interests already owned by such Member. Upon withdrawal, the withdrawing Member shall not be entitled to distribution of any Agency property or assets; rather the Agency shall retain all property interests and assets used by the Agency in furtherance of its purpose under this Agreement. Upon withdrawal of a Member, the Agency shall have no further obligation to provide any of the programs described in Section 2.C and 2.D to that Member. In the event of a withdrawal, this Agreement shall continue in full force and effect among the remaining members as set forth in Section 5.E below.

F. Continuing Obligations upon Withdrawal. The withdrawal of one or more Members shall not terminate this Agreement or result in the dissolution of the Agency, and the Agency shall remain in operation provided that there are at least two Members which remain in the Agency and subject to this Agreement.

G. Dissolution. The Agency may be dissolved at any time upon the unanimous approval of the Members' governing boards. However, the Agency shall not be dissolved until all debts and liabilities of the Agency have been eliminated. Upon dissolution of the Agency, each Member shall receive its proportionate share of any remaining assets after all Agency liabilities and obligations have been paid in full. Each Member's proportionate share of such remaining assets shall be determined by the Agency Treasurer based upon the estimated total population of each Member in proportion to the total estimated population of all Members at the time of dissolution. The estimated population of the Members shall be determined based on the estimated

population report published by the California State Department of Finance, or if such report is no longer published, by such other method of determining population as agreed upon by the Members. The distribution of remaining assets may be made “in kind” or assets may be sold and the proceeds thereof distributed to the Members. This distribution shall occur within a reasonable time after dissolution. No former Member that previously withdrew shall be entitled to a distribution upon dissolution.

11. AUTHORITY RETAINED BY MEMBERS

A. Approval by Members. This Agreement requires specific approval from the legislative bodies of the Members for certain actions provided for under this Agreement. These actions include:

- i. Implementation of an Additional Program in a Member’s jurisdiction (Section 2.D, Section 5).
- ii. Approval of an alternative organic materials program (Section 4.B.iii).
- iii. Dissolution of the Agency (Section 10.G).
- iv. Amendment of this Agreement (Section 13.B).

B. No Limitation on Members. Nothing in this Agreement shall be construed as a limitation on the legislative authority or constitutional police powers of the Members.

12. FINANCIAL PROVISIONS

A. Establishment of Funds. The Agency shall establish and maintain such funds and accounts as may be required by general accepted public agency accounting practices. The Agency shall maintain strict accountability of all funds and report all receipts and disbursements of the Agency on no less than a quarterly basis.

B. Fiscal Year. The Fiscal Year of the Agency shall be from July 1 to June 30.

C. Budget. Prior to the end of each Fiscal Year, the Board shall adopt a budget for the Agency for the ensuing Fiscal Year. The Board may authorize mid-year budget adjustments, as needed.

D. Waste Management Agency Fees. The Agency’s programs are funded in part through a tip fee charge on waste entering the County of Sonoma’s waste disposal system to fund the cost of the programs and services provided by the Agency, which the County of Sonoma collects and remits to the Agency (the “**Waste Management Agency Fee**”). The County, either directly or through its Contractor, shall continue to collect and remit such Waste Management Agency Fee to the Agency for the term of this Agreement, unless and until the Agency provides written notice directing the County to cease collecting such fee. The County’s obligation to collect and remit the Waste Management Agency Fee shall survive the County’s withdrawal from the Waste Management Agency.

E. Current Composting Program Fee. The Current Composting Program is primarily funded by a tip fee that is charged to all Yard Waste, Wood Waste and Residential Food Waste received at the Central Landfill and the Transfer Stations (the “**Current Composting Program Fee**”). The County, either directly or through its Contractor, shall continue to collect and remit the Current Composting Program Fee to the Agency for so long as the Agency is operating the Current Composting Program, unless and until the Agency provides written notice to the County to cease collecting the Current Composting Program Fee. At such time that the Agency ceases its operation of the Current Composting Program, the Agency shall provide written notice to the County, and the County shall have no further obligation to collect and remit the Current Composting Program Fee to the Agency. The County’s obligation to collect and remit the Waste Management Agency Fee shall survive the County’s withdrawal from either the Current Composting Program or the Waste Management Agency.

F. Additional Fees. The Agency may establish, levy and collect such other fees or surcharges for services provided by the Agency in furtherance the Core Programs and Additional Programs to fund the Agency’s costs of providing such services, as permitted by law.

G. Agreements with Individual Member Agencies. In the event that a Member does not provide its jurisdiction’s waste to the County of Sonoma’s waste disposal system and therefore does not contribute to the Waste Management Agency Fee, Agency may, at its discretion, enter into separate agreements with such individual Members to make available some or all of the Core Programs and Additional Programs in exchange for compensation from the Member for the costs of the Programs provided.

H. Insurance. The Agency shall be required to obtain insurance, or join a self-insurance program in which one or more of the Members participate, appropriate for its operations. Any and all insurance coverages provided by the Agency, and/or any self-insurance programs joined by the Agency, shall name each and every Member as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. Minimum levels of the insurance or self-insurance program shall be set by the Agency in its ordinary course of business. The Agency shall also require all of its contractors and subcontractors to have insurance appropriate for their operations. All amounts coverages and provisions of the insurance policies identified in this subsection H shall be subject to the approval of Agency Counsel.

13. MISCELLANEOUS PROVISIONS

A. Agreement Complete. This Agreement constitutes the full and complete agreement of the Members. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

B. Amendment. This Agreement may be amended from time to time by the unanimous consent of the Members, acting through their governing bodies. Such amendments shall be in the form of a writing signed by each Member.

C. Successors and Assigns. The rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Agency then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Members hereto. This section does not prohibit a Member from entering into an independent agreement with another agency regarding the financing of that Member's contributions to the Agency or the disposition of proceeds, which that Member receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Agency or the Members under this Agreement.

D. Execution in Counterparts. This Agreement may be executed in counterparts, each counterpart being an exact duplicate of all other counterparts, and all counterparts shall be considered as constituting one complete original and may be attached together when executed by the Members hereto.

E. Member Authorization. The governing bodies of the Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

F. Notices. Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the Members hereto on Exhibit "A" of this Agreement, or to such other changed addresses communicated to the Agency and the Members in writing.

G. Severability and Validity of Agreement. Should the participation of any Member to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that Member's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each Member hereby agrees it would have entered into this Agreement upon the same remaining terms as provided herein.

IN WITNESS WHEREOF, the Members hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

COUNTY OF SONOMA

Chair
Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Assistant County Counsel

CITY OF SANTA ROSA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF ROHNERT PARK

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SEBASTOPOL

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF SONOMA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF CLOVERDALE

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF PETALUMA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF COTATI

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SIGNATURES CONTINUED ON FOLLOWING PAGE

CITY OF HEALDSBURG

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

TOWN OF WINDSOR

Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Attachment: Attachment C SCWMA-A&R JPA Agreement (1476 : SCWMA JPA Renewal)

EXHIBIT A

NOTICE INFORMATION FOR MEMBERS

COUNTY OF SONOMA:

County of Sonoma
Attn: County Administrator
575 Administration Drive
Suite 104A
Santa Rosa, CA 95403

CITY OF SANTA ROSA

City of Santa Rosa
Attn: City Manager
100 Santa Rosa Avenue
Room 10
Santa Rosa, CA 95404

CITY OF ROHNERT PARK

City of Rohnert Park
Attn: City Manager
130 Avram Avenue
Rohnert Park, CA 94928

CITY OF SEBASTOPOL

City of Sebastopol
Attn: City Manager
7120 Bodega Avenue
P.O. Box 1776
Sebastopol, CA 95473

CITY OF SONOMA

City of Sonoma
Attn: City Manager
No. 1, the Plaza
Sonoma, CA 95476

[CONTINUED ON NEXT PAGE]

CITY OF CLOVERDALE

City of Cloverdale
Attn: City Manager
124 North Cloverdale Blvd.
Cloverdale, CA 95425

CITY OF PETALUMA

City of Petaluma
Attn: City Manager
11 English Street
Petaluma, CA 94952

CITY OF COTATI

City of Cotati
Attn: City Manager
201 West Sierra Avenue
Cotati, CA 94932-4217

CITY OF HEALDSBURG

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

TOWN OF WINDSOR

Town of Windsor
Attn: Town Manager
9291 Old Redwood Highway
P.O. Box 100
Windsor, CA 95492-0100

Attachment: Attachment C SCWMA-A&R JPA Agreement (1476 : SCWMA JPA Renewal)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Approval of a Lease Agreement with Burbank Housing Development Corporation for the rehabilitation and management of property located at 721-723 Center Street (APN 002-042-016)

PREPARED BY: Karen Massey, Community Housing and Development Director

STRATEGIC INITIATIVE(S):

Quality of Life

Effective & Efficient Government

RECOMMENDED ACTION(S):

Adopt a resolution approving a Lease Agreement (“Agreement”) with Burbank Housing Development Corporation for the rehabilitation, operation and maintenance of property located at 721-723 Center Street (APN 002-042-016) and authorizing the City Manager to execute the Agreement and related documents

BACKGROUND:

In December 2016, the City Council approved a Purchase and Sale Agreement to purchase the property located at 721-723 Center Street for affordable housing purposes. The property contains 8 multifamily units that are currently housing local families and are being rented below market rate. The City is currently in escrow to purchase the property and is in the process of completing inspections on the Property with close of escrow anticipated to occur at the end of February.

At the same time the Purchase and Sale Agreement was approved, the Council also approved a Memorandum of Understanding (“MOU”) with Burbank Housing Development Corporation (“Burbank”) to assist with the rehabilitation, operation and maintenance of the Property. Burbank currently manages approximately 200 affordable units in the City of Healdsburg and has the experience and expertise to oversee the Property. Under the terms of the MOU the City would lease the Property to Burbank for a period of not less than 55 years for the purpose of affordable housing and Burbank would be responsible for all aspects of the rehabilitation, operation and maintenance of the Property including day-to-day operations and resident services. The MOU outlined the roles and responsibilities of the City and Burbank and acts as the basis for the subsequent development of a long-term Lease Agreement and related documents.

DISCUSSION/ANALYSIS:

In December, the City Council approved a MOU with Burbank which outlines the preliminary terms under which Burbank would assist with the rehabilitation, operation and maintenance of the Property. Under the terms of the MOU the City was to develop a long-term Lease Agreement with Burbank. Staff has negotiated the terms of the Lease Agreement, consistent with the approved MOU.

Under the Lease Agreement, Burbank would lease the property from the City for a period of not less than 55 years for affordable housing purposes for low and moderate income households. The Agreement also includes an option to extend the Lease Agreement for an additional 45 years as well a Right of First Offer for Burbank to purchase the property in the event the City elects to sell the property in the future. Burbank would make annual lease payments to the City, based upon 50% of the residual receipts from the property (residual receipts are the moneys left over once the costs to operate the property are covered, including capital reserves). Burbank would be responsible for all aspects of the rehabilitation, operation and on-going maintenance for the property as well as all resident services requirements including day-to-day operations and decision-making, enforcement of existing leases, income verification, enforcing occupancy and affordability standards, and relocation assistance (if any). Upon taking over management of the Property, Burbank would complete initial health and safety repairs identified during the inspection process with a full rehabilitation of the Property anticipated to occur by early 2019. The initial repairs are anticipated to occur with little disruption to the existing tenants. Once the full extent of the rehabilitation is determined, the City and Burbank would work together to accommodate any tenants that might be temporarily displaced by the rehabilitation.

ALTERNATIVES:

The Council could approve the Lease and related documents as proposed or direct Staff to modify the terms.

FISCAL IMPACT:

The Lease Agreement will result in annual lease payments from Burbank based upon residual receipts which will vary annually depending upon the rents received less the cost to rehabilitate and operate the Property. Those funds will be deposited into the Housing Successor Agency Fund.

ENVIRONMENTAL ANALYSIS:

Approval and execution of the Lease is exempt from California Environmental Quality Act ("CEQA") pursuant to Public Resource Code Sections 21159.21 and 21159.23 and CEQA Guidelines Sections 15194, 15195, 15301, 15326 and 15332.

ATTACHMENT(S):

Resolution
 Lease Agreement
 Exhibit B - Regulatory Agreement
 Exhibit C - Notice of Affordability Restrictions
 Exhibit D - Memorandum of Lease

CITY OF HEALDSBURG

RESOLUTION NO. ___-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG APPROVING A LEASE AGREEMENT WITH BURBANK CENTER STREET APARTMENTS LLC FOR THE REHABILITATION, OPERATION AND MAINTENANCE OF PROPERTY LOCATED AT 721-723 CENTER STREET AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS

WHEREAS, the City Council has made access to safe, affordable, and decent housing a top priority in our community; and

WHEREAS, this priority is reflected in the City Council's adopted goals for fiscal year 2016-17 which include continuing efforts to develop affordable housing city-wide and exploring opportunities which allow the City to develop housing and supplement funding for affordable housing; and

WHEREAS, 721-723 Center Street ("Property") is comprised of eight multifamily rental units currently rented below market rate to lower income families in our community; and

WHEREAS, the Property provides valuable affordable housing in our community; and

WHEREAS, on December 19, 2016 the City entered into a Purchase and Sale Agreement to purchase the Property; and

WHEREAS, Burbank Housing Development Corporation ("Burbank") currently manages approximately 200 affordable units in the City of Healdsburg and has the experience and expertise to oversee the rehabilitation, operation and maintenance of the Property; and

WHEREAS, the City and Burbank entered into a Memorandum of Understanding dated December 19, 2016, providing a preliminary outline of the roles and responsibilities of the City and Burbank to act as the basis for the subsequent development of a long-term Lease Agreement and related documents; and

WHEREAS, pursuant to the Memorandum of Understanding City staff has negotiated the terms and conditions of the Lease Agreement pursuant to which Burbank Center Street Apartments LLC, an affiliate of Burbank ("Tenant") will oversee the rehabilitation, operation and maintenance of the Property; and

WHEREAS, the City anticipates closing escrow on the Property at the end of February, 2017 and concurrently Tenant taking over the rehabilitation, operation and maintenance of the Property; and

WHEREAS, the terms and conditions for the rehabilitation, operation and maintenance of the Property are more particularly described in the proposed Lease Agreement; and

WHEREAS, under the Lease Agreement Tenant would lease the Property from the City for a period of not less than fifty-five (55) years (with an option to extend for an additional forty-five (45) years, and a right of first offer to purchase the Property in the event the City were to decide to sell the Property), for affordable housing purposes for low and moderate income households with lease payments made annually from 50% of the residual receipts; and

WHEREAS, under the Lease Agreement Tenant would be responsible for all aspects of the rehabilitation, operation and on-going maintenance for the Property as well as all resident services requirements for the Property; and

WHEREAS, the City and Tenant have negotiated the terms of an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”), which requires among other things, the Property to be rented to low and moderate income households for fifty-five (55) years.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby:

1. Approves the Lease Agreement, Regulatory Agreement and related documents, and authorizes the City Manager or designee to execute and deliver each such document to which the City is a party substantially in the form on file with the City Clerk, with such non-material changes as may be approved by the City Attorney.
2. Authorizes the recordation of a Notice of Affordability Restrictions on Transfer of Property and a Memorandum of the Lease in the Official Records of Sonoma County.
3. Authorizes the City Manager or designee to execute and deliver such other documents and to take such other actions as necessary to carry out the intent of this Resolution.
4. Finds that approval and execution of the Lease Agreement is exempt from California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Sections 21159.21 and 21159.23 and CEQA Guidelines Sections 15194, 15195, 15301, 15326 and 15332.

PASSED, APPROVED AND ADOPTED this 6th day of February, 2017 by the following vote:

AYES: Councilmembers: (0) None

NOES: Councilmembers: (0) None

ABSENT: Councilmembers: (0) None

ABSTAINING: Councilmembers: (0) None

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1483 : 721 Center Lease Agreement with Burbank)

LEASE

by and between

**THE CITY OF HEALDSBURG,
a California municipal corporation**

as Landlord

and

**Burbank Center Street Apartments LLC,
a California limited liability company**

as Tenant

Dated as of _____, 2017

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

THIS LEASE (this “**Lease**” or this “**Agreement**”), dated as of _____, 2017 (the “**Effective Date**”), is entered into by and between the City of Healdsburg, a California municipal corporation (hereafter “**City**” or “**Landlord**”) and Burbank Center Street Apartments, LCC, a California limited liability company (hereafter “**Tenant**”). Landlord and Tenant are hereafter collectively referred to as the “**Parties**.”

RECITALS

A. The City has made access to safe, affordable, and decent housing a top priority, as reflected in the City’s adopted goals for fiscal year 2016-17 and in its Inclusionary Housing Ordinance, set forth in Chapter 20.20 of the City’s Municipal Code. To help achieve the City’s affordable housing goals, the City has acquired certain real property located at 721 A-D and 723 A-D Center Street, Healdsburg, California, bearing Sonoma County Assessor’s Parcel No. 002-042-016, and more particularly described in **Exhibit A** attached hereto (the “**Land**”) and the Improvements located thereon. Hereafter, the Land and the Improvements are collectively referred to as the “**Property**.”

B. On December 19, 2016, the City Council approved a Memorandum of Understanding with the Tenant and has authorized the City to enter into a lease agreement with Tenant which would govern Tenant’s rehabilitation, operation and maintenance of the Property. The City Council has approved the lease of the Property as set forth in this Agreement, has followed all requisite procedures, and has adopted all requisite findings in connection with the foregoing.

C. Tenant proposes to perform health and safety repairs, rehabilitate, operate and maintain the existing multi-family housing project located on the Property consisting of eight (8) residential units and common area, driveway, parking, fence, landscaping, laundry facilities, recreational space, any common facilities and related improvements (all of the foregoing are collectively referred to herein as the “**Project**”).

D. City desires to lease to Tenant, and Tenant desires to lease from City the Property, upon the terms and conditions set forth in this Lease, for the undertaking of the Project as more particularly described herein.

E. City desires to grant to Tenant certain rights under a Right of First Offer to purchase the Property, upon the terms and conditions set forth herein.

F. In connection with the development and management of the Project, Landlord and Tenant will execute and cause to be recorded in the Official Records the following documents, substantially in the forms attached hereto as **Exhibit B**, **Exhibit C** and **Exhibit D**, respectively: an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “**Regulatory Agreement**”), a Notice of Affordability Restrictions on Transfer of Property, and a Memorandum of the Lease Agreement.

NOW, THEREFORE, for and in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows.

ARTICLE I
DEFINITIONS

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

“**Affordable Rent**” is defined in the Regulatory Agreement.

“**Applicable Laws**” is defined in Section 6.3.

“**Area Median Income**” is defined in the Regulatory Agreement.

“**City**” is defined in the opening paragraph.

“**City Council**” means the City Council of the City of Healdsburg.

“**Claims**” is defined in Article X.

“**Environmental Laws**” is defined in Section 7.11.4.

“**Hazardous Material**” is defined in Section 7.11.4.

“**Improvements**” means all buildings, structures, fixtures, fences, walls, paving, parking improvements, driveways, walkways, plazas, landscaping, permanently affixed utility systems and equipment, and other improvements located on the Property, including, without limitation, the Project and all replacements of the foregoing.

“**Indemnitees**” is defined in Article X.

“**Lease Termination**” is defined in Section 3.1.

“**Leasehold Mortgage**” means a mortgage on the leasehold estate created by this Lease and held by a Leasehold Mortgagee.

“**Leasehold Mortgagee**” means the mortgagee or beneficiary of any Leasehold Mortgage and in the event of a transfer of such Leasehold Mortgage, the successor Leasehold Mortgagee, upon delivery of written notice of the transfer to Landlord.

“**Official Records**” means the Official Records of Sonoma County.

“**Prevailing Wage Laws**” is defined in Section 6.3.

“**Project**” is defined in Recital C, and includes any replacement thereof pursuant to this Lease.

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

“**Regulatory Agreement**” is defined in Recital E.

“**Rehabilitation Plans**” is defined in Section 6.14.

“**Term**” is defined in Section 3.1.

“**Transfer**” is defined in Section 16.1.

ARTICLE II

DEMISE OF PREMISES

2.1 Demise. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Property for the Term and on the terms and conditions set forth in this Lease.

2.2 Condition of Title. Landlord leases the Property to Tenant subject to all easements, covenants, conditions, restrictions and other title matters of record existing as of the Effective Date, and all matters that would be apparent from an inspection of the Property on the Effective Date.

2.3 Condition of Property. Tenant specifically acknowledges that the City is leasing the Property to Tenant on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis and that Tenant is not relying on any representations or warranties of any kind whatsoever, express or implied, from City, its employees, board members, agents, or brokers as to any matters concerning the Property. The City makes no representations or warranties as to any matters concerning the Property, including without limitation: (i) matters relating to soils, subsoils, geology, the presence or absence of fill, groundwater, drainage, and flood zone designation, (ii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iii) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (v) the compliance of the Property with Environmental Laws, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vi) the presence or removal of Hazardous Material, substances or wastes on, under or about the Property or the adjoining or neighboring property; and (vii) the condition of title to the Property.

2.4 Tenant to Rely on Own Experts. Tenant acknowledges that notwithstanding the delivery by City to Tenant of any materials, including, without limitation, third party reports, Tenant will rely entirely on Tenant's own experts and consultants and its own independent investigation and judgment as to all matters relating to the Property. Tenant acknowledges that Tenant is familiar with the condition of the Property, has made such investigations of the

Property as Tenant has deemed desirable, and by execution hereof, accepts the Property in its current "AS-IS" condition and state.

2.5 Environmental Disclosure. To the extent the City has copies of reports regarding the environmental condition of the Property, it will provide copies to Tenant upon request; but the Parties acknowledge that City will not be conducting a public records search of any regulatory City files—although the City urges Tenant to do so to satisfy itself regarding the environmental condition of the Property. By execution of this Agreement, Tenant: (i) acknowledges its receipt of the foregoing notice respecting the environmental condition of the Property; (ii) acknowledges that it has had an opportunity to conduct its own independent review and investigation of the Property; (iii) agrees to rely solely on its own experts in assessing the environmental condition of the Property and its sufficiency for its intended use; and (iv) waives any and all rights Tenant may have to assert that the City failed to disclose information about the environmental condition of the Property.

2.6 Release by Tenant. Effective upon the Effective Date, Tenant WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES the Indemnitees and any person acting on behalf of the City, from any and all Claims, direct or indirect, known or unknown, foreseen or unforeseen, which Tenant now has or which may arise in the future on account of or in any way arising out of or in connection with the physical condition of the Property, the presence of Hazardous Material in, on, under or about the Property, or any law or regulation applicable thereto including, without limiting the generality of the foregoing, all Environmental Laws. The provisions of this Section 2.6 shall survive the expiration or earlier termination of this Agreement.

TENANT ACKNOWLEDGES THAT TENANT IS FAMILIAR WITH SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, TENANT EXPRESSLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE FOREGOING RELEASE:

Tenant's initials: _____

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

ARTICLE III

TERM OF LEASE; RIGHT OF FIRST OFFER TO PURCHASE PROPERTY

3.1 Term. The Term of this Lease (the “**Term**”) shall commence on the Effective Date, which is the date that the City acquires fee title to the Property (the “**Commencement Date**”). The Parties shall execute a memorandum of this Lease substantially in the form set forth in Exhibit D attached hereto (the “**Memorandum**”) which shall be recorded in the Official Records. Unless sooner terminated or extended under the provisions hereof, the Term of this Lease shall expire on the day preceding the fifty-fifth (55th) anniversary of the Commencement Date (the “**Expiration Date**”). The expiration or sooner termination of the Term shall be referred to as “**Lease Termination**.” The Memorandum shall specify the Commencement Date and the Expiration Date.

3.2 Lease Year. For purposes of this Lease, “**Lease Year**” shall mean each calendar year, or partial calendar year during the Term. If the Commencement Date does not occur on January 1, then any amounts required to be paid under this Lease on a Lease Year basis shall be prorated on a per diem basis for the partial Lease Years that commence with the Commencement Date and end on the Expiration Date.

3.3 Term Extension. Subject to approval of the City Council, the Term of this Lease may be extended for an additional forty-five (45) year term (the “**Extended Term**”). The terms and conditions of this Lease shall apply during the Extended Term, except, however, the option for a Term Extension as set forth in this Section 3.3 shall not apply to the Extended Term. If Tenant desires to continue this Lease for the Extended Term, Tenant shall provide written notice of its request for an Extended Term to Landlord no earlier than 365 days before the Expiration Date of this Lease and no later than 240 days before the Expiration Date of this Lease. Landlord may accept or reject Tenant’s request, in Landlord’s sole discretion. If Landlord and Tenant extend the Term of this Lease pursuant to this Section 3.3, all references to the “Term” in this Lease shall include the Extended Term, and the Expiration Date shall be amended to mean the last day of the Extended Term.

3.4 Right of First Offer (“ROFO”) to Purchase the Property; Conditions. If at any time during the term of this Lease, Landlord shall desire to sell the Property, Landlord shall first solicit an offer from Tenant in accordance with, and subject to, the provisions of this Section 3.4.

3.4.1 If Landlord determines that it wishes to market the Property for sale during the term of this Agreement, then provided that Tenant is not in default under this Lease, Landlord shall deliver to Tenant written notification of its intention to market the Property for sale (the “**Notice of Sale**”).

3.4.2 Tenant shall have ninety (90) calendar days from the date of the Notice of Sale to present a written offer to purchase the Property from Landlord, which offer shall set forth Tenant’s proposed purchase price for the Property, and for a closing within sixty (60) calendar days thereafter, and shall otherwise set forth terms and conditions which are consistent with

terms for comparable deals in the market and upon which Tenant would propose to purchase the Property from Landlord (the “**Offer Notice**”).

3.4.3 If Tenant fails to present an Offer Notice meeting the criteria in the preceding paragraph within the ninety (90) calendar day period, Tenant’s ROFO rights to purchase the Property shall immediately and without need for notice of any kind, expire and be of no further force or effect, time being of the essence, and Landlord shall be free to decide not to sell the Property to any party, or to solicit and accept offers from other parties on such terms as Landlord may, in its sole and absolute discretion determine.

3.4.4 If Tenant presents a timely and valid Offer Notice to Landlord in accordance with the terms of this Section 3.4, and Landlord in its sole and absolute discretion is willing to accept the terms set forth in the Offer Notice, Landlord shall notify Tenant thereof in writing (the “**Offer Response Notice**”), and Landlord and Tenant shall then have sixty (60) calendar days after delivery of the Offer Response Notice to execute a mutually acceptable written purchase and sale agreement for the sale of the Property from Landlord to Tenant on the terms set forth in the Offer Notice and such other terms as may be mutually agreed upon by the parties, working in good faith. If for any reason whatsoever, despite such good faith efforts, the parties do not execute such purchase and sale agreement within such 60-calendar day period, time being of the essence, then the ROFO rights shall immediately and without need for notice of any kind, expire and be of no further force or effect, and Landlord shall be free to decide not to sell the Property to any party, or to solicit and accept offers from other parties on such terms as Landlord may, in its sole and absolute discretion determine.

3.4.5 The ROFO is personal to Tenant and may not be assigned, transferred or conveyed to any party without the written consent of City, except that the ROFO may be exercised by any of the following entities without further approval from the City: Burbank Housing Development Corporation (“**BHDC**”); a limited liability company of which BHDC is the sole member; or a limited partnership of which BHDC is the general partner.

3.4.6 Escrow; Form of Conveyance. If Landlord and Tenant execute a mutually acceptable written purchase and sale agreement for the sale of the Property from Landlord to Tenant, the Parties shall promptly open an escrow with an escrow company reasonably acceptable to Landlord and Tenant (the “**Escrow Holder**”). This Section 3.4 shall constitute Escrow Holder’s basic instructions; however, Escrow Holder may prepare, and the Parties may agree to execute, such reasonable and customary supplemental instructions and instruments as may be reasonably required by the Parties and Escrow Holder, in order to clarify its duties hereunder and facilitate an orderly sale of the Property to Tenant. To the extent of any inconsistency between the provisions of such supplemental instructions and the provisions of this Section 3.4, the provisions of this Section 3.4 shall control. At Closing, Landlord shall convey title to the Property to Tenant via deed, however, Landlord shall reserve from the conveyance an easement for the benefit of Landlord for the Right of Immediate Entry and Continued Possession for the Construction, Improvement, Replacement, Addition, Maintenance and Repairs for an Electric Pole Line and Aerial Facilities for the Purpose of Electric Service and incidental purposes, in substantially the same form as the Easement recorded on January 7, 1988 as Instrument No. 1988-1157 of the Official Record, unless the City determines that such easement is no longer required.

3.4.7 Title. Tenant shall accept title to the Property subject to all easements, covenants, conditions, restrictions and other title matters of record existing as of the Effective Date of this Lease, and all matters that would be apparent from an inspection of the Property on the Effective Date (the “**Permitted Exceptions**”). On or before the Closing Date (defined in Section 3.4.8), Landlord agrees to cause to be removed any liens, encumbrances, or other matters recorded against the Property that are voluntarily created by Landlord after the Effective Date of this Lease that are not consented to by Tenant. Any liens, encumbrances, or other matters consented to by Tenant as provided in this Section shall be included in and deemed to be Permitted Exceptions.

3.4.8 Closing. For purposes of the ROFO, the “**Closing Date**” shall be defined as the date the deed conveying the Property to Tenant, is recorded in the Official Records. The Closing Date shall be designated by Tenant in the Offer Notice and shall occur no later than sixty (60) days following Landlord’s receipt of the Offer Notice (the “**Outside Closing Date**”). Tenant shall pay Rent to Landlord through and including the Closing Date. At least one (1) day before the Closing Date, Tenant shall deposit into escrow by cashier’s check or wire transfer of immediately available funds the Purchase Price, together with all amounts due and owing under this Lease as of the Closing Date and all other amounts for which Tenant is responsible Section 3.4.9 and under the purchase and sale agreement for the sale of the Property.

3.4.9 At Tenant’s election and at Tenant’s sole expense, Escrow Holder shall issue a policy of title insurance with any endorsements required by Tenant in the form requested by Tenant. Tenant shall pay all transfer taxes and recording fees in connection with the conveyance of the Property to Tenant. Tenant shall pay Escrow Holder’s fees and costs. Tenant is responsible for the payment of all taxes and all utilities and other operating expenses attributable to the Property; therefore, there will be no proration of such taxes, utilities, or other operating expenses. The Parties shall execute and deliver additional documents and instruments required by Applicable Laws or by the Escrow Holder to affect the conveyance of the Property to Tenant.

3.4.10 If the Closing Date does not occur for any reason (other than a breach of the purchase and sale agreement for the sale of the Property by Landlord) on or before the Outside Closing Date, and the Landlord and Tenant have not agreed in writing to extend the Outside Closing Date, the ROFO and the purchase and sale agreement for the sale of the Property shall terminate automatically without further need of any documentation, and Tenant shall execute any documents requested by Landlord necessary to evidence the termination of the ROFO and the purchase and sale agreement for the sale of the Property. Thereafter, Landlord shall be free to decide not to sell the Property to any party, or to solicit and accept offers from other parties on such terms as Landlord may, in its sole and absolute discretion determine.

3.4.11 “AS IS”. Tenant represents, warrants, and agrees that if Closing occurs pursuant to this ROFO and the purchase and sale agreement for the sale of the Property, Tenant will acquire the Property “AS IS” and “WHERE IS” without any representation or warranty of Landlord, express, implied, or statutory, as to the nature or condition of title to the Property or its fitness for Tenant’s intended use of same. Based on Tenant’s rights under this Lease, Tenant, as

of the Closing Date, will be familiar with the condition of the Property and will have conducted its own independent inspection, investigation, and analysis of the Property as it deems necessary or appropriate. Further, without limiting the generality of the foregoing, Tenant expressly waives and relinquishes any and all rights and remedies Tenant may have at such time or thereafter against Landlord, whether known or unknown, with respect to any past, present, or future presence or existence of Hazardous Material on, under, or about the Property or with respect to any past, present, or future violations of any rules, regulations, or laws, now or hereinafter enacted, regulating or governing the use, handling, storage, or disposal of Hazardous Material.

ARTICLE IV

RENT

4.1 Rent. For the period commencing upon the Effective Date and ending on the Expiration Date, for each Lease Year during the Term, Tenant shall pay to Landlord, annual rent (the “**Base Rent**”) due and payable on a residual receipts basis with fifty percent (50%) of all Surplus Cash, payable to the City in accordance with the procedures set forth in Section 4.4, and the other fifty percent (50%) to be retained by the Tenant.

4.2 Additional Rent. Tenant also agrees to pay as rent all sums, Impositions (as defined in Section 5.1 below), costs, expenses, and other payments which Tenant in any of the provisions of this Lease assumes or agrees to pay (collectively, the “**Additional Rent**”). If Tenant fails to pay timely any Additional Rent, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of rent, subject to the terms and conditions of this Lease.

4.3 Payment of Rent. The Base Rent and Additional Rent shall be collectively referred to as “**Rent**” under this Lease. All Rent shall be paid to Landlord in lawful money of the United States at the place to which notices are to be delivered to Landlord, unless Landlord designates a different address for the payment of Rent in writing to Tenant. Rent shall be payable on each anniversary of the Effective Date during the term hereof. In its discretion, Tenant may elect to prepay one or more installments of Base Rent.

4.4 Annual Payments from Surplus Cash. By no later than May 15 of each year following the Effective Date of this Lease, Tenant shall pay to City fifty percent (50%) of all Surplus Cash generated by the operation of the Project during the previous calendar year as Base Rent under this Lease.

4.4.1 No later than March 15 of each year during the Term of this Lease, beginning with the year 2018, Tenant shall provide to City Tenant’s calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, an independent audit prepared for the Project by a certified public accountant in accordance with generally accepted accounting principles. The annual report shall include an accounting of deposits to and withdrawals from the Project replacement reserve and operating reserve. The City shall have the right to inspect and audit Tenant’s books and records concerning the calculation of Surplus Cash, and to object within

sixty (60) days from receipt of the report. Failure to timely object shall be deemed acceptance of the report. If the City does object, City shall specify the reasons for its disapproval, and Tenant shall have thirty (30) days to reconcile any disapproved item. If Tenant and City cannot agree on the amount of Surplus Cash, an independent auditor mutually selected by Tenant and City shall resolve any disputed items. The cost of the auditor shall be shared equally by Tenant and City.

4.4.2 No later than November 1 of each year during the Term of this Lease beginning with the year 2017, Tenant shall provide to City a proposed budget (“**Budget**”) for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed Budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within forty-five (45) days of receipt, City shall be deemed to have accepted the budget. If the Budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget that, in total, exceed ten percent (10%) of the total expense budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

4.4.3 “**Surplus Cash**” shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Project. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Project, less fees and closing costs reasonably incurred in connection with such refinancing and any City-approved uses of the net cash proceeds of the refinancing.

4.4.4 “**Gross Revenue**” shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received by Tenant from the operation and leasing of the Project. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance not required to be paid to the holders of Approved Loans (provided however, expenditure of such casualty insurance proceeds for repair or restoration of the Project after a casualty event shall be included within Annual Operating Expenses in the year of the expenditure, and with City’s written consent, proceeds of casualty insurance may be excluded from Gross Revenue until the year such proceeds will be expended for repair or restoration of the Project provided that Tenant provides adequate assurance that such proceeds will be expended for such purposes); condemnation awards for a taking of part or all of the Property or the Improvements for a temporary period; and the fair market value of any goods or services provided to Tenant in consideration for the leasing or other use of any part of the Project. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Tenant other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

4.4.5 “**Annual Operating Expenses**” shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Project to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis

(excluding debt service due from residual receipts or surplus cash of the Project) on loans which have been approved in writing by the City (the “**Approved Loans**”); property management fees and reimbursements in an amount in accordance with industry standards, but not to exceed \$70 per unit per month, increasing by the greater of 3% annually or the increase in the Consumer Price Index-Urban (CPI-U) for the San Francisco-Oakland-San Jose, California area over the prior year as published for the month of June, and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Project; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Tenant incurred in the ordinary course of business for the Project; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements in an amount no greater than \$600 per unit per year (with a 3% escalator/year) or such greater amount as reasonably required by the holder of an Approved Loan or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Tenant’s expense; cash deposits into operating reserves in an amount reasonably approved by City or required by the holder of an Approved Loan, but only if the accumulated operating reserve does not exceed three (3) months’ projected Project operating expenses; and other ordinary and reasonable operating expenses approved by City pursuant to the Budget.

4.4.6 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 4.4.5); contributions to Project operating or replacement reserves (except as permitted pursuant to Section 4.4.5); except as provided in Section 4.4.5, debt service payments on any loan which is not an Approved Loan, including without limitation, unsecured loans or loans secured by deeds of trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; capital expenditures in excess of \$2,500 unless included in the Budget approved in advance by City or otherwise approved by the City in writing; any amount paid to Tenant or any entity controlled by the persons or entities in control of Tenant. Notwithstanding the foregoing limitation regarding payments to Tenant and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 4.4.5 above, even if paid to Tenant or an affiliate of Tenant: fees paid to a property management agent, resident services agent, or social services agent pursuant to a property management agreement or services agreement approved by City; developer fees, asset management fees, and repayment of cash advances by Tenant cover Project operating expense deficits or emergency cash needs of the Project. Payments to Tenant or its affiliates in excess of the applicable limitations set forth in Section 4.4.5 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash unless otherwise agreed to in writing by the City.

ARTICLE V

TAXES, ASSESSMENTS AND OTHER CHARGES

5.1 Impositions. Tenant covenants and agrees to pay prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Property or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge, in lieu of or substitution for real estate taxes, and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon or which becomes due and payable and a lien upon (a) the Property or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the rent or income received by Tenant from subtenants or licensees, (c) any use or occupancy of the Property or part thereof, or (d) this transaction or, subject to the exclusions specified below, any document to which Tenant is a party creating or transferring an estate or interest in the Property or part thereof. All of the foregoing are hereinafter referred to as “**Impositions.**”

5.1.1 Exclusions. Impositions specifically shall exclude (i) any income, franchise, gross receipts, estate, inheritance, transfer or gift tax imposed on Landlord, and (ii) any transfer tax imposed on any document to which Landlord is a party creating or transferring an estate or interest in the Property.

5.1.2 Installments. If, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same respectively become due and before any fine or penalty may be added thereto for the nonpayment of any such installment and interest. Any Impositions relating to tax years that are only partially included in the Term shall be prorated between Tenant and Landlord.

5.1.3 Evidence of Payment. Upon request by Landlord, Tenant shall furnish, in form satisfactory to Landlord, evidence of payment prior to delinquency of all Impositions payable by Tenant.

5.2 Tenant Right to Contest. Tenant shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such right shall not be deemed or construed in any way as relieving, modifying or extending Tenant’s covenant to pay any such Imposition at the time and in the manner required by law. Any such contest shall be conducted in accordance with and subject to the requirements of Applicable Laws and otherwise in a manner that does not subject Landlord’s title to the Property to foreclosure or forfeiture. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all claims, damages, losses, liabilities, costs and expenses (including without limitation attorneys’ fees) incurred by Landlord as a result of any such contest brought by Tenant. During any contest of an Imposition, Tenant shall (by payment of disputed sums, if necessary) prevent any advertisement of tax sale, foreclosure of, or any divesting of Landlord’s title, reversion or other interest in the Property or the Improvements.

5.3 Tenant Duty to File. Tenant shall have the duty of making or filing any exemption application, declaration, statement or report which may be necessary or advisable in connection with property tax exemption or the determination, equalization, reduction or payment of any Imposition which is or which may become payable by Tenant under the provisions of this Article V, and Landlord shall not be responsible for the contents of any such declaration, statement or report; provided, however Landlord shall cooperate with Tenant in connection with the foregoing, including joinder in any application pertaining thereto to the extent required under Applicable Law, all at no cost to Landlord.

5.4 Utilities. Tenant agrees to pay, or cause to be paid, all charges which are incurred by Tenant or which are otherwise a charge or lien against the Property or part thereof during the Term, for gas, water, electricity, light, heat or power, telephone or other communication service use, or other utility use, rendered or supplied upon or in connection with the Property. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits and other equipment for the supply of utilities to the Project. In no event shall Landlord have any liability to Tenant, and Tenant hereby releases Landlord, from any and all claims, including but not limited to consequential damages, lost profits and similar damages that Tenant may incur as a result of any interruption, curtailment or diminishment of such utilities, other than for the active negligence or willful misconduct of Landlord. Notwithstanding the foregoing, Tenant shall have the right to challenge the amount or validity of the foregoing charges, provided that doing so does not result in the Property being subjected to any lien or other encumbrance that is not itself adequately released, insured over or otherwise satisfied by Tenant after Tenant has exhausted its efforts to contest the same in accordance with all Applicable Laws. Landlord shall cooperate, within reasonable limits, to assist Tenant in securing utility services for the Project.

ARTICLE VI

REHABILITATION OF THE PROJECT

6.1 Rehabilitation of the Project. Tenant agrees to (1) perform required health and safety repairs (“Repair Work”) and (ii) rehabilitate the Improvements (the “Rehabilitation of the Improvements”), in accordance with plans and specifications that will be submitted to the City and any other applicable governmental agency or authority for their approval.

6.2 Rehabilitation Schedule. Tenant shall commence the Repair Work within one hundred and twenty (120) days following the Effective Date, and shall diligently prosecute the Repair Work to completion, and shall commence the Rehabilitation of the Improvements in accordance with the Rehabilitation Schedule that will be submitted to the City for approval within one hundred and twenty (120) days following the Effective Date, which Rehabilitation Schedule will be sufficient to allow the City to issue a final Notice of Completion for the Rehabilitation of the Improvements within eighteen (18) months following the Effective Date (which may be extended to twenty-four (24) months if required due to relocation of residents during rehabilitation and approved by Landlord) with rehabilitation to be completed by no later than March 31, 2019, unless an extension is approved by Landlord. The commencement date for the Rehabilitation of the Improvements set forth in the Rehabilitation Schedule may be extended

if additional time is required to obtain title insurance on the water/sewer easement servicing the Property (or other resolution that is satisfactory to Tenant and Landlord). Tenant's failure to commence or complete the Rehabilitation of the Improvements in accordance with the time periods specified in this Section 6.2 shall be an Event of Default hereunder, subject to the terms of Section 6.10 hereunder. Prior to commencing the Repair Work or the Rehabilitation of the Improvements, Tenant shall, at Tenant's sole expense, employ a licensed professional to conduct a survey of the Improvements to determine if any lead paint or asbestos is present and to advise as to proper management and disposal if such substances are identified. Tenant shall, at Tenant's sole expense, promptly comply with the recommendations of such licensed professional and complete such management and disposal of any such substances.

6.3 Rehabilitation Standards. Tenant shall carry out and shall cause its contractors and subcontractors to carry out the Repair Work and the Rehabilitation of the Improvements and all subsequent improvements, alterations and replacements, in a first class and workmanlike fashion in accordance with the Rehabilitation Plans approved by Landlord and City, in compliance with all applicable state, federal, and local laws, rules, ordinances, codes, and regulations, including without limitation California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (the "**Prevailing Wage Laws**"), and all other applicable federal and state labor laws and standards, applicable provisions of the California Public Contracts Code (if any), the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* (all of the foregoing, collectively "**Applicable Laws**"). Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by the Repair Work and the Rehabilitation of the Improvements and make adequate provision for the safety of all persons affected thereby. Tenant shall have the sole responsibility for obtaining all necessary governmental permits and approvals for the rehabilitation. Landlord shall cooperate with Tenant in connection with obtaining any such governmental permits and approvals. Tenant shall pay (or cause to be paid) all costs and expenses associated with the Improvements rehabilitated by Tenant on the Property and shall indemnify, defend and hold Landlord harmless from and against all claims, liabilities, losses, costs and expenses (including reasonable attorney fees) incurred by or brought against Landlord for the failure of Tenant to pay for the cost of such work, any mechanics' or other liens filed against the Property in connection therewith, or the failure of Tenant to comply with any Applicable Laws, including the Prevailing Wage Laws. Upon Landlord's request, Tenant shall make available for Landlord's inspection certified payrolls from the general contractor and all subcontractors.

6.4 Easements; Reciprocal Easement/Joint Use Agreement. From time to time at Tenant's request, Landlord shall, in its capacity as fee title owner to the Property, join in the grant of easements to public or private utility companies for utility service to and for the benefit of the Project. Landlord agrees to join in granting or dedicating such public or private utility or other easements as may be reasonably required for the development, maintenance, use, operation or enjoyment of the Property in accordance with this Lease.

6.5 Protection of Landlord. Nothing in this Lease shall be construed as constituting the consent of the Landlord, express or implied, to the performance of any labor or services, or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or any part thereof, by any contractor, subcontractor, laborer or materialman such as to give rise to any right of any such contractor, subcontractor, laborer or materialman to file a mechanic's lien or other claim against the fee title to the Property. Landlord shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Landlord may deem necessary for the protection of Landlord and the Property from mechanic's liens or other claims. Tenant shall give Landlord ten (10) days' prior written notice of the commencement of any work to be done on the Property to enable Landlord to post such notices. In addition, Tenant shall make, or cause to be made, timely payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection with the Property (subject to Tenant's right to contest the same in accordance with all Applicable Laws).

6.6 Mechanic's Liens and Stop Notices. Tenant shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Tenant. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property, Tenant shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged. Tenant shall indemnify, defend and hold Landlord harmless from and against liability, loss, damages, costs and expenses (including reasonable attorneys' fees) incurred by or brought against Landlord for claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. Tenant agrees to and shall indemnify, defend and hold harmless from and against liability, loss, damages, costs and expenses (including reasonable attorneys' fees) incurred by or brought against Landlord for claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under Tenant.

6.7 Right of City to Satisfy Liens on the Property. If Tenant fails to satisfy or discharge any lien or stop notice on the Property pursuant to and within the time period set forth in Section 6.6 above, upon not less than ten (10) days' prior written notice to Tenant, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Tenant's expense and without further notice to Tenant, and all sums advanced by City for such purpose shall be payable to Landlord as Additional Rent. In such event Tenant shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Tenant to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Tenant. Tenant shall file a valid notice of cessation or notice of completion upon cessation of the Rehabilitation of the Improvements on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

6.8 Notice of Completion. If applicable, upon completion of the Rehabilitation of the Improvements, Tenant shall file or cause to be filed in the Official Records a Notice of Completion with respect to the subject work (the “**Notice of Completion**”). Upon request of Landlord, Tenant shall make available to Landlord following the completion of the Rehabilitation of the Improvements a full set of as-built plans for the Project.

6.9 Use of Plans. The contracts relating to design and rehabilitation of the Improvements executed by and between Tenant (or other affiliate of Tenant) and any architect, other design professional or any general contractor shall provide, in form and substance reasonably satisfactory to Landlord, for the assignment thereof to Landlord as security to Landlord for Tenant’s performance hereunder, and Landlord shall be furnished with any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated due to Tenant’s default, Landlord may, at its election, use any plans and specifications to which Tenant is then entitled pursuant to any such contract upon the payment of any sums due to any party thereto, subject to any prior rights of the Project construction/rehabilitation lender.

6.10 Cost of Rehabilitation; Financing of Rehabilitation by Tenant. Tenant shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the rehabilitation of the Improvements. Except as expressly set forth herein, all costs of designing, and rehabilitating the Improvements, and compliance with the Project approvals, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Tenant and shall not be an obligation of the City. If any Applicable Laws are hereafter changed so as to require during the Term any alteration of the Improvements, or the reinforcement or any other physical modification of the Improvements, Tenant shall be solely responsible for such cost and expense.

Within one hundred and eighty (180) days of the Effective Date, Tenant shall demonstrate to the satisfaction of the City that Tenant has obtained binding commitments (the “**Binding Commitments**”) from a lending institution for the Rehabilitation of the Improvements. The financing structure, sources and terms shall be the responsibility of Tenant, but shall all be subject to the City’s review and written approval, not to be unreasonably withheld. If the City does not respond to Tenant’s written request for such approval within thirty (30) days after the City’s receipt of such request, the City shall be deemed to have so approved. The City shall cooperate, at no cost to the City, in Tenant’s obtaining the rehabilitation financing for the Project, including consideration of permitting the Property to be encumbered by a Leasehold Mortgage pursuant to the terms and conditions of Article XV of this Lease to secure such financing. If Tenant has not demonstrated to the satisfaction of the City that Tenant has obtained the Binding Commitments from a lending institution within such 180 day period as described above, City shall give written notice of such default to Tenant, and Tenant shall have thirty (30) days from receipt of such notice, or such longer time as the City may provide in the notice, to cure the default to City’s satisfaction. If Tenant does not cure such default, City may exercise all rights and remedies available to City under this Lease, including but not limited to the right to terminate the Lease. Notwithstanding the foregoing, in the event that Tenant is unable to obtain the Binding Commitments, despite its diligent and good faith efforts as demonstrated to Landlord in its reasonable discretion, Landlord and Tenant agree to work in good faith to review and consider revisions to certain terms and conditions of this Lease to facilitate Tenant’s attainment

of the Binding Commitments. If Landlord and Tenant agree to revise any terms of this Lease to facilitate Tenant's financing for the Rehabilitation of the Improvements, such revisions may be approved and implemented by the City Manager, unless the City Manager, in his or her discretion, refers the matter to the City Council for approval. If after ninety (90) days, despite the good faith efforts of Landlord and Tenant, Landlord and Tenant have not agreed upon any revisions to this Lease to facilitate Tenant's financing and Tenant has not obtained the Binding Commitments, this Lease shall terminate one hundred twenty (120) days after the lapse of such 90-day period.

6.11 Project Approvals. Tenant acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the Rehabilitation of the Improvements, does not limit in any manner the discretion of City in such approval process, and does not relieve Tenant from the obligation to apply for and obtain all necessary entitlements, approvals, and permits for the development of the Property, including without limitation, the approval of architectural plans, the issuance of any certificates regarding historic resources required in connection with the Project (if any), and the completion of any required environmental review. Tenant covenants that it shall obtain all necessary permits and approvals which may be required by City, County, or any other governmental agency having jurisdiction over the Property, and shall not commence rehabilitation work on the Improvements prior to issuance of building permits required for such work. City staff shall work cooperatively with Tenant to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the Rehabilitation of the Improvements on the Property.

6.12 Intentionally deleted.

6.13 Fees and Permits. Tenant shall have the sole responsibility for obtaining all necessary governmental permits and approvals for the Rehabilitation of the Improvements, at Tenant's sole cost and expense. Landlord shall cooperate with Tenant in connection with obtaining any such governmental permits and approvals. Tenant shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City and all other agencies with jurisdiction over development of the Property in connection with obtaining building permits and other approvals for the Rehabilitation of the Improvements, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Rehabilitation of the Improvements.

6.14 Rehabilitation Plans. Within the time set forth in the Rehabilitation Schedule, Tenant shall submit to the City's Building Department detailed rehabilitation plans for the Rehabilitation of the Improvements (the "**Rehabilitation Plans**"). As used herein **Rehabilitation Plans** means all construction documents upon which Tenant and Tenant's contractors shall rely in performing the Rehabilitation of the Improvements (including the landscaping, parking, and common areas) and shall include, without limitation, detailed plans and descriptions of the rehabilitation work to be completed in each of the eight (8) residential units in the Project, site development plans, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and

building plans and specifications.

6.15 Rehabilitation Pursuant to Plans. Tenant shall perform the Rehabilitation of the Improvements in accordance with the approved Rehabilitation Plans and all permits and approvals granted by the City. Tenant shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Project. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and rehabilitation work on the Rehabilitation of the Improvements shall be performed by licensed contractors, engineers or architects, as applicable.

6.16 Change in Rehabilitation Plans. If Tenant desires to make any material change in the approved Rehabilitation Plans, Tenant shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the Rehabilitation Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. Unless City notifies Tenant in writing that a proposed change is rejected or that City requests a modification to such proposed change within thirty (30) days, it shall be deemed approved. If rejected, the previously approved Rehabilitation Plans shall continue to remain in full force and effect. Any change in the Rehabilitation Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the architecture, design, function, use, or amenities of the Project as shown on the latest approved Rehabilitation Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

6.17 Rights of Access. For the purpose of ensuring that the Rehabilitation of the Improvements is completed in compliance with this Agreement, Tenant shall permit representatives, employees and agents of the City to enter upon the Property following 24 hours written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided).

6.18 City Disclaimer. Tenant acknowledges that the City is under no obligation, and the City undertakes or assumes no responsibility or duty to Tenant or to any third party, to in any manner review, supervise, or inspect the progress of rehabilitation or the operation of the Project. Tenant and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Tenant is properly discharging its obligations under this Agreement, and shall not be relied upon by Tenant or any third party as a warranty or representation by the City as to the quality of the design or construction of the Rehabilitation of the Improvements or otherwise.

6.19 Defects in Plans. The City shall not be responsible to Tenant or to any third party for any defect in the Rehabilitation Plans or for any structural or other defect in any work done pursuant to the Rehabilitation Plans. Tenant shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to,

or alleged to arise from or relate to defects in the Rehabilitation Plans or defects in any work done pursuant to the Rehabilitation Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Tenant's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not, and shall not, waive any rights against Tenant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Tenant's deposit with City of any of the insurance policies described in this Agreement. Tenant's indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

6.20 Equal Opportunity. There shall be no discrimination on the basis of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in rehabilitation work on the Property, and Tenant shall direct its contractors and subcontractors to refrain from discrimination on such basis.

6.21 Prevailing Wage Requirements. To the full extent required by applicable federal and state law, Tenant and its contractors, subcontractors and agents shall comply with Prevailing Wage Law and federal Davis Bacon requirements, and shall be responsible for carrying out the requirements of such provisions. If applicable, Tenant shall submit to City a plan for monitoring payment of prevailing wages and shall implement such plan at Tenant's expense.

6.22 Performance and Payment Bonds. Prior to commencement of Repair Work and Rehabilitation of the Improvements, Tenant shall cause its general contractor to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of the Repair Work and the Rehabilitation of the Improvements. The bonds shall name the City as an obligee. In lieu of such performance and payment bonds, subject to City's approval of the form and substance thereof, Tenant may submit evidence satisfactory to the City of the contractor's ability to commence and complete the Repair Work and the Rehabilitation of the Improvements in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. Such evidence must be submitted to City in approvable form in sufficient time to allow for City's review and approval prior to the scheduled rehabilitation start date.

6.23 Insurance Requirements. Tenant shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article IX.

6.24 Contractors and Subcontractors. No contractual relationship shall exist between the City and any contractors or subcontractors hired by or working directly or indirectly on behalf of Tenant.

6.24.1. Tenant agrees to include in all of its contracts with contractors (and to require all of its contractors to include in all of their contracts with subcontractors) the same requirements and provisions of this Lease including the indemnity and insurance requirements,

to the extent such requirements apply to the scope of the contractor's and/or subcontractor's work. Tenant shall provide a copy of the indemnity and insurance provisions of this Lease to all contractors and subcontractors. Tenant shall require all contractors and sub-contractors to provide valid certificates of insurance and the endorsements required by this Lease prior to commencement of any work. Upon City's request, Tenant shall promptly provide proof of such compliance to the City.

6.24.2 With regard to the scope of contractor's and/or subcontractor's work, all contractors and subcontractors hired or working directly or indirectly on behalf of Tenant shall agree to be bound to the Tenant and the City in the same manner and to the same extent as Tenant is bound to the City under this Lease.

ARTICLE VII

USE OF THE PROPERTY

7.1 Permitted Uses. Tenant may use the Property for the rehabilitation, maintenance and operation of the Project as an eight (8) unit multi-family residential rental project and related ancillary facilities consistent and compatible with a multi-family residential rental project and for no other purpose without the prior written consent of Landlord. Tenant shall not do or permit any activity on or about the Property that constitutes a public or private nuisance. At Tenant's sole expense, Tenant shall procure and maintain all governmental licenses or permits required for the proper and lawful conduct of Tenant's activities conducted on the Property.

7.2 Affordability Requirements. Subject to a potential Extended Term, for a term of fifty-five (55) years commencing upon the Effective Date, no fewer than eight (8) of the dwelling units in the Project shall be both rent-restricted and occupied (or if vacant, available for occupancy) by eligible households of low and moderate-income pursuant to and in accordance with the terms and conditions set forth in the Regulatory Agreement. Tenant shall comply with the terms and conditions set forth in the Regulatory Agreement, which is by this reference incorporated herein. This Section 7.2 shall terminate and be of no further force and effect if the Regulatory Agreement is terminated following the foreclosure of a Leasehold Mortgage or assignment or deed in lieu thereof.

7.3 Preference for Displacees, Residents and Employees. Consistent with the requirements of California Health and Safety Code Section 33411.3, Tenant shall provide persons and households of low or moderate-income who have been temporarily displaced by the Project a priority in renting housing rehabilitated on the Property. In addition, in order to ensure that there is an adequate supply of affordable housing within the City of Healdsburg for residents and employees of businesses within the City, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Tenant shall give a preference in the rental of the residential units in the Project to eligible households that include at least one member who has lived or worked in the City for the past three (3) consecutive years. In the event there are fewer eligible persons available than there are units, units shall be made available to members of the general public. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control.

7.4 Relocation. Households residing on the Property as of the Effective Date shall not be displaced before suitable replacement housing is available in comparable replacement housing. Tenant shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, and all other applicable local, state and federal laws and regulations (collectively “**Relocation Laws**”) relating to the displacement and relocation of eligible persons as defined in such Relocation Laws. Any and all costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to Relocation Laws shall be paid by Tenant. Tenant shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Tenant’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Tenant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Tenant’s deposit with City of any of the insurance policies described in this Agreement. Tenant’s indemnification obligations set forth in this Section shall not apply to Claims arising from the gross negligence or willful misconduct of the Indemnitees. Tenant’s obligations set forth in this Section 7.4 shall survive the expiration or earlier termination of this Agreement.

7.5 Reporting Requirements.

7.5.1 Tenant Certification. For so long as the Regulatory Agreement is in effect, Tenant shall obtain from each current household, and from each future household prior to occupancy, of each dwelling unit in the Project and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as reasonably required by Landlord: (a) the identity of each member of the household; and (b) total household income. Tenant shall retain such certificates for not less than three (3) years, upon request shall make the originals available for inspection by Landlord and shall provide copies of such certificates to Landlord. Tenant shall have twelve (12) months from the Effective Date to obtain the tenant certifications from households who occupy a unit as of the Effective Date.

7.5.2 Annual Report. For so long as the Regulatory Agreement is in effect, Tenant shall submit an annual report (the “**Annual Report**”) to Landlord, no later than February 1st of each year, commencing with February 1, 2018, which shall, at a minimum, include the following information for each dwelling unit in the Project: (i) initial occupancy date; (ii) the number of persons residing in the unit; (iii) the information specified in Section 7.5.1, and (iv) the monthly rent charged. Upon Landlord’s request, Tenant shall include with the Annual Report, an annual income recertification and documentation verifying tenant eligibility, and such additional information as Landlord may reasonably request from time to time in order to show compliance with this Agreement.

7.5.3 Termination of Restrictions. The provisions of Section 7.5 shall terminate and be of no further force and effect if the Regulatory Agreement is terminated.

7.6 Intentionally deleted.

7.7 No Condominium Conversion. Tenant shall not convert the Project to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Project during the Term of this Lease.

7.8 Obligation to Refrain from Discrimination. Tenant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Tenant covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Tenant shall include such provision in all deeds, leases, contracts and other instruments executed by Tenant, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Tenant, its successors or assigns, as to any portion of the Property or the improvements located thereon shall contain the following language:

(a) In Deeds, the following language shall appear:

“(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10,

51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

- (b) In Leases, the following language shall appear:

“(1) The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

“(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).”

- (c) In Contracts, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

7.9 Management and Operation of the Project; Compliance with Laws. Tenant agrees to operate, maintain and manage the Property in a first-class manner, subject to incidental wear and tear. Tenant, at its sole cost and expense, shall comply with all Applicable Laws pertaining to the use, operation, occupancy and management of the Property. Tenant shall not itself, and shall not permit any subtenant to use the Property or the Improvements for any unlawful purpose and shall not itself, and shall not permit any subtenant to, perform, permit or suffer any act of

omission or commission upon or about the Property or the Improvements which would result in a nuisance or a violation of Applicable Law.

7.10 Tenant Right to Contest. Tenant shall have the right to contest by appropriate proceedings, in the name of Tenant, and without cost or expense to Landlord, the validity or application of any Applicable Law. If compliance with any Applicable Law may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge or liability against the Property or Tenant's interest therein, and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all claims, damages, losses, liabilities, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Landlord as a result of any such contest brought by Tenant.

7.11 Hazardous Materials.

7.11.1 Obligations of Tenant. Tenant hereby covenants and agrees that:

(1) Tenant shall not cause or permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property or the Project with the exception of limited amounts of cleaning supplies and other materials customarily used in rehabilitation, use or maintenance of residential properties similar in nature to the Project and used, stored and disposed of in compliance with Environmental Laws.

(2) Tenant shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Project or the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Tenant shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Tenant, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Tenant or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**". The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Tenant shall promptly take all actions at its sole expense as are necessary to remediate the Property as required by law; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. Without the City's prior written consent, Tenant shall not enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim.

7.11.2 Environmental Indemnity. To the greatest extent allowed by law, Tenant shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material on, under, in or about the Property after the Effective Date, or the transportation of any such Hazardous Material to or from, the Property after the Effective Date, or (ii) the failure of Tenant, Tenant's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Material, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws. Tenant's indemnification obligation pursuant to this Section includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision.

7.11.3 No Limitation. Tenant hereby acknowledges and agrees that Tenant's duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Material, whether the City obtained such information from the Tenant or from its own investigations, unless such information was known to the City at the time of execution of this Agreement but not disclosed to Tenant.

7.11.4 Definitions.

7.11.4.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methyl tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

7.11.4.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *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. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq.*), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq.*), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq.*), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq.*), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq.*).

ARTICLE VIII SURRENDER AND RIGHT TO REMOVE

8.1 Ownership During Term.

8.1.1 Improvements. During the Term of this Lease the Improvements shall, subject to the terms of this Lease, be and remain the property of Landlord.

8.1.2 Personal Property. All personal property, furnishings, fixtures and equipment installed by Tenant in, on or around the Property which (i) are not attached to the Property so as to cause substantial damage upon removal, and (ii) are not necessary for the normal operation and occupancy of the Project, shall be the personal property of Tenant (the "**Personal Property**"). At any time during the Term, Tenant shall have the right to remove the Personal Property provided Tenant shall repair any damage caused by the removal of such Personal Property. Personal Property shall not include any portion or part of major building components or fixtures necessary for the operation of the basic building systems (such as elevators, escalators, chillers, boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems) which shall be deemed a part of the Improvements.

8.2 Ownership at Lease Termination.

8.2.1 Improvements. Upon the Lease Termination, the Improvements and all stoves, refrigerators and dishwashers installed in the residential units (the "**Appliances**") shall unconditionally be and become the property solely of Landlord (except for any such Appliances that are installed by the residents of the residential units, which shall remain the property of such residents), and no compensation therefor shall be due or paid by Landlord to Tenant for any part

thereof, and this Lease shall operate as a conveyance and assignment thereof. Upon Lease Termination, Tenant shall surrender to Landlord the Property, the Improvements and the Appliances in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances other than those matters existing prior to the Effective Date or matters subsequently created or consented to by Landlord. Upon Lease Termination, at Landlord’s request Tenant agrees to execute, acknowledge and deliver to Landlord such recordable instruments as are necessary or desirable to confirm the termination of the Lease and all Tenant’s rights hereunder and to perfect Landlord’s right, title and interest in and to the Property, the Improvements and the Appliances.

8.2.2 Personal Property. With the exception of the Appliances, any Personal Property may be removed prior to Lease Termination by Tenant; provided, however, the removal shall be with due diligence, and without expense to Landlord, and any part of the Property damaged by such removal shall be promptly repaired. Any Personal Property which remains on the Property for thirty (30) days after the Lease Termination may, at the option of Landlord, be deemed to have been abandoned and either may be retained by Landlord as its property or may be disposed of in accordance with Applicable Law. If requested by Landlord within a reasonable time but not less than six months prior to the termination of this Lease, upon Lease Termination Tenant shall, at Tenant’s sole cost and expense, remove all Personal Property, or portions thereof designated by Landlord.

8.3 Condition of Improvements at Lease Termination. Landlord has entered this Lease in reliance on the fact that, at Lease Termination, Landlord will receive from Tenant the Improvements in good condition and repair, reasonable wear and tear excepted and reflecting the age of the Improvements at such time and Landlord’s willingness during the Term of this Lease to consent to the encumbrance of Tenant’s interest in the Property for rehabilitation and construction financing. At any time during the Term, upon reasonable advance notice and during normal business hours, Landlord may inspect the Property and Improvements to confirm that they are being properly maintained as required herein. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Property or Improvements which Landlord has determined are not being properly maintained and Tenant shall promptly comply with the provisions of this Lease regarding such items; provided, the failure of Landlord to inspect or to notify Tenant of any default hereunder shall not be a waiver of Landlord’s right to enforce Tenant’s maintenance and repair obligations hereunder.

8.4 Survival. The provisions of this Article VIII shall survive Lease Termination.

ARTICLE IX
INSURANCE

9.1 Insurance. Tenant, at its sole cost and expense, commencing upon the Effective Date and continuing throughout the Term (except as otherwise specified below) shall keep and maintain in full force and effect policies of insurance pursuant to and in accordance with the requirements set forth in this Article IX.

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

(a) Tenant and all contractors working on behalf of Tenant on the Project shall maintain a commercial general liability policy in the amount One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) annual aggregate coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Tenant and all contractors working on behalf of Tenant shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for 'any auto' and shall furnish or cause to be furnished to City evidence satisfactory to City that Tenant and any contractor with whom Tenant has contracted for the performance of work on the Property. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Tenant and all contractors must, at their sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Tenant. The Statutory Workers' Compensation Insurance coverage must be for Statutory Limits, and Employer's Liability Insurance must be provided with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, agents and volunteers for loss arising from or related to the work done by such person.

(d) Upon commencement of the Repair Work and the Rehabilitation of the Improvements and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Tenant and all contractors working on behalf of Tenant shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Tenant shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee.

(g) Prior to commencement of rehabilitation work, Tenant shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City’s Risk Manager, Tenant shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Tenant shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City 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, City may, without further notice and at its option, procure such insurance coverage at Tenant’s expense, and Tenant shall promptly reimburse City or such expense upon receipt of billing from City.

(i) Coverage provided by Tenant shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. Tenant shall furnish the required certificates and endorsements to City prior to the commencement of the Repair Work and the Rehabilitation of the Improvements, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City’s Risk Manager. At the option of and upon request by City’s Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City’s delivery of written notice of any such adjustments, Tenant shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

ARTICLE X

INDEMNIFICATION BY TENANT

Tenant shall indemnify, defend (with counsel approved by Landlord), protect and save Landlord and its elected and appointed officials, officers, employees, and agents (all of the foregoing, collectively the “**Indemnitees**”) harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, judgments, judicial or administrative proceeding, deficiency, order, costs and expenses (including without limitation reasonable attorneys’ fees and court costs) (all of the foregoing,

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collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to: the Tenant’s rehabilitation, renovation, use, operation, or management of, the Property or the Improvements; any breach or default on the part of Tenant in the performance of any covenant or agreement to be performed by Tenant pursuant to this Lease; any negligence of Tenant or any of its agents, contractors, employees, sublessees or licensees; any accident, injury or damage caused to any person in or on the Property or Improvements; the furnishing of labor or materials by Tenant; or the failure to comply with Applicable Laws (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781); whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Tenant which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Tenant’s deposit with City of any of the insurance policies described in this Agreement. Tenant’s indemnification obligations set forth in this Section shall not apply to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees or to any Claims arising before the Effective Date of this Lease. If an insurer under insurance required to be maintained by Tenant hereunder shall undertake to defend the Landlord under a reservation of rights with respect to ultimate coverage and Landlord shall deem it necessary to retain independent counsel with respect to such matter, Tenant shall pay the reasonable fees of such counsel. Tenant’s obligations under this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE XI

DAMAGE AND DESTRUCTION

11.1 Damage or Destruction. In the event of any damage to or destruction of the Improvements during the Term for which insurance coverage is required under this Lease, Tenant shall restore and rebuild the Improvements as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by Applicable Law and the availability of insurance proceeds for such purpose. Tenant shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible. Unless Landlord agrees otherwise in writing, Tenant shall commence reconstruction of the Improvements within sixty (60) days following the date upon which insurance proceeds are made available for such work. Tenant shall be deemed to have commenced reconstruction when Tenant engages an architect for such work. Upon the occurrence of damage or destruction, all insurance proceeds paid in respect of such damage or destruction shall be applied to the payment of the costs of the restoration and rebuilding required to be performed by Tenant pursuant to this Lease. The insurance proceeds shall be held in trust by a financial institution agreed upon by Landlord and Tenant (the “**Insurance Trustee**”), with the costs of such trust to be a first charge against the insurance proceeds. After the completion of the restoration and rebuilding of the Improvements, any remaining insurance proceeds shall be paid to Tenant and Tenant shall be entitled to retain the same.

11.1.1 Mortgagee Protection. Notwithstanding the foregoing or any other provision to the contrary in this Article XI, if a Leasehold Mortgagee requires insurance

proceeds payable with respect to a casualty to be paid to it or its successors or assigns pursuant to the terms of its Leasehold Mortgage, the insurance proceeds shall be delivered to such Leasehold Mortgagee to be applied by such Leasehold Mortgagee in accordance with such Leasehold Mortgage.

11.2 Rebuilding by Tenant. The funds held by the Insurance Trustee shall be held in trust and shall be applied to the cost of rebuilding. Any funds held by the Insurance Trustee following final completion of rebuilding and payment of all costs and expenses thereof and removal of any liens related thereto, shall be paid to Tenant.

11.3 Disbursement of Funds. The Insurance Trustee shall disburse funds only on a periodic basis approved by Landlord and Tenant and only upon receipt of invoices and other documentation, certified as correct by Tenant's architect, if an architect is required for the repair, evidencing satisfactory completion of the work for which payment is requested (a "**Payment Request**"). Further, the Insurance Trustee shall not disburse any funds unless the payment request is accompanied by (a) an executed conditional lien release in form complying with California law relating to all labor and materials described in the Payment Request and (b) an executed final lien release in form complying with California law releasing all claims for labor and materials described in the immediately preceding Payment Request.

11.4 Notice Required. In the event of material damage to or destruction of the Improvements, or any part thereof, Tenant shall promptly give Landlord and Leasehold Mortgagee notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. For purposes of this Article XI damage or destruction shall be deemed to be material if the estimated cost to repair equals or exceeds Ten Thousand Dollars (\$10,000).

11.5 Removal of Debris. If this Lease shall terminate following the occurrence of damage to or destruction of the Improvements and at a time when Tenant shall not have restored and rebuilt the Improvements, then Tenant shall, at its cost and expense after the use of any insurance proceeds released for such purpose, remove the debris and damaged portion of Improvements (including without limitation all foundations) and restore the Property and Improvements or the applicable portion thereof to a neat, clean and safe condition.

11.6 Tenant's Right to Terminate. Notwithstanding any contrary provision of this Article XI, Tenant shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements where all or substantially all of the Improvements are substantially damaged or destroyed and such damage or destruction resulted from a cause not insured against by Tenant nor required to be insured against by Tenant under this Lease (an "**Uninsured Loss**"), and where all of the following occur:

(i) No more than one hundred twenty (120) days following the Uninsured Loss, Tenant shall notify Landlord of its election to terminate this Lease. To be effective, such notice must include the written consent of all Leasehold Mortgagees to Tenant's exercise of the option to terminate set forth in this Section 11.6. Landlord shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Tenant has obtained the consent of all Leasehold Mortgagees to Tenant's exercise of its option to terminate this Lease.

(ii) No more than sixty (60) days following the giving of the notice required by the preceding paragraph (i) or such longer time as may be reasonable under the circumstances, Tenant shall, at Tenant's expense after the use of any insurance proceeds released for such purpose, remove all debris and other rubble from the Property, secure the Property against trespassers, and at Landlord's election, remove all remaining Improvements on the Property.

(iii) No more than thirty (30) days following Tenant's termination notice, Tenant shall deliver to Landlord a quitclaim deed to the Property and Improvements in recordable form, in form and content satisfactory to Landlord and/or with such other documentation as may be reasonably requested by Landlord or any title company on behalf of Landlord, terminating Tenant's interest in the Property and Improvements.

ARTICLE XII

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

If Tenant shall at any time fail to pay any Imposition or other charge payable by Tenant to a third party as required by this Lease within the time permitted (which shall be deemed to include any time to contest the same that is permitted by Applicable Laws), or to pay for or maintain any of the insurance policies required pursuant to Article IX within the time therein permitted, or to make any other payment or perform any other act on its part to be made or performed hereunder within the time permitted by this Lease, then after thirty (30) days' written notice to Tenant and after satisfying all other notice requirements set forth in this Lease respecting Leasehold Mortgagees and such parties' failure to timely cure (or as applicable, commence to cure) the same, and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to): (i) pay such Imposition or other charge payable by Tenant; (ii) pay for and maintain such insurance policies required pursuant to Article IX; or (iii) make such other payment or perform such other act on Tenant's part to be made or performed under this Lease; and Landlord may enter upon the Property and Improvements for such purpose and take all such action thereon as may be reasonably necessary therefor.

All sums paid by Landlord and all costs and expense incurred by Landlord in connection with the performance of any such act (together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment) shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. The "**Default Rate**" shall mean interest calculated at an annual rate equal to the rate of interest most recently announced by Bank of America N.A. (or its successor bank) at its San Francisco office as its "reference rate" but in no event more than the maximum rate of interest permitted by law. If Bank of America or its successor no longer issues a "reference rate," the most comparable rate of the largest bank with its corporate headquarters in California shall be used. If there is no such bank or comparable rate, then the Default Rate shall be the highest legal rate of interest that may be charged at that time.

ARTICLE XIII

REPAIRS, CHANGES, ALTERATIONS AND NEW CONSTRUCTION

13.1 Repairs and Maintenance. Tenant covenants and agrees, throughout the Term, without cost to Landlord, to take good care of the Property and to keep the same in good order and condition. Tenant shall promptly, at Tenant's own cost and expense, make all necessary repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, whether contemplated or not contemplated at the time of execution of this Lease, and shall keep the Property in a well maintained, safe, clean and sanitary condition. The term "repairs" shall include replacements or renewals when necessary, and all such repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant waives any rights created under any law now or hereafter in force to make repairs to the Improvements at Landlord's expense. Tenant shall keep and maintain all portions of the Property and the sidewalks adjoining the same in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. From time to time during the Term, upon not less than 48 hours prior notice from Landlord, Landlord may enter the Property, or portions thereof, to determine if Tenant is properly maintaining the Property. If, following any such inspection by Landlord, Landlord delivers notice of any deficiency to Tenant, Tenant shall promptly prepare and deliver to Landlord Tenant's proposed plan for remedying the indicated deficiencies. Tenant's failure to deliver a remedial plan and to complete, within a reasonable time, remedial work shall be a default under this Lease (subject to all applicable notice and cure rights of Tenant and the Leasehold Mortgagees). Landlord's failure to deliver, following any Landlord's inspection, any notice of deficiency to Tenant, shall not be a waiver of any default by Tenant under this Article XIII. Tenant shall defend, indemnify and hold Landlord harmless from and against any claim, loss, expense, cost, or liability incurred by Landlord arising out of Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Property as required hereunder.

13.2 Changes and Alterations. Tenant shall not during the Term make any changes or alterations in, to or of the Improvements without the prior written consent of Landlord, which Landlord shall not unreasonably withhold, so long as Tenant complies with all of the following at Tenant's sole cost and expense:

- (a) The change or alteration shall be in harmony with neighboring buildings and shall not materially impair the value or structural integrity of the Improvements.
- (b) The change or alteration shall be for a use which is permitted hereunder.
- (c) No change, alteration or addition shall be undertaken until Tenant shall have obtained and paid for, so far as the same may be required from time to time, all permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them, having jurisdiction. Landlord shall join in the application for such permits or authorizations whenever such action is necessary; provided, however, that Landlord shall incur no liability or expense in connection therewith.
- (d) Any change, alteration or addition shall be made in a good and workmanlike manner and in accordance with all applicable permits and all Applicable Laws.

(e) During the period of initial renovation of, or of construction of any change, alteration or addition in, to or of, the Improvements or of any permitted demolition or new construction or of any restoration, Tenant shall maintain or cause to be maintained property and other applicable insurance described in Article IX, which policy or policies by endorsement thereto, if not then covered, shall also insure any change, alteration or addition or new construction, including all materials and equipment incorporated in, on or about the Improvements (including excavations, foundations and footings) under a broad form all risks builders' risk form or equivalent thereof.

(f) Tenant shall comply with the provisions of Article VI hereof.

(g) At Landlord's request, Tenant shall provide Landlord with a copy of as-built drawings for the Improvements within sixty (60) days following the completion of the Improvements.

13.3 Exceptions to Requirement for Consent. The foregoing notwithstanding, following City's issuance of a Notice of Completion after completion of the rehabilitation of the Project, Tenant shall not be required to obtain Landlord's prior written consent to any changes, alterations or improvements so long as all the following requirements are met:

(a) The change, alteration or improvement is nonstructural;

(b) The change, alteration or improvement is not visible from the exterior of any building on the Land;

(c) The change, alteration or improvement has a cost of less than Ten Thousand Dollars (\$10,000); and

(d) The provisions of Article VI are satisfied.

Notwithstanding the foregoing, except in response to emergency situations for which it would not be reasonably practicable or possible to provide such advance notice, Tenant shall deliver to Landlord not later than ten (10) days prior to commencement of any construction, change, alteration or repair, written notice of the proposed work, a general description of the proposed work and sufficient information to permit Landlord to post a notice of nonresponsibility on the Land.

13.4 No Right to Demolish. Notwithstanding any other provisions of this Article XIII, Tenant shall have no right to demolish any Improvement, once built, unless Tenant shall have received the prior written consent of Landlord which shall not be unreasonably withheld if the age and condition of the Improvements makes repair or reconstruction impractical or financially infeasible.

ARTICLE XIV

EMINENT DOMAIN

14.1 Eminent Domain.

14.1.1 Definitions. The following definitions shall apply in construing the provisions of this Article XIV:

(a) “**Award**” means all compensation, damages or interest, or any combination thereof, paid or awarded for the taking, whether pursuant to judgment, by agreement, or otherwise.

(b) “**Notice of intended taking**” means any notice or notification on which a reasonably prudent person would rely and would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning entity a written notice of intent to take.

(c) “**Partial taking**” means any taking that is not a total taking, a substantial taking, or a temporary taking.

(d) “**Substantial taking**” means the taking of so much of the Property that the remaining portion thereof would not be economically and feasibly usable by Tenant for the then existing uses and purposes of the Property, in Tenant’s reasonable judgment, but shall exclude a temporary taking.

(e) “**Taking**” means any taking of or damage, including severance damage, to all or any part of the Property or any interest therein by the exercise of the power of eminent domain, or by inverse condemnation, or a voluntary sale, transfer or conveyance under threat of condemnation in avoidance of the exercise of the power of eminent domain or while condemnation proceedings are pending.

(f) “**Temporary taking**” means the taking of any interest in the Property for a period of less than one (1) year.

(g) “**Total taking**” means the taking of all or substantially all of the Property, but shall exclude a temporary taking.

14.1.2 Notice. The party receiving any notice of the kind specified below shall promptly give the other party and all Leasehold Mortgagees written notice of the receipt, contents and date of the notice received:

- (a) notice of intended taking;
- (b) service of any legal process relating to condemnation of all or any portion of the Property;
- (c) notice in connection with any proceedings or negotiations with respect to such a condemnation; or
- (d) notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

Landlord and Tenant, and any Leasehold Mortgagee, each shall have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of their respective claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the mutual agreement of Landlord and Tenant and any Leasehold Mortgagee. Landlord and Tenant each agree to execute, acknowledge and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

14.1.3 Total or Substantial Taking. In the event of a total or substantial taking of fee title to the Property, Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease as of the date of the vesting of title in the condemning authority; provided, however, that if actual physical possession of all or part of the Property is taken by the condemning authority prior to such date of vesting of title, Tenant's obligations to pay Rent and other sums under this Lease shall terminate as of such earlier date. In the event of a total or substantial taking of an interest in the Property other than fee title, at Tenant's option (exercisable by written notice to Landlord), Tenant's interest in this Lease and all obligations of Tenant subsequently accruing hereunder shall cease as aforesaid.

14.1.4 Award. In the event of a total or substantial taking, the Award shall be apportioned as follows, in the following order:

(a) To Leasehold Mortgagee in an amount equal to the amount owing on the Leasehold Mortgage.

(b) To Landlord that portion of the Award equal to the fair market value of the Property. Any "bonus value" attributable to this Lease shall be paid to Landlord.

14.1.5 Temporary Taking. In the event of a temporary taking where Tenant's leasehold interest is interfered with on a temporary basis, Tenant shall be entitled to the whole Award for such interference, and this Lease shall remain in full force and effect.

14.1.6 Partial Taking. In the event of a partial taking, this Lease shall remain in full force and effect, covering the remainder of the Property, and Tenant shall repair and restore any damage to the Improvements caused by such partial taking consistent with and subject to the provisions applicable to a restoration in the event of an insured casualty under Article IX, so that after completion of the restoration the Improvements shall be, as nearly as possible, in a condition as good as the condition immediately preceding the partial taking. The Award for any partial taking shall be deposited and disbursed in the same manner as insurance proceeds are disbursed for restoration pursuant to Article IX, and upon completion of the restoration, any remaining portion of the Award shall be allocated as set forth in Section 14.1.6.1.

14.1.6.1 Award on Partial Taking. In the event of a partial taking, after application of the Award for restoration pursuant to Section 14.1.6, any remaining portion of such Award shall be apportioned as follows, in the following order:

(a) To Leasehold Mortgagee in an amount equal to the amount owing on the Leasehold Mortgage.

(b) To Landlord, that portion of the Award attributable to the fair market value of the portion of the Property taken.

No payments shall be made to Tenant pursuant to this Section if any default by Tenant hereunder has occurred and is continuing unless and until such default is cured.

ARTICLE XV

MORTGAGES

15.1 Leasehold Mortgages. Tenant shall have the right, at any time and from time to time during the Term, to encumber its leasehold interest hereunder with a Leasehold Mortgage or Mortgages subject to Landlord's prior written consent (which consent may be withheld in Landlord's sole discretion) provided that (a) no Leasehold Mortgage shall in any way impair (except as otherwise stated herein or as provided by law) the enforcement of Landlord's right and remedies herein and by law provided, (b) any such Leasehold Mortgage shall at all times be subject and subordinate to, and shall not affect or become a lien upon Landlord's right, title or estate in the Property or in this Lease, and (c) Tenant shall give Landlord prior written notice of any such Leasehold Mortgage, accompanied by a true and correct copy of any such Leasehold Mortgage. Any Leasehold Mortgage shall be subject to the terms and conditions set forth in this Article XV.

15.2 Rights of Leasehold Mortgagee.

15.2.1 Notices. If Landlord shall have been provided with written notice of the address of any Leasehold Mortgagee, Landlord shall mail to such Leasehold Mortgagee a copy of any notice under this Lease at the time of giving such notice to Tenant, and no such notice shall be effective against such Leasehold Mortgagee, and no termination of this Lease or termination of Tenant's right of possession of the Property or reletting of the Property by Landlord predicated on the giving by Landlord of any notice shall be effective, unless Landlord gives to such Leasehold Mortgagee written notice or a copy of its notice to Tenant of such default or termination, as the case may be.

15.2.2 Right to Cure.

(a) In the event of any default by Tenant under the provisions of this Lease, the Leasehold Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied such default (including the right, upon prior written notice to Landlord, to enter the Property if necessary to cure the default) within the same cure period as afforded Tenant hereunder, extended by an additional sixty (60) days, which cure period shall commence as against the Leasehold Mortgagee upon the receipt by the Leasehold Mortgagee of the notice of default. Landlord shall accept such performance by the Leasehold Mortgagee as if the same had been done by Tenant.

(b) The term "**incurable default**" as used herein means any default which cannot be reasonably cured by a Leasehold Mortgagee. The term "**curable default**" means any default under this Lease which is not an incurable default. Any failure to pay monetary sums shall at all times be deemed a curable default. Any failure to comply with the

requirements of Section 7.2 hereof (for so long as such Section 7.2 remains in effect) shall at all times be deemed a curable default, and as to Leasehold Mortgagees or any entity acquiring the interest of Tenant in the Property and in this Lease as a result of the foreclosure of a Leasehold Mortgage (or an assignment or deed in lieu thereof), Landlord shall not terminate this Lease provided such party is diligently and in good faith proceeding to cure any such default. In the event of any curable default under this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease, by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property, appoint a receiver, exercise any other remedy under this Lease, or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the curing of such default or effecting such foreclosure, and upon completion of a foreclosure (or assignment or deed in lieu thereof) such default shall be deemed to have been cured. The foregoing sentence shall not be deemed to extend the time period within which a default in the payment of money must be cured under Section 15.2.2 (a). The Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings. Nothing herein shall preclude Landlord from terminating this Lease with respect to any additional default which shall occur during any period of forbearance and not be remedied within the cure period, if any, applicable to any such additional default, except that Leasehold Mortgagee shall have the same rights specified in this Article XV with respect to any additional defaults.

In the event of any incurable default under this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) of this Lease, the Leasehold Mortgagee shall give Landlord written notice that it intends to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in effecting such foreclosure and such incurable default shall be deemed cured upon the foreclosure of the Leasehold Mortgage (or assignment or deed in lieu thereof).

(c) If the default by Tenant pertains to the failure of Tenant to complete Rehabilitation of the Improvements within the time period required under Section 6.2 of this Lease, and if prior to the expiration of the applicable grace period specified in Section 15.2.2 (a) of this Lease, the Leasehold Mortgagee shall give Landlord written notice that it intends to undertake to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall promptly commence and then proceed with diligence to do so, whether by foreclosure or otherwise, then Landlord will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of or relet the Property or similarly enforce performance of this Lease so long as the Leasehold Mortgagee is diligently and in good faith engaged in the completion of the Rehabilitation of the Improvements or effecting such foreclosure; provided, however, Landlord shall not be obligated to forbear from a termination or other enforcement of its rights under the Lease in response to such default beyond the date which

is one (1) year following the date of foreclosure of the Leasehold Mortgage (or deed or assignment in lieu of foreclosure); provided, further, that additional extensions will be granted by the City, in its reasonable discretion, if the City determines that there has been good faith progress in pursuing completion of the Rehabilitation of the Improvements, which may include, among other things, obtaining additional or substitute financing, or securing a substitute construction contractor.

(d) If a Leasehold Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings for Leasehold Mortgagee shall be extended for the period of such prohibition.

15.2.3 Execution of New Lease. If this Lease is terminated for any reason, including by Tenant's trustee in bankruptcy, receiver, liquidator or other similar person on account of a default or if Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of the Leasehold Mortgagee, or pursuant to judicial proceedings, and if (i) all monetary defaults of Tenant have been cured, and (ii) the Leasehold Mortgagee shall have arranged to the reasonable satisfaction of Landlord to cure any other curable default of Tenant under this Lease, then Landlord, within thirty (30) days (or such period as may reasonably be necessary to enable Landlord to comply with statutory requirements applicable to Landlord's lease of real property) after receiving a written request therefor, which shall be given within sixty (60) days after such termination or transfer and upon payment to it of all reasonable out-of-pocket expenses, including attorneys' fees, incident thereto, will execute and deliver a new lease of the Property to the Leasehold Mortgagee or its affiliate or other nominee or to the purchaser, assignee or transferee, as the case may be, for the remainder of the Term, containing the same covenants, agreements, terms, provisions, priority, and limitations, as are contained herein. The tenant under such new lease shall be personally obligated only for the performance of obligations under the Lease commencing as of the date of such foreclosure or assumption, and ending as of the date of any assignment of the Lease to a successor tenant.

(a) Upon the execution and delivery of a new lease, the new tenant, in its own name or in the name of Landlord may take all appropriate steps as shall be necessary to remove Tenant from the Property, but Landlord shall not be subject to any liability for the payment of fees, including attorneys' fees, costs or expenses in connection therewith, and the new tenant shall pay all such fees, including attorneys' fees, costs and expenses, on demand, and shall make reimbursement to Landlord of all such fees, including attorneys' fees, costs and expenses, incurred by Landlord. Tenant acknowledges and agrees that Landlord shall have no liability whatsoever to Tenant in connection with any such action, and hereby releases Landlord from any claim Tenant may have with respect thereto.

(b) Upon execution of any new lease, the new tenant named therein shall cure all uncured curable defaults hereunder. Any nonmonetary cure required of the new tenant shall be commenced within thirty (30) days following the date the new tenant executes the new lease and has a right to possession, and thereafter shall be diligently prosecuted to completion. Any failure to comply with any of the foregoing requirements shall constitute a default under the new lease.

(c) Following foreclosure or enforcement of a Leasehold Mortgage, or assignment in lieu thereof, Landlord will recognize the purchaser or assignee of the leasehold estate as the Tenant under the Lease.

(d) After such termination and cancellation of the Lease and prior to the expiration of the period within which the Leasehold Mortgagee may elect to obtain a new lease from City, City shall refrain from terminating any existing sublease or otherwise encumbering the Property or the Improvements without the prior written consent of the Leasehold Mortgagee. Any new lease shall enjoy the same priority in time and in right as the Lease over any lien, encumbrance or other interest created by Landlord before or after the date of such new lease, and shall vest in the new lessee all right, title, interest, power and privileges of Tenant hereunder in and to the Property and the Improvements, including, without limitation, the assignment of Tenant's interest in and to all then existing subleases and sublease rentals and the automatic vesting of title to all Improvements, fixtures and personal property of Tenant. Such new lease shall provide, with respect to each and every permitted sublease which immediately prior to the termination of the Lease was superior to the lien of the Leasehold Mortgage that the new lessee shall be deemed to have recognized the sublessee under the sublease, pursuant to the terms of the sublease as though the sublease had never terminated but had continued in full force and effect after the termination of the Lease, and to have assumed all the obligations of the sublessor under the sublease accruing from and after the termination of the Lease, except that the obligation of the new lessee, as sublessor, under any covenant of quiet enjoyment, expressed or implied, contained in any such sublease shall be limited to the acts of such new lessee and those claiming by, under or through such new lessee. If more than one entity claims to be the Leasehold Mortgagee that is entitled to a new lease pursuant to this subsection, City shall enter into such new lease with the lender whose mortgage or deed of trust is prior in lien. City, without liability to Tenant or any lender with an adverse claim, may rely upon a lender title insurance policy issued by a responsible title insurance company doing business in the state where the Property is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such new lease.

15.2.4 Tenant Default Under Leasehold Mortgage. If Tenant defaults under a Leasehold Mortgage, the Leasehold Mortgagee may exercise with respect to Tenant's interest in the Property and the Improvements any right, power or remedy under the Leasehold Mortgage which is not in conflict with the provisions of this Lease, including without limitation, judicial or nonjudicial foreclosure of the Leasehold Mortgage (or deed or assignment in lieu thereof), appointment of a receiver, and/or revocation of Tenant's license to collect rents.

15.2.5 No Merger. There shall be no merger of this Lease or any interest in this Lease, nor of the leasehold estate created hereby, with the fee estate in the Property, by reason of the fact that this Lease or such interest therein, or such leasehold estate may be directly or indirectly held by or for the account of any person who shall hold the fee estate in the Property, or any interest in such fee estate, nor shall there be such a merger by reason of the fact that all or any part of the leasehold estate created hereby may be conveyed or mortgaged in a Leasehold Mortgage to a Leasehold Mortgagee who shall hold the fee estate in the Property or any interest of the Landlord under this Lease.

15.2.6 Assumption of Obligations. For the purpose of this Article XV, the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. The purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument or assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, in order to be deemed to be an assignee or transferee and before the same shall be binding on Landlord, must assume in writing the performance of all of the terms, covenants, and conditions on the part of Tenant to be performed hereunder during the period such party holds a leasehold interest in the Property by an instrument, in recordable form, reasonably satisfactory to Landlord; provided however, that nothing contained herein shall be construed to require the purchaser, assignee or transferee as described above to be obligated to cure any default by Tenant. Although a purchaser, assignee or transferee shall not be obligated to cure any default, if any curable default is not cured, Landlord may exercise any remedy available under this Lease, including the termination of this Lease, if the curable default is not cured after the expiration of any applicable cure period.

15.2.7 Limitation of Leasehold Mortgagee Liability for Tenant Defaults. Notwithstanding any contrary provision hereof: (i) no Leasehold Mortgagee shall be required to pay any liens or charges that are extinguished by the foreclosure of its Leasehold Mortgage; (ii) any incurable default shall be, and shall be deemed to have been waived by Landlord upon completion of foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser at a foreclosure sale, or any entity who otherwise acquires Tenant's interest from the Leasehold Mortgagee by deed in lieu of foreclosure. Any entity acquiring the interest of Tenant in the Property and in this Lease as a result of the foreclosure of a Leasehold Mortgage (or an assignment or deed in lieu thereof) acquires an interest in the leasehold only, and shall be liable to perform the obligations of Tenant under this Lease only during the period such entity retains ownership of the interest of Tenant in the Property and in this Lease.

15.3 Non-Subordination of Fee. Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Property or its right to rent payments hereunder or any other right of Landlord herein. Except as expressly set forth in this Article XV, no Leasehold Mortgage shall impair Landlord's ability to enforce its rights and remedies under this Lease or provided by law. Landlord shall have no obligation to encumber or otherwise subordinate its fee interest in the Property or in this Lease to the interest of any Leasehold Mortgagee in this Lease or in Tenant's leasehold estate.

15.4 Transfers and Subsequent Transfers. In the event any person or entity becomes the lessee under the Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under Section 15.2.3, such new person or entity must be approved by Landlord in accordance with the provisions and requirements set forth in Article XVI. In addition, the transferee must be experienced in the rehabilitation, operation and management of affordable rental housing projects without a record of material violations of discriminatory restrictions or other applicable state or federal laws pertaining thereto. In the event any person or

entity becomes the lessee under the Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under Section 15.2.3, such person or entity may assign or Transfer the Lease or such new lease only in accordance with the terms of Article XVI.

15.5 Landlord's Rights Under Leasehold Mortgages.

15.5.1 Notice of Tenant's Default. Tenant shall ensure that every Leasehold Mortgage secured by a deed of trust on Tenant's leasehold estate in the Property shall expressly provide that:

(a) the lender shall give Landlord contemporaneous notice of any default by Tenant thereunder, if the failure to cure such default could reasonably be expected to result in acceleration of the maturity of the debt secured by the Leasehold Mortgage; provided however, that the lender's giving or failure to give notice shall not affect the lender's rights or ability to timely pursue all applicable remedies, including, but not limited to, filing a notice of default or notice of sale, instituting judicial foreclosure proceedings, or seeking the appointment of a receiver. In addition, within three (3) business days following Tenant's receipt of any notice of default under any financing document affecting the Property, Tenant shall provide Landlord with a copy of such notice.

(b) Landlord shall have the right, but not the obligation, to cure any curable default by Tenant (but without obligation to do so) upon the same terms and conditions and within ninety (90) days measured from the date that Landlord receives notice thereof; and

(c) If Landlord shall tender payment in full of all sums required to be paid under the Leasehold Mortgage or the note secured thereby (disregarding any acceleration of maturity thereunder, but including any costs or expenses arising as a result of such default) on or before ninety (90) calendar days from the date of such notice of default from the lender to Landlord, then the lender shall accept such payment and rescind the acceleration, if any. Any sums paid by Landlord pursuant to this Section 15.5.1 shall become immediately due and payable from Tenant to Landlord as Rent due under this Lease.

(d) Landlord shall have the right and option (but not the obligation), during the period described in the last sentence of this paragraph, by notice in writing to the lender, to purchase any Leasehold Mortgage, the note secured thereby, and any other instruments securing or guaranteeing such note or otherwise evidencing any obligation secured by the Leasehold Mortgage. The purchase price therefor shall be the full amount due and owing to the lender thereunder, including any costs, expenses, swap termination fees, and penalties payable in accordance with the terms thereof. The sale and assignment by the lender shall be without recourse or warranty by the lender except that such lender has good title to the note (or is authorized to obtain payment or acceptance on behalf of one who has good title) and has the authority to transfer the loan to the City. The right granted by this paragraph may be exercised by Landlord at any time after the lender has declared the entire sum secured by any Leasehold Mortgage to be due and payable or has commenced proceedings to foreclose any Leasehold Mortgage, and such right shall terminate ninety (90) days following receipt by Landlord of the notice described above.

15.6 Intentionally deleted.

15.7 No Voluntary Surrender/Modification. Notwithstanding anything to the contrary set forth herein, Landlord will not voluntarily surrender the Lease or accept a voluntary surrender of the Tenant's leasehold estate, and Landlord will not amend or modify the Lease without the prior written consent of all holders of any Leasehold Mortgage then in effect (which such party may withhold in such party's sole discretion). Landlord will not enforce against any Leasehold Mortgagee any waiver or election made by Tenant under the Lease which has a material adverse effect on the value of Tenant's leasehold estate or the rights of Tenant under the Lease without the prior written consent of such Leasehold Mortgagee (which may be withheld in its sole discretion).

15.8 Leasehold Mortgagee Right to Pay Landlord Obligations. Leasehold Mortgagees shall have the right, but not the obligation, upon not less than five (5) business days' prior written notice to Landlord, to pay any taxes payable by Landlord with respect to the Property, and to cure any monetary or nonmonetary default by Landlord under any encumbrance on the Property which has priority over this Lease; and if any Leasehold Mortgagee does so pay or cure, Landlord agrees that it will reimburse such Leasehold Mortgagee for the amount thereof promptly following Landlord's receipt of Leasehold Mortgagee's written request therefor.

15.9 Amendments for the Benefit of Leasehold Mortgagees. Landlord and Tenant shall cooperate to include in this Lease by suitable amendment from time to time, provisions which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a default under the Lease. Landlord and Tenant each agree to execute and deliver (and acknowledge, if necessary for recording purposes) any agreement reasonably necessary to effect any such amendment; provided however, that any such amendment shall not in any way affect the Term, the Rent payable hereunder, nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

ARTICLE XVI

ASSIGNMENT, TRANSFER, SUBLETTING

16.1 Restrictions on Transfer or Assignment by Tenant. Except as permitted pursuant to Article XV and this Article XVI, Tenant shall not sell, transfer, encumber, pledge, assign, sublet or otherwise convey ("**Transfer**") all or any portion of its interest in the Property, the Improvements or this Lease voluntarily, involuntarily, by operation of law, or otherwise, without Landlord's prior written consent. Each Transfer shall comply with all requirements therefor set forth elsewhere in this Lease and Tenant shall have no right to hypothecate or encumber its interest in this Lease or sublet or assign all or any portion of the Property and/or the Improvements except as expressly provided under the terms of this Lease. No voluntary or involuntary assignee, sublessee, or successor in interest of Tenant shall acquire any rights or powers under this Lease except as expressly set forth herein.

16.1.1 Exception. Notwithstanding any contrary provision of this Lease, Landlord's consent shall not be required, and the provisions of Section 16.2 below shall not be applicable, with respect to the following Transfer: the renting or leasing of residential units to tenants in the ordinary course of business.

16.2 Procedure for Obtaining Landlord's Consent.

(a) Transfer Request. With respect to each Transfer requiring the Landlord's consent under Section 16.1, Tenant shall send to Landlord written request for Landlord's approval of the Transfer specifying the name and address of the proposed transferee and its legal composition (if applicable). Each Transfer Request shall be accompanied by all of the following:

(i) An audited or certified financial statement of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting procedures by a certified public accounting firm sufficiently current and detailed to evaluate the proposed transferee's assets, liabilities and net worth and certified as true and correct by the proposed transferee;

(ii) a description of the nature of the interest proposed to be transferred and the proposed effective date of such Transfer;

(iii) a true and complete copy of the proposed assumption agreement described in Section 16.6;

(iv) a complete history of the proposed transferee describing its background, its current real estate projects and location thereof, and the background of the principals or personnel to be involved in the development or operation of the portion of the Property subject to the Transfer and stating whether the proposed transferee ever filed for bankruptcy or had projects that were foreclosed;

(v) a description of all projects of the proposed transferee which during the past five (5) years have been the subject of substantial litigation; and

(vi) any such other information as reasonably requested by Landlord within fifteen (15) days following the receipt of the above information, in order to make an informed decision whether or not to approve or disapprove the Transfer.

(b) Approval of Landlord. Within thirty (30) days following receipt of all the information referred to in Section 16.3 (a), Landlord shall approve or disapprove a proposed transferee with respect to the information supplied which approval shall not be unreasonably withheld. If Landlord fails to give Tenant written notice of its disapproval of the transferee or request additional information in writing within such thirty (30) day period, it shall be deemed to have approved the transferee.

16.3 Subleases; Nondisturbance and Attornment. Tenant agrees for the benefit of Landlord that each sublease, rental agreement, and any other agreement for occupancy of any part of the Improvements (each an "**Occupancy Agreement**") entered into after the Effective

Date: (a) shall state that it is subject to the terms and provisions of this Lease, and (b) shall require that the subtenant under the Occupancy Agreement shall attorn to and accept Landlord as the sublessor or other party under the Occupancy Agreement in the event this Lease is terminated. Landlord agrees that as long as each Occupancy Agreement complies with the requirements of the preceding clauses (a) and (b), then upon the expiration or termination of this Lease, Landlord shall recognize the subtenant or occupant under the Occupancy Agreement as the direct tenant of Landlord under the terms and conditions contained in the Occupancy Agreement and for a term equal to the then unexpired term of the Occupancy Agreement; provided however, that: (i) at the time of the expiration or termination of this Lease no uncured default shall exist under the Occupancy Agreement which at such time would permit the termination of the Occupancy Agreement or the exercise of any dispossession remedy provided for therein; and (ii) Landlord shall not be (x) liable for any prior act or omission of Tenant under the Occupancy Agreement; (y) liable for the return of any security deposit under the Occupancy Agreement not actually received by Landlord; or (z) subject to any offsets or defenses that the subtenant or occupant may have against Tenant. The provisions of this Section 16.3 shall survive the expiration or termination of this Lease.

16.4 Limitations.

(a) Non-Transfer Period. In no event shall Tenant request Landlord to approve any Transfer prior to the date that all of the following shall have occurred:

(i) the Rehabilitation of the Improvements shall be complete and a final Notice of Completion shall be issued with respect to the entire Project; and

(ii) all costs and expenses with regard to the Rehabilitation of the Improvements and related Improvements shall be paid in full, all lien periods shall have expired and there shall be no liens on the Property, the Improvements, the Landlord's fee title or any portion thereof.

The provisions of this Section 16.4 (a) shall not be applicable to the granting of a Leasehold Mortgage in accordance with Section 15.1, and shall not be applicable to, or after, the foreclosure of a Leasehold Mortgage or the acquisition of Tenant's interest in this Lease by assignment or deed in lieu of foreclosure.

(b) No Relief from Liability. No Transfer will limit, diminish or otherwise relieve Tenant of any liability described herein. The provisions of this Section 16.4 (b) shall not be applicable to any Transfer following the foreclosure of a Leasehold Mortgage or following the acquisition of Tenant's interest in this Lease by assignment or deed in lieu of foreclosure.

(c) No Consent If Bankruptcy. In no event shall Landlord be required to consent or be deemed to consent to a Transfer to a party then subject to any proceedings under any insolvency, bankruptcy or similar laws.

(d) Criteria for Transfer. Landlord shall be deemed to be reasonable in withholding its consent to a proposed Transfer if, among other requirements, if either of the following two conditions shall be unsatisfied:

(i) Tenant delivers to Landlord an audited financial statement of the proposed transferee for the three most recent calendar or fiscal years prepared in accordance with generally accepted accounting principles by a recognized certified accounting firm demonstrating that the proposed transferee (or its principals) is a viable, going concern with sufficient financial ability to own, operate and manage the Property; and

(ii) the proposed transferee shall have demonstrated experience rehabilitating, operating and managing affordable residential properties similar to the Project without a record of material violations of discriminatory restrictions or other applicable state or federal laws pertaining thereto.

16.5 Involuntary and Other Transfers. Without limiting any other restrictions on transfer contained in this Lease, no interest of Tenant in this Lease, the Property or part thereof shall be assignable in the following manner:

(a) under an order of relief filed, or a plan of reorganization confirmed, for or concerning Tenant by a bankruptcy court of competent jurisdiction under the federal bankruptcy act or the laws of the State of California, whereby any interest in this Lease, the Property or part thereof is assigned to any party which does not qualify as an approved transferee pursuant to this Lease unless such order is filed or such plan is confirmed in connection with an involuntary proceeding brought against Tenant and Tenant reacquires such transferred interest within ninety (90) days after the date such order is filed or such plan is confirmed;

(b) if Tenant assigns substantially all of its assets for the benefit of its creditors; or

(c) if an order of attachment is issued by a court of competent jurisdiction, whereby any interest in this Lease, the Property or part thereof or substantially all of Tenant's assets are attached by its creditors and such order of attachment is not stayed within ninety (90) days after the date it is issued.

The transfers described in this Section 16.5 shall constitute a breach under this Lease by Tenant and Landlord shall have the right to terminate this Lease as a result of any such transfer taking place, in which case this Lease shall not be treated as an asset of Tenant.

16.6 Assumption Agreement and Release. No permitted Transfer shall be effective until any curable default hereunder shall have been cured and there shall have been delivered to Landlord an assumption agreement, executed by the transferor and the proposed transferee, whereby such transferee expressly assumes such obligations as arise and/or accrue at any time after such Transfer takes place; and whereby such transferee assumes liability for the Lease obligations. The parties agree that as a condition to any Transfer taking place the transferee shall deliver to Landlord representations and warranties confirming the accuracy of the information delivered to Landlord concerning its current financial condition and its outstanding or pending liabilities.

16.7 Intentionally deleted.

16.8 Sale by Landlord. Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect the right of Landlord to sell, transfer, assign or convey all or any portion of the right, title and estate of Landlord in the Property and in this Lease; provided, however, that in each such instance any such sale, transfer, assignment or conveyance shall be subject to this Lease, and Tenant's other rights arising out of this Lease shall not be affected or disturbed in any way by any such sale, transfer, assignment or conveyance. Any other provision of this Lease to the contrary notwithstanding, each covenant, agreement or obligation of Landlord under this Lease relating to the ownership or use of the Property is intended to and shall constitute a covenant running with the title to the Property and shall be binding upon the owner from time to time of the Property. At such time as Landlord shall sell, transfer, assign or convey the entire right, title and estate of Landlord in the Property and in this Lease, all obligations and liability on the part of Landlord arising under this Lease after the effective date of such sale, transfer, assignment or conveyance shall terminate as to Landlord, and thereupon all such liabilities and obligations shall be binding upon the transferee.

ARTICLE XVII

BREACHES, REMEDIES AND TERMINATION

17.1 Event of Default. Tenant shall be in default under this Lease upon the occurrence of any of the following (“**Events of Default**”):

- (a) Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, Tenant's obligation to pay taxes and assessments due on the Property or part thereof, subject to Tenant's rights to contest such charges pursuant to Section 5.2), and such default continues for ten (10) days after Tenant receives Notice of Breach (as defined in Section 17.2.1);
- (b) Insurance. Tenant fails to obtain and maintain any policy of insurance required pursuant to this Lease, and Tenant fails to cure such default within ten (10) days;
- (c) Abandonment. Tenant abandons the Property;
- (d) Bankruptcy. Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;
- (e) Reorganization. A court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree remains unvacated and unstayed for an aggregate of ninety (90) days from the first date

of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof is appointed without the consent or acquiescence of Tenant and such appointment remains unvacated and unstayed for an aggregate of ninety (90) days, such ninety (90) day period to be extended in all cases during any period of a bona fide appeal diligently pursued by Tenant;

(f) Liens. Subject to Tenant's right to contest the following charges pursuant to Sections 5.2 and 6.6, Tenant fails to pay prior to delinquency taxes or assessments due on the Property or the Improvements or fails to pay when due any other charge that may result in a lien on the Property or the Improvements, and Tenant fails to cure such default within ninety (90) days of the date of delinquency, but in all events prior to the date upon which the holder of any lien has the right to pursue foreclosure thereof;

(g) Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of Tenant in the Property and such execution, attachment or similar process is not released, bonded, satisfied or vacated or stayed within sixty (60) days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant;

(h) Transfer. Tenant Transfers all or any portion of Tenant's interest in this Lease, the Property, the Improvements or part thereof in violation of the provisions of Article XVI and fails to rescind such Transfer within ten (10) days after written notice from Landlord;

(i) Other Obligations. Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 17.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Landlord shall have given written notice of the default to Tenant; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if Tenant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

17.2 Notice and Opportunity to Cure.

17.2.1 Notice of Breach. Unless expressly provided otherwise in this Lease, no breach by a party shall be deemed to have occurred under this Lease unless another party first delivers to the nonperforming party a written request to perform or remedy (the "**Notice of Breach**"), stating clearly the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

17.2.2 Failure to Give Notice of Breach. Failure to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. Except as otherwise expressly provided in this Lease, any failure or delay by either party in asserting any rights and remedies as to any breach shall not operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and

maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

17.2.3 Intentionally deleted.

17.3 Remedies Upon Default.

17.3.1 Landlord's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of Landlord hereunder and/or provided by law, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article XV hereof, Landlord shall have the right to terminate this Lease and/or Tenant's possessory rights hereunder, in accordance with applicable law to re-enter the Property and take possession thereof and of the Improvements, and except as otherwise provided herein or prohibited by law, to remove all persons and property therefrom, and to store such property at Tenant's risk and for Tenant's account, and Tenant shall have no further claim thereon or hereunder. In no event shall this Lease be treated as an asset of Tenant after any final adjudication in bankruptcy except at Landlord's option so to treat the same but no trustee, receiver, or liquidator of Tenant shall have any right to disaffirm this Lease.

17.3.2 Remedies Upon Abandonment. If Tenant should breach this Lease and abandon the Property, Landlord may, at its option, but subject in all events to the rights and remedies of Leasehold Mortgagees under Article XV hereof, enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder. Additionally, Landlord shall be entitled to recover from Tenant all costs of maintenance and preservation of the Property, and all costs, including attorneys' and receiver's fees incurred in connection with the appointment of and performance by a receiver to protect the Property and Landlord's interest under this Lease.

17.3.3 Landlord Right to Continue Lease. In the event of any default under this Lease by Tenant (and regardless of whether or not Tenant has abandoned the Property), this Lease shall not terminate (except by an exercise of Landlord's right to terminate under Section 17.3.1) unless Landlord, at Landlord's option, elects to terminate Tenant's right to possession or, at Landlord's further option, by the giving of any notice (including, without limitation, any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) to terminate Tenant's right to possession. For so long as this Lease continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including, without limitation, the right to recover all rent and other monetary payments as they become due hereunder. For the purposes of this Lease, the following shall not constitute termination of Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Property; or (b) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease.

17.3.4 Right to Injunction; Specific Performance. In the event of a default by Tenant under this Lease that remains uncured beyond any applicable grace periods permitted hereunder, Landlord shall have the right to commence an action against Tenant for damages, injunction and/or specific performance. Tenant's failure, for any reason, to comply with a court-ordered injunction or order for specific performance shall constitute a breach under this Lease.

17.3.5 Damages Upon Termination. Should Landlord elect to re-enter the Property, or should Landlord take possession pursuant to legal proceedings or to any notice provided by law, this Lease shall thereupon terminate, and Landlord may recover from Tenant:

- (a) the worth at the time of award of the unpaid rent which is due, owing and unpaid by Tenant to Landlord at the time of termination; and
- (b) the worth at the time of award of the amount by which the unpaid rent which would have come due after termination until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided; and
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss which Tenant proves could be reasonably avoided; and
- (d) all other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things are likely to result therefrom, including all costs (including attorneys' fees) of repossession, removing persons or property from the Property, repairs, reletting and reasonable alterations of the Improvements in connection with reletting, if any.

All computations of the worth at the time of award of amounts recoverable by Landlord under subparagraphs (a), (b), and (d) above shall be computed by allowing interest at a rate equal to the rate of interest most recently announced by Bank of America, N.A., (or any successor bank) at its principal office in San Francisco as its "reference rate" serving as the basis upon which effective rates of interest are calculated for those transactions making reference thereto, but in no event in excess of the maximum rate of interest permitted under applicable law. The worth at the time of the award recoverable by Landlord under (c) above shall be computed by discounting the amount otherwise recoverable by Landlord at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%, or at such lower discount rate as may hereafter be specified by applicable California statute.

17.4 Right to Receiver. Following the occurrence of an Event of Default, if Tenant (and all Leasehold Mortgagees) fails after receipt of a Notice of Breach to cure the default within the time period set forth in this Lease, Landlord, at its option, may have a receiver appointed to take possession of Tenant's interest in the Property with power in the receiver (a) to administer Tenant's interest in the Property, (b) to collect all funds available in connection with the operation of the Property, and (c) to perform all other acts consistent with Tenant's obligations under this Lease, as the court deems proper. Landlord's rights under this Section 17.4 shall be subject and subordinate to the rights of all Leasehold Mortgagees.

17.5 Remedies Cumulative. No remedy in this Article XVII shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease may be exercised from time to time and as often as

occasion may arise or as may be deemed expedient, subject to any limitations referred to hereinabove.

17.6 No Election of Remedies. The rights given in this Article XVII to receive, collect or sue for any rent or rents, moneys or payments, or to enforce the terms, provisions and conditions of this Lease, or to prevent the breach or nonobservance thereof, or the exercise of any such right or of any other right or remedy hereunder or otherwise granted or arising, shall not in any way affect or impair or toll the right or power of Landlord upon the conditions and subject to the provisions in this Lease to terminate Tenant's right of possession because of any default in or breach of any of the covenants, provisions or conditions of this Lease beyond the applicable cure period.

17.7 Survival of Obligations. Nothing herein shall be deemed to affect the right of Landlord to indemnification for liability arising prior to the termination of the Lease for personal injuries or property damage or in connection with any other Claim, nor shall anything herein be deemed to affect the right of Landlord to equitable relief where such relief is appropriate. No expiration or termination of the Lease by operation of law, or otherwise, and no repossession of the Property or any part thereof shall relieve Tenant of its previously accrued liabilities and obligations hereunder, all of which shall survive such expiration, termination or repossession.

17.8 No Waiver. Except to the extent that Landlord may have agreed in writing, no waiver by Landlord of any breach by Tenant of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be deemed a waiver by Landlord of its rights or remedies with respect to such breach.

17.9 Assignment of Subrents and Other Sums. Subject to the rights of any Leasehold Mortgagee, Tenant irrevocably assigns to Landlord the subrents and other sums due from Project tenants, licensees or concessionaires for the purposes and upon the terms and conditions set forth below. This assignment shall not impose upon Landlord any duty to produce rents from the Project, or cause Landlord to be (a) a "mortgagee in possession" for any purpose, (b) responsible for performing any of the obligations of the sublessor under any sublease, or (c) responsible for any waste committed by subtenants or any other parties, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. This is an absolute assignment (subject to the rights of any and all Leasehold Mortgagees), not an assignment for security only; and Landlord's right to subrents is not contingent upon, and may be exercised without possession of, the Property. Tenant hereby authorizes Landlord, at the election of Landlord to file a UCC-1 Financing Statement reflecting this assignment with the California Secretary of State. Landlord shall provide all Leasehold Mortgagees for which Landlord has been given an address for notice purposes with not less than twenty (20) days' prior written notice preceding any enforcement by Landlord of its rights to subrents.

17.10 License. Landlord confers upon Tenant a license ("**License**") to collect and retain the subrents, issues and profits of the Project as they become due and payable, until the occurrence of an Event of Default. Upon the occurrence of an Event of Default, the License

shall be automatically revoked and, subject to any rights of any Leasehold Mortgagee, Landlord may collect and retain the subrents, issues and profits without additional notice and without taking possession of the Property. This right to collect subrents, issues and profits shall not grant to Landlord the right to possession, except as hereinafter provided, and neither said right, nor termination of the License, shall impose upon Landlord the duty to produce subrents, issues or profits or to maintain all or any part of the Property.

ARTICLE XVIII

GENERAL PROVISIONS

18.1 Estoppel Certificates. At any time and from time to time, Landlord and Tenant, shall for the benefit of any Leasehold Mortgagee, on at least twenty (20) days' prior written request by the requesting party, deliver to the party requesting same a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the Rent has been paid and stating whether or not, to the best knowledge of the certifying party, the other party is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the certifying party may have knowledge and such other statements or certifications reasonably requested. A prospective purchaser or Leasehold Mortgagee shall be entitled to request such a statement and rely on a statement delivered hereunder.

18.2 Quiet Enjoyment. Landlord covenants and agrees that Tenant (and pursuant to the provision of Articles XV, any Leasehold Mortgagee), upon paying the Rent and all other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Property during the Term of this Lease without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

18.3 Landlord's Right to Enter the Property. Landlord and its agents may enter the Property or the Improvements from time to time with reasonable notice (and, upon Tenant's request, when accompanied by representative(s) of Tenant), except for emergencies in which case no notice shall be required, to inspect the same, to post notices of nonresponsibility and similar notices, and to discharge Tenant's obligations hereunder when Tenant has failed to do so within a reasonable time after written notice from Landlord.

18.4 Representations of Landlord and Tenant.

18.4.1 Tenant hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Tenant is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of California;

(b) Tenant has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of Tenant, enforceable against Tenant in

accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and

(c) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Tenant or any provision of any indenture, agreement or other instrument to which Tenant is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, partnership agreement, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Tenant.

18.4.2 Landlord hereby represents and warrants that all of the following are true and correct as of the Effective Date:

(a) Landlord has taken all requisite action in connection with the execution of this Lease and the undertaking of the obligations set forth herein. This Lease constitutes the legally valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(b) The execution of this Lease and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon Landlord or any provision of any indenture, agreement or other instrument to which Landlord is a party or may be bound. Neither the entry into nor the performance of this Lease will violate, be in conflict with or constitute a default under any charter, bylaw, trust agreement, mortgage, deed of trust, indenture, contract, judgment, order or other agreement, charge, right or interest applicable to Landlord.

(c) As of the Effective Date, Landlord has not executed or consented to the recordation of any monetary lien on Landlord's fee interest in the Property, and Landlord agrees that it will not execute or consent to the recordation of any monetary lien on Landlord's fee interest in the Property unless the holder of such lien agrees irrevocably to recognize this Lease in the event of any realization upon the Property by such holder or its successors or assigns.

18.5 Miscellaneous.

18.5.1 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.5.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Lease 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 is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (c) 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;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a nonbusiness day;
- (e) electronic transmission (email), in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient’s time or on a nonbusiness day.

Landlord: City of Healdsburg
 401 Grove Street
 Healdsburg, CA 95448
 Attention: City Manager
 Fax: 707-431-3321
 Email: kmassey@ci.healdsburg.ca.us

Tenant: Burbank Center Street Apartments LLC, a California limited liability company
 790 Sonoma Avenue
 Santa Rosa, CA 95404
 Attention: Chief Executive Officer
 Fax: 707-526-9782
 Email: LFlorin@burbankhousing.org

Leasehold Mortgagee:

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

18.5.3 Captions; Construction. The captions used for the sections and articles of this Lease are inserted for convenience only and shall not be used to construe this Lease. The language in all parts of this Lease shall be construed as a whole, according to its fair meaning and not strictly for or against Landlord or Tenant.

18.5.4 Binding on Successors. Subject to the restrictions on Transfers set forth in Article XVI, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

18.5.5 Short Form of Lease. A memorandum of lease substantially in the form attached hereto as Exhibit B shall be executed by Landlord and Tenant and recorded in the Office of the Sonoma County Recorder.

18.5.6 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Sonoma County, California or in the Federal District Court for the Northern District of California.

18.5.7 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

18.5.8 Indemnity Includes Defense Costs. In any case where either party is obligated under an express provision of this Lease, to indemnify and to save the other party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

18.5.9 No Brokers; No Third-Party Beneficiaries. Landlord represents that it has not engaged any broker or agent to represent Landlord in this transaction. Tenant represents that it has not engaged any broker or agent to represent Tenant in this transaction. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities or expenses, including attorneys' fees and costs, arising out of, or in connection with claims made by any broker or individual for commissions or fees as a result of the acts of the indemnifying party. There shall be no third-party beneficiaries to this Lease other than the Leasehold Mortgagees.

18.5.10 Disclaimer of Partnership, Lender/Borrower Relationship. The relationship of the parties under this Lease is solely that of landlord and tenant, and it is expressly understood and agreed that Landlord does not as a result of this Lease in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise. This Lease is not intended to, and shall not be construed to,

create the relationship of principal and agent, partnership, joint venture, association, or seller and buyer as between Landlord and Tenant. It is further expressly understood and agreed that this Lease is not intended to, and shall not be construed to create the relationship of lender and borrower, and Landlord does not, solely as a result of this Lease, become a lender to Tenant.

18.5.11 Entire Agreement; Amendments. This Lease together with the Regulatory Agreement contains the entire agreement between the parties relative to the subject matter hereof. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Lease and are of no further force and effect except as expressly provided in this Lease. No amendment or modification hereof shall be effective for any purpose unless in writing signed by Landlord and Tenant.

18.5.12 Time is of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a “business day” means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

18.5.13 Survival. The following provisions shall survive the expiration or termination of this Lease: all representations made by Tenant hereunder, Tenant’s release of Landlord pursuant to Section 2.6, Tenant’s indemnification obligations pursuant to Sections 5.2, 6.6, 6.19, 7.4, 7.10, 7.11.2, 13.1, and 18.5.9 and Article X, and all other provisions of this Lease which state that they shall survive the expiration or termination of this Lease.

18.5.14 Headings; Interpretation. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

18.5.15 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

18.5.16 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City its capacity as Landlord hereunder is required or permitted under this Lease, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the governing board of the

City. In any approval, consent, or other determination by Landlord required hereunder, Landlord shall act reasonably and in good faith.

18.5.17 Inspection of Books and Records. Upon request, Tenant shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Tenant necessary to determine Tenant's compliance with the terms of this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the Effective Date.

LANDLORD:

CITY OF HEALDSBURG

By: _____
City Manager

ATTEST:
By: _____
Maria Curiel, City Clerk

APPROVED AS TO FORM:

By: _____
Samantha Zutler, City Counsel

TENANT:

**BURBANK CENTER STREET APARTMENTS LLC,
a California limited liability company**

**By: BURBANK HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation, its sole member and manager**

By: 

Lawrance Florin, Chief Executive Officer

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

Exhibit A

LEGAL DESCRIPTION OF LAND
(Attach legal description.)

Exhibit B

AFFORDABLE HOUSING REGULATORY AGREEMENT
(Attach form of Agreement.)

Exhibit C

NOTICE OF AFFORDABILITY RESTRICTIONS
(Attach form of Notice.)

Exhibit D

MEMORANDUM OF LEASE
(Attach form of Memorandum.)

Attachment: Lease Agreement (1483 : 721 Center Lease Agreement with Burbank)

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

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attention: City Manager

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

Empty rectangular box for recording information.

Space above this line for Recorder's use.

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

by and between

THE CITY OF HEALDSBURG

and

BURBANK CENTER STREET APARTMENTS LLC

(721 and 723 Center Street)

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

**AFFORDABLE HOUSING REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is entered into effective as of 1/5/17, 2017 (“**Effective Date**”) by and between the City of Healdsburg, a California municipal corporation (“**City**”) and Burbank Center Street Apartments LLC, a California limited liability company (“**Tenant**”). The City and the Tenant are collectively referred to herein as the “**Parties.**”

RECITALS

A. Tenant leases from the City pursuant to a Lease dated 1/5/17, 2017 (the “**Lease**”) that certain real property and improvements located at 721 A-D and 723 A-D Center Street, Healdsburg, California, known as Sonoma County Assessor’s Parcel No. 002-042-016, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Pursuant to the Lease Tenant shall rehabilitate, manage and operate an affordable housing development on the Property consisting of eight (8) residential units and related improvements (collectively, the “**Project**”). Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the Lease.

C. The Lease provides that the residential units rehabilitated and managed on the Property will be required to be available to Eligible Households (defined below) at Affordable Rents (defined below) in accordance with this Agreement for a period of not less than the fifty-five (55) year Term of the Lease.

D. As a condition to its agreement to enter into the Lease with Tenant, City requires the Property to be subject to the terms, conditions and restrictions set forth herein.

F. The purpose of this Agreement is to satisfy the affordability requirements of the City’s affordable housing program and to regulate and restrict the occupancy and rents of the Project’s residential units for the benefit of the Project occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Tenant and Tenant’s successors and assigns for the full term of this Agreement.

AGREEMENT

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

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

“**80% AMI Household**” means a household whose Gross Income upon initial occupancy

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

does not exceed eighty percent (80%) of Area Median Income as adjusted for Actual Household Size.

“120% AMI Household” means a household whose Gross Income upon initial occupancy does not exceed one hundred twenty percent (120%) of Area Median Income as adjusted for Actual Household Size.

“80% AMI Unit” means a unit that is restricted for rent to Eligible Households that qualify as eighty percent (80%) AMI Households.

“120% AMI Unit” means a unit that is restricted for rent to Eligible Households that qualify as one hundred twenty percent (120%) AMI Households.

“Actual Household Size” means the actual number of persons in the applicable household.

“Adjusted for Family Size Appropriate for the Unit” Provided there are no pertinent federal statutes applicable to a project or program, “adjusted for family size appropriate to the unit,” shall mean for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Rent” means the following amounts, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis: (i) for the 80% AMI Units in the Project, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of eighty percent (80%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit; and (ii) for the 120% AMI Units in the Project, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

“Area Median Income” or “AMI” means the median income for Sonoma County, California, adjusted for Actual Household Size, as determined by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development (“HCD”) in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“City’s Authorized Representative” means the City Manager of the City of Healdsburg.

“City Documents” means the Lease and this Agreement.

“Claims” is defined in Section 2.6.

“Eligible Household” means (i) for the 80% AMI Units in the Project, a household for which gross household income upon initial occupancy does not exceed eighty percent (80%) of

AMI, and (ii) for the 120% AMI Units in the Project, a household for which gross household income upon initial occupancy does not exceed one hundred twenty percent (120%) of AMI.

“**Indemnitees**” is defined in Section 2.6.

“**Lease**” is defined in Recital B.

“**Marketing and Management Plan**” is defined in Section 6.5.

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

2. Use and Affordability Restrictions. Tenant hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the operation of a multifamily rental housing development in compliance with the Lease and the requirements set forth herein. Tenant represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Tenant covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the Effective Date no fewer than six (6) of the Units in the Project shall be 80% AMI Units that shall be rented at the applicable Affordable Rent to (or if vacant, available for occupancy by) Eligible Households that qualify as 80% AMI Households, and no fewer than two (2) of the Units in the Project shall be 120% AMI Units that shall be rented at the applicable Affordable Rent to (or if vacant, available for occupancy by) Eligible Households that qualify as 120% AMI Households. If any tenant occupying a Unit as of the Effective Date does not qualify as an Eligible Household, following one hundred twenty (120) days’ notice, if so permitted by local and state law, such tenant shall be required to vacate the Unit.

In the event that recertification of tenant incomes indicates that the number of residential units actually occupied by Eligible Households falls below the number specified in this Section 2.1, Tenant shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s).

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail.

2.2 Rents for Residential Units; Unit Sizes. Rents for the residential units in the Project shall be limited to the applicable Affordable Rents for Eligible Households.

2.2.1 If upon recertification of a tenant of an 80% AMI Unit, Tenant determines that such tenant’s income has increased and exceeds the qualifying income for an 80% AMI Household, but does not exceed the maximum qualifying income for a 120% AMI Household, then upon expiration of the such tenant’s lease and following one hundred twenty

(120) days' notice: (a) such tenant's unit shall be considered a 120% AMI Unit; (b) such tenant's rent may be increased to the Affordable Rent for a 120% AMI Household; and (c) Tenant shall rent the next available Affordable Unit to an 80% AMI Household to restore the affordability mix required by this Agreement.

2.2.2 If, upon recertification of the income of a tenant of an 80% AMI Unit, Tenant determines that such tenant's income has increased and exceeds the qualifying income for an 80% AMI Household and also exceeds the qualifying income for a 120% AMI Household, then upon the expiration of such tenant's lease and following one hundred twenty (120) days' notice, and if so permitted by local and state law, such tenant shall be required to vacate the unit and Tenant shall rent the unit to an 80% AMI Household to restore the affordability mix required by this Agreement.

2.2.3 If, upon recertification of the income of a tenant of a 120% AMI Unit, Tenant determines that such tenant's income has increased and exceeds the qualifying income for a 120% AMI Household, then upon the expiration of such tenant's lease and following one hundred twenty days' notice, and if so permitted by local and state law, such tenant shall be required to vacate the unit and Tenant shall rent the unit to an 120% AMI Household to restore the affordability mix required by this Agreement.

2.3 Intentionally omitted.

2.4 No Condominium Conversion. Tenant shall not convert the Project to condominium or cooperative Tenantship or sell condominium or cooperative rights to the Project or any part thereof during the term of this Agreement.

2.5 Non-Discrimination; Compliance with Fair Housing Laws.

2.5.1 Preference for Displaced and Local Residents. Consistent with the requirements of California Health and Safety Code Section 33411.3, Tenant shall provide persons and households of low or moderate-income who have been temporarily displaced by the Project a priority in renting housing rehabilitated on the Property. In addition, in order to ensure that there is an adequate supply of affordable housing within the City of Healdsburg for residents and employees of businesses within the City, to the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Tenant shall give a preference in the rental of the residential units in the Project to eligible households that include at least one member who has lived or worked in the City for the past three (3) consecutive years. In the event there are fewer Eligible Household applicants that meet the criteria specified in this paragraph than there are available units, units shall be made available to members of the general public who are Eligible Households. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 shall control if such provisions apply to the project due to Project financing sources.

2.5.2 Fair Housing. Tenant shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Tenant shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or

vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.5.3 Non-Discrimination. Tenant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Tenant covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Tenant shall include such provision in all deeds, leases, contracts and other instruments executed by Tenant, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Tenant, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

“Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(b) (1) In Leases, the following language shall appear:

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

“The lessee herein covenants by and for the lessee and lessee’s heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.”

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(c) In Contracts pertaining to the management of the Project, the following language shall appear:

“There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.”

2.6 Relocation. Persons residing on the Property as of the Effective Date of this Agreement shall not be displaced before suitable replacement housing is available. Tenant shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled in accordance with California Relocation Assistance Law (Government Code Section 7260 *et seq.*), all state and local regulations implementing such law, and all other applicable local, state and federal laws and regulations (collectively “**Relocation Laws**”) relating to the displacement and relocation of eligible persons as defined in such Relocation Laws. All costs incurred in connection with the temporary and/or permanent displacement and/or relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to

Relocation Laws shall be paid by Tenant.

Tenant 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 in connection with the breach of Tenant’s obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Tenant’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 arising solely from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Tenant 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 Tenant, of any of the insurance policies described in this Agreement.

3. Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Certification. Tenant or Tenant’s authorized agent shall obtain from each household within twelve (12) months of the Effective Date, and prior to the initial occupancy of each residential unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

- (i) The identity of each household member; and
- (ii) The total gross household income;

Tenant shall retain such certificates for not less than three (3) years, and upon City’s request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Report; Inspections. By not later than March 31 of each year during the term of this Agreement, commencing with the year 2018 (reflecting information from the year 2017), Tenant shall submit an annual report (“Annual Report”) to the City in form satisfactory to City, together with Tenant’s certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1. Upon request of City, Tenant shall allow City’s Authorized Representative to inspect and copy all records documenting the source of household income.

Tenant shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Tenant may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

In addition to the information described above, the Annual Report shall include the following:

- (i) A Project income and expense statement for the reporting period;
- (ii) Proposed annual budget for the next fiscal year which sets forth Tenant's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;
- (iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Project as well as the amount in the Project's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year; and
- (iv) Information on the status of the waiting list for units, including the number of households on the list and the number of persons on the list that meet the criteria set forth in Section 2.5.1; and

Tenant shall provide City a copy of the annual financial audit of the books and records of Tenant, prepared in accordance with generally accepted auditing standards by an independent certified public accountant, within thirty (30) days' after completion. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

City may, from time to time request additional or different information, and Tenant shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Tenant shall maintain all records regarding the rehabilitation of the Project for five (5) years after final payment and all other pending matters are closed. Tenant shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Tenant of any records it deems insufficient. Tenant shall have thirty (30) calendar days from such notice to correct any specified deficiency in the records, or, if more than thirty (30) days shall be reasonably necessary to correct the deficiency, Tenant shall begin to correct the deficiency within thirty (30) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 Tenant shall provide City and its authorized agents and representatives reasonable access to any books, documents, papers and records of the Project for the purpose of making audits, examinations, excerpts and transcriptions, during normal business hours of Tenant and upon not less than three (3) business days' written notice.

3.4.2 With 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Project and the Property and to interview tenants and employees of the Project, for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the Term of the Lease, unless the Lease Term is extended, in which case the term of this Agreement shall be extended by mutual agreement of the Parties.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof, as such may be extended pursuant to Section 4.1, regardless of any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; 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 as such may be extended pursuant to Section 4.1.

5. Binding Upon Successors; Covenants to Run with the Land. Tenant hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Tenant 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 Tenant and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Tenant, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, lease or other instrument. If any such contract, deed, lease or other instrument has been executed prior to the date hereof, Tenant hereby covenants to obtain and deliver to City an instrument in recordable

form signed by the parties to such contract, deed, lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Tenant agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Rehabilitation; Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Tenant shall be responsible for all management functions with respect to the Property and the Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for rehabilitation, management repair, maintenance or marketing of the Property or the Project.

6.2 Management Entity. City shall have the right to review and approve the qualifications of the management entity proposed by Tenant for the Project, and shall have the right to review and approve any agreement executed between Tenant and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Tenant of its primary responsibility for proper performance of management duties. City hereby approves Tenant as the initial management entity for the Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Tenant that Tenant has failed to operate the Project in accordance with this Agreement, City may, subject to any applicable cure period, require Tenant to contract with a qualified management agent selected by City, to operate the Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Tenant shall at its own expense, maintain the Property and the Project 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. Without limiting the foregoing, Tenant agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Tenant shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Tenant shall provide adequate security measures for the Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of

Healdsburg business license if required under local law. To the extent allowed by state and federal laws, Tenant shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Tenant shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Tenant breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), or such additional time as is reasonably required to rectify the condition, then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All reasonable costs expended by City in connection with the foregoing shall be paid by Tenant to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 8% per annum or the highest rate permitted by applicable law. City shall have a lien against the Property for the amount of such unpaid sums and shall have the right to record a Notice of Claim of Lien against the Property.

6.5 Marketing and Management Plan. Concurrently with the execution of this Agreement by the Parties, Tenant shall submit for City review and approval, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Tenant plans to market the residential units to prospective Eligible Households in accordance with fair housing laws and this Agreement, Tenant's tenant selection criteria, and how Tenant plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Tenant and the management entity plan to manage and maintain the Property and the Project. The Plan shall include the proposed management agreement and the form of rental agreement that Tenant proposes to enter into with Project tenants. Tenant shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property and the Project, and throughout the term of this Agreement, shall submit proposed material modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

- (a) The actions to be taken by Tenant to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.5 above;
- (b) Criteria for determining tenant eligibility, including certification of household income and size, and establishing reasonable occupancy standards (which shall not exceed standards established by state and federal fair housing laws and state housing and building codes) and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references, and criminal background

investigations;

- (c) A requirement that eligible tenants be selected based on order of application, lottery or other reasonable method approved by City;
- (d) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a unit may be available;
- (e) A requirement that ineligible applicants be notified of the reason for their ineligibility;
- (f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;
- (g) Maintenance of a waiting list of eligible applicants;
- (h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;
- (i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;
- (j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;
- (k) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;
- (l) A requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry;
- (m) A parking management plan which details, among other things, how parking spaces will be assigned, how guest parking will be handled and how parking will be managed to encourage tenants to use their assigned parking spaces;
- (n) Procedures for maintenance and management of the Project;
- (o) Procedures for dealing with tenant or neighborhood issues or concerns;
- (p) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs and handling net cash flow; and
- (q) Such other requirements and criteria/procedures as City may determine appropriate.

6.6 Approval of Amendments. If City has not responded to any proposed amendment or change to the Management and Marketing Plan within sixty (60) days following City's receipt of such amendment, the amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Tenant shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Tenant shall not be required to pay any such charge so long as (a) Tenant is contesting such charge in good faith and by appropriate proceedings, (b) Tenant maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Tenant immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Tenant's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.8 Insurance Coverage. Throughout the term of this Agreement Tenant shall comply with the insurance requirements set forth in Exhibit B, and shall, at Tenant's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.9 Property Damage or Destruction. If any part of the Project is damaged or destroyed, Tenant 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. During such time that lenders providing financing for the rehabilitation of the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Sonoma County. Tenant hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, which consent may be withheld in City's sole discretion, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Lease or this Agreement, Tenant shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease, of the whole or any part of the Property, the Project, or the improvements located on the Property, including but not limited to any assignments creating any security interests in Tenant's leasehold interest in the Property for the purpose of financing the rehabilitation of the Project in accordance with the Lease (collectively, "**Transfer**") without the prior written consent of the City, which approval may be withheld in

City's sole discretion. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Lease, Tenant shall not undergo any significant change of ownership without the prior written approval of City, which approval may be withheld in City's sole discretion. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest in Tenant of more than forty-nine percent (49%) in aggregate of the present ownership and /or control of Tenant, taking all transfers into account on a cumulative basis.

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate the rehabilitation of the Property; or (ii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement. In the event any person or entity becomes the lessee under the Lease by means of foreclosure or deed in lieu of foreclosure or pursuant to any new lease obtained under Section 15.2.3, such new person or entity must be approved by Landlord in accordance with the provisions and requirements set forth in Article XVI of the Lease and this Section 8. In addition, the transferee must be experienced in the rehabilitation, operation and management of affordable rental housing projects without a record of material violations of discriminatory restrictions or other applicable state or federal laws pertaining thereto.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), or (iii), of Section 8.2:

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete and manage the Project and to otherwise fulfill the obligations undertaken by the Tenant under this Agreement.

(ii) The Tenant and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property, the Improvements or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Tenant under this Agreement and the Lease arising after the effective date of the Transfer and all obligations of Tenant arising prior to the effective date of the Transfer (unless Tenant expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Tenant's obligations pursuant to the restrictions set forth in this Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval

to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Tenant, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Tenant or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder if without the prior written approval of the City, Tenant assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8 and the Subsections thereof.

8.5 Recovery of City Costs. Tenant shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within thirty (30) days following City's delivery to Tenant of an invoice detailing such costs.

8.6 Encumbrances. Tenant shall ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against Tenant's leasehold interest in the Property, the Project or part thereof for the benefit of a third party lender ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall provide to City a copy of any notice of default issued to Tenant concurrently with provision of such notice to Tenant; (ii) City shall have the right, but not the obligation, to cure any default by Tenant within the same period of time provided to Tenant for such cure extended by an additional ninety (90) days; and (iii) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Tenant agrees to provide to City a copy of any notice of default Tenant receives from any Third-Party Lender within three (3) business days following Tenant's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any leasehold mortgage or leasehold deed of trust made in good faith and for value upon all or any portion of the Project 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 leasehold mortgages or leasehold deeds of trust encumbering the Project 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**"):

- (i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Tenant’s failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Tenant to cure such default within five (5) days;

(iii) Subject to Tenant’s right to contest the following charges, Tenant’s failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Tenant’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;

(iv) A default arises under any loan secured by a leasehold mortgage, leasehold deed of trust or other security instrument recorded against Tenant’s leasehold interest in 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;

(v) A default arises under the Lease and remains uncured beyond the expiration of any applicable cure period;

(vi) Tenant’s default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for fifteen (15) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Tenant, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Tenant’s failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith.

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:

(i) 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;

(ii) For violations of obligations with respect to rents for residential units in the Project, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent;

(iii). Pursue any other remedy allowed under the City Documents 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.

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

10. Indemnity. Tenant shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Tenant's rehabilitation, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Tenant's indemnification obligations under this Section 10 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Tenant 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 Tenant, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

11.2 No 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 Tenant 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.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Lease 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 is effective upon delivery;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (c) 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;
- (d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day;

(e) electronic transmission (email), in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery. Any notice given by email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attention: City Manager
Fax: _____
Email: _____

Tenant: Burbank Center Street Apartments LLC.
790 Sonoma Avenue
Santa Rosa, CA 95404
Attention: Chief Executive Officer
Fax: 707-526-9782
Email: LFlorin@burbankhousing.org

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

11.5 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 Tenant 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 Tenant (except as expressly provided in this Agreement) or to any third party with respect to the Project. Tenant and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Tenant and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Tenant shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the 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.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Tenant 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 Tenant or its successor or for any obligation of City under this Agreement.

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any 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 Healdsburg 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.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Sonoma County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Lease contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibit A and Exhibit B, attached hereto are incorporated herein by this reference.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

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 HEALDSBURG, a municipal corporation

By: _____
David Mickaelian, City Manager

Attest:

By: _____
Maria Curiel, City Clerk

Approved as to form:

By: _____
Samantha Zutler, City Attorney

TENANT:
BURBANK CENTER STREET APARTMENTS LLC,
a California limited liability company

By: BURBANK HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation, its sole member and manager

By:  _____
Lawrance Florin, Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

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.

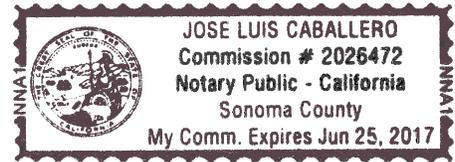
STATE OF CALIFORNIA)
)
COUNTY OF SONOMA)

On February 2, 2017, before me, Jose Luis Caballero, Notary Public, personally appeared Lawrance Florin, 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 Jose Luis Caballero (Seal)



Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

Exhibit A**PROPERTY**

The real property situated in the City of Healdsburg, County of Sonoma, State of California, described as follows:

APN: 002-042-016

Attachment: Exhibit B - Regulatory Agreement (1483 : 721 Center Lease Agreement with Burbank)

Exhibit B

INSURANCE REQUIREMENTS

Tenant, at its sole cost and expense, commencing upon the Effective Date and continuing throughout the Term of this Agreement (except as otherwise specified below) shall keep and maintain in full force and effect policies of insurance pursuant to and in accordance with the requirements set forth in this Exhibit B:

(a) Tenant and all contractors working on behalf of Tenant on the Project shall maintain a commercial general liability policy in the amount of Two Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$1,000,000) annual aggregate coverage, or such other policy limits as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Tenant and all contractors working on behalf of Tenant shall maintain a comprehensive automobile liability coverage in the amount of One Million Dollars (\$1,000,000), combined single limit including coverage for 'any auto' and shall furnish or cause to be furnished to City evidence satisfactory to City that Tenant and any contractor with whom Tenant has contracted for the performance of work on the Property. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Tenant and all contractors must, at their sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Tenant. The Statutory Workers' Compensation Insurance coverage must be for Statutory Limits. The insurance must be endorsed to waive all rights of subrogation against the City and its officials, officers, employees, agents and volunteers for loss arising from or related to the work done by such person.

(d) Upon commencement of rehabilitation work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Tenant and all contractors working on behalf of Tenant shall maintain a policy of builder's all-risk insurance in an amount not less than the full insurable cost of the Project on a replacement cost basis naming City as loss payee.

(e) Tenant shall maintain property insurance covering all risks of loss (other than earthquake), including flood (if required) for 100% of the replacement value of the Project with deductible, if any, in an amount acceptable to City, naming City as loss payee.

(f) Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Commercial General Liability and comprehensive automobile policies required hereunder shall name the Indemnitees as additional insureds. Builder's Risk and property insurance shall name City as loss payee.

(g) Prior to commencement of rehabilitation work, Tenant shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material adverse

change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material adverse change, cancellation, termination or non-renewal.

The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by City's Risk Manager, Tenant shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(h) If any insurance policy or coverage required hereunder is canceled or reduced, Tenant shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City 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, City may, without further notice and at its option, procure such insurance coverage at Tenant's expense, and Tenant shall promptly reimburse City or such expense upon receipt of billing from City.

(i) Coverage provided by Tenant shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. Tenant shall furnish the required certificates and endorsements to City prior to the commencement of rehabilitation of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

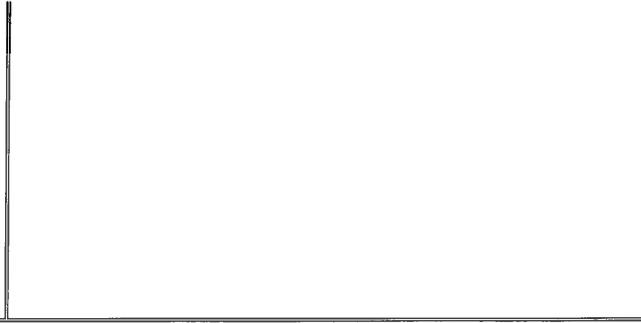
(j) Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, City's Risk Manager. At the option of and upon request by City's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects the Indemnitees or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) The limits of the liability coverage and, if necessary, the terms and conditions of insurance, shall be reasonably adjusted from time to time (not less than every five (5) years after the Effective Date nor more than once in every three (3) year period) to address changes in circumstances, including, but not limited to, changes in the purchasing power of the dollar and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Tenant shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

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

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attn: City Manager

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



Space above this line for Recorder's use.

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY**

THIS NOTICE OF AFFORDABILITY RESTRICTIONS ON TRANSFER OF PROPERTY (this "**Notice**") is dated as of 4/26, 2017 (the "**Effective Date**") with reference to the real property located in the City of Healdsburg, Sonoma County, California known as 721-723 Center Street, and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**").

1. Burbank Center Street Apartments LLC, a California limited liability company ("**Tenant**") leases the Property and the improvements located thereon from the City of Healdsburg, a California municipal corporation ("**City**").
2. City and Tenant have entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**") dated as of the date hereof and recorded in the Official Records of Sonoma County substantially concurrently herewith. Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Regulatory Agreement
3. The Regulatory Agreement requires that for a term of fifty-five (55) years commencing upon the Effective Date of the Regulatory Agreement and this Notice: (i) not less than six (6) of the residential units in the Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is less than or equal to eighty percent (80%) of Area Median Income ("**AMI**"), and (ii) not less than two (2) of the residential units in the Project shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is less than or equal to one hundred twenty percent (120%) of AMI.

This Notice is intended to provide notice of documents that affect title to the Property. Reference should be made to the Regulatory Agreement for a more detailed description of all matters described in this Notice. In the event of any conflict between the terms of this Notice and the terms of the Regulatory Agreement, the Regulatory Agreement shall prevail.

This Notice is being recorded and filed in compliance with California Health and Safety SF #4812-0935-7375 v1 1

Attachment: Exhibit C - Notice of Affordability Restrictions (1483 : 721 Center Lease Agreement with Burbank)

Code Section 33334.3(f)(3) and (4), and shall be indexed by the County and the current owner of the Property.

SIGNATURES ON FOLLOWING PAGE(S).

CITY:

CITY OF HEALDSBURG, a municipal corporation

By: _____
David Mickaelian, City Manager

Attest:

By: _____
Maria Curiel, City Clerk

Approved as to form:

By: _____
Samantha Zutler, City Attorney

TENANT:

BURBANK CENTER STREET APARTMENTS LLC,
a California limited liability company

By: BURBANK HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation, its sole member and manager

By:  _____
Lawrance Florin, Chief Executive Officer

SIGNATURES MUST BE NOTARIZED.

Attachment: Exhibit C - Notice of Affordability Restrictions (1483 : 721 Center Lease Agreement with Burbank)

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.

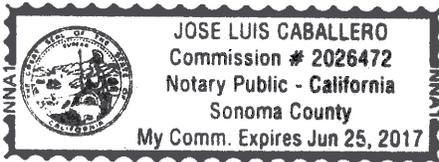
STATE OF CALIFORNIA)
)
COUNTY OF SONOMA)

On February 2, 2017, before me, Jose Luis Caballero, Notary Public, personally appeared Lawrance Florn, 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 *Jose Luis Caballero* (Seal)



Attachment: Exhibit C - Notice of Affordability Restrictions (1483 : 721 Center Lease Agreement with Burbank)

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 SONOMA)

On _____, 20__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: Exhibit C - Notice of Affordability Restrictions (1483 : 721 Center Lease Agreement with Burbank)

Exhibit A**PROPERTY**

The real property situated in the City of Healdsburg, County of Sonoma, State of California, described as follows:

APN: 002-042-016

**RECORDING REQUESTED BY AND
AFTER RECORDATION MAIL TO:**

City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attention: City Manager

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

Space above this line for Recorder's use.

MEMORANDUM OF LEASE

(721 and 723 Center Street Project)

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into this 2 day of February, 2017 by and between the City of Healdsburg, a California municipal corporation ("Landlord") and Burbank Center Street Apartments LLC, a California limited liability company ("Tenant").

WITNESSETH

1. This is a memorandum of that certain lease by and between Landlord and Tenant, dated as of Feb, 2017 and incorporated by reference (the "Lease") relating to the lease by Tenant of certain real property owned by Landlord, located at 721-723 Center Street in the City of Healdsburg, County of Sonoma, California, and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").

2. The initial term of the Lease commenced on Feb, 2017 and continues for fifty-five (55) years, unless earlier terminated according to the Lease. In addition, the Lease provides for an optional extended term for an additional forty-five (45) years, upon request of Tenant and approval by Landlord. The Lease also provides a Right of First Offer to the Tenant to purchase the Property pursuant to the terms and conditions of the Lease.

3. The Lease restricts Tenant from assigning the Lease or subletting without Landlord's prior written consent.

4. This Memorandum of Lease is made upon all the terms and conditions in the Lease, and all of said terms and conditions are incorporated by reference herein. In the event of any conflict or inconsistency between the Lease and this Memorandum of Lease, as between

Attachment: Exhibit D - Memorandum of Lease (1483 : 721 Center Lease Agreement with Burbank)

Landlord and Tenant, the Lease shall control. The parties hereto agree that this Memorandum of Lease may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Memorandum of Lease, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, upon the day and year first hereinabove written, the respective parties hereto have executed this Memorandum of Lease, personally or by officers or agents thereunto duly authorized.

[Signatures on following page]

CITY:

CITY OF HEALDSBURG, a municipal corporation

By: _____
David Mickaelian, City Manager

Attest:

By: _____
Maria Curiel, City Clerk

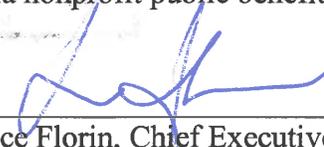
Approved as to form:

By: _____
Samantha Zutler, City Attorney

TENANT:

BURBANK CENTER STREET APARTMENTS LLC,
a California limited liability company

By: BURBANK HOUSING DEVELOPMENT CORPORATION,
a California nonprofit public benefit corporation, its sole member and manager

By:  _____
Lawrance Florin, Chief Executive Officer

Attachment: Exhibit D - Memorandum of Lease (1483 : 721 Center Lease Agreement with Burbank)

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.

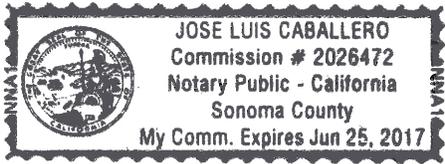
STATE OF CALIFORNIA)
)
COUNTY OF SONOMA)

On February 2, 2017, before me, Jose Luis Caballero, Notary Public, personally appeared Lawrance Florin, 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~~/their 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 Jose Luis Caballero (Seal)



Attachment: Exhibit D - Memorandum of Lease (1483 : 721 Center Lease Agreement with Burbank)

Exhibit A**PROPERTY**

The real property situated in the City of Healdsburg, County of Sonoma, State of California, described as follows:

APN: 002-042-016

Attachment: Exhibit D - Memorandum of Lease (1483 : 721 Center Lease Agreement with Burbank)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Review of Community Housing Committee Makeup and Work Plan

PREPARED BY: Karen Massey, Community Housing and Development Director

STRATEGIC INITIATIVE(S):

Quality of Life

Effective & Efficient Government

RECOMMENDED ACTION(S):

1. Consider adopting a Resolution which rescinds Resolution No. 116-2015 in its entirety and reconfigures the Community Housing Committee and outlines its roles and responsibilities.
2. By motion, appoint a Council Subcommittee to interview applicants for the Community Housing Committee.

BACKGROUND:

The Community Housing Committee was created in May 2015 with the purpose of providing recommendations on housing related matters to the City Council. The Committee is comprised of nine members including two Council Members, two Planning Commissioners and five members at large. In 2016 the Committee held 16 community meetings and workshops and completed the following work:

1. Recommended an amendment to the Growth Management Ordinance,
2. Recommended revisions to the Inclusionary Housing Ordinance, and
3. Prepared the City's first Housing Action Plan.

DISCUSSION/ANALYSIS:

Committee Makeup

Five of the nine Committee seats (the two Councilmember seats and three at-large seats) are currently influx. Two of these seats are currently vacant due to the recent departure of Tom Chambers and resignation of Jon Worden. In addition, two at-large member seat terms expired

effective December 31st (the current members continue to serve until direction is given by Council). These two positions were advertised for twice on the homepage of the City's website and social media and an e-mail was sent to the City's website subscribers. To date, three applications have been received (two of the applicants are the current members whose terms have expired). Finally, the Council will need to make its annual appointment to fill the second City Council Member seat currently held by Vice Mayor Mansell.

Given the number of seats currently influx, as well as the fact that the Committee is currently between work assignments, the Council may wish to reconsider the makeup of the Committee at this time. Options include:

1. Retaining the existing Committee: Leaving the Committee as currently configured, reappointing the Councilmember seats and filling the three at-large seats with members based upon the applications already received,
2. Diversifying the open seats: Leaving the Committee as currently configured, reappointing the Councilmember seats and diversifying the three at-large seats with members that represent a broader cross section of the community, or
3. Reconfiguring the Committee: Reconfiguring the Committee to include fewer members and diversifying its membership to represent a broader cross section of the community.

If the Council wishes to reconsider the makeup of the Committee, Staff recommends the following:

- Reducing the number of Committee Members to seven
- Reconsider having a Council Member and Planning Commissioner on the Committee
 - Council may wish to appoint a liaison to the Committee. Their role would be to observe and report back to Council.
- Selecting at-large Committee Members that represent a broad cross section of the community diversified by age, family status, ethnicity, gender, housing tenure and experience with the building/development industry.

Committee Work Plan

There are several housing related policies that could be reviewed, and potentially revised, to better align with the City's housing objectives. These include the Housing Action Plan (HAP), Inclusionary Housing Ordinance (IHO), Growth Management Ordinance (GMO) Policies and Procedures, and Accessory Dwelling Unit Ordinance as well as considering alternative sources of affordable housing.

Given that the HAP was thoroughly vetted by the Committee in 2016 at numerous public meetings and workshops, as well as the fact that much of the HAP remains relevant to achieving the City's housing objectives, Staff recommends the revisions to the HAP (which include omitting reference to amending the GMO and creation of a middle income category of affordable housing) be completed by Staff and brought forward to the City Council for review and approval. Directing Staff to complete the revisions to the HAP would enable the Committee to focus on development of other housing policies that require more detailed review and vetting.

Staff recommends the following work tasks be assigned to the Committee:

- Reviewing GMO Policies and Procedures - The GMO is made up of two parts: the limit on the number of residential units (adopted by voters) and the implementing policies and procedures (adopted by the Council). In November, voters reaffirmed the limit which allows for an average of 30 units (allocations) per year, not to exceed 90 allocations in a three year period. The policies and procedures dictate how the allocations get distributed. Currently, allocations are divided into two categories based on the type of lot the unit is proposed on - an individual lot or a lot created by subdivision. The City Council may wish to undertake a review of the policies and procedures to determine if another method of distributing the allocations would more closely align with the City's housing objectives.
- Alternative Sources of Affordable Housing - At the January 3rd City Council meeting the Council received a presentation from Staff and considered several alternatives for providing additional affordable housing including an enhanced infrastructure financing district, commercial linkage fee, or commercial inclusionary housing ordinance. While no action was taken, Council expressed an interest in reviewing these alternative sources of affordable housing as part of the Committee's work plan.
- Updating Inclusionary Housing Ordinance (IHO) - The adopted IHO requires 15% of all new for-sale, market rate residential units to be affordable to very low, low, and moderate income households. The CHC previously reviewed and recommended changes to the IHO as part of the GMO amendment. The City Council may wish to undertake a review of the existing IHO to ensure it is meeting the City's affordable housing objectives; specifically, the 15% affordability requirement could be reviewed to determine the optimal affordability requirement that can be supported without overburdening developers.
- Local Revisions to the Accessory Dwelling Unit (ADU) Ordinance - The Planning and Building Department recently completed revisions to the Accessory Dwelling Unit Ordinance to reflect recent changes in State law that became effective January 1st. At the time of adoption both the Planning Commission and City Council expressed the desire to review the Ordinance for further local amendments in order to further encourage ADUs.

ALTERNATIVES:

Council may retain the existing Committee as is, diversify the open seats or reconfigure the Committee. Council may accept the work plan outlined above, modify it or provide other direction to Staff. Alternatively, Council may choose to include the Housing Action Plan in the Committee's work plan.

FISCAL IMPACT:

The cost related to the Committee has already been included in the fiscal year 2016-17 and 2017-18 budgets. There will be no additional fiscal impact based upon the proposed action.

Depending upon the Committee's work plan if consultants are hired additional funding may be required.

ENVIRONMENTAL ANALYSIS:

The proposed action requests direction to Staff on the Committee makeup and future work plan. Pursuant to Title 14, the California Code of Regulations, Section 15061(b)(3) of the California Environmental Quality Act ("CEQA") guidelines, these actions do not constitute a project that will result in a significant effect on the environment.

ATTACHMENT(S):

Resolution

CITY OF HEALDSBURG

RESOLUTION NO. ___-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG RESCINDING RESOLUTION NO. 116-2015 AND RECONFIGURING THE COMMUNITY HOUSING COMMITTEE AND OUTLINING THE ROLES AND RESPONSIBILITIES OF THE COMMITTEE

WHEREAS, the City Council of the City of Healdsburg recognizes the continuing need to address the community's affordable and workforce housing needs; and

WHEREAS, the City Council desires to reconfigure the Community Housing Committee to represent a broad cross section of the community and to advise and make recommendations to Council on how to best address workforce and affordable housing challenges in the City of Healdsburg.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg hereby rescinds Resolution No. 116-2015 and reconfigures the Community Housing Committee and adopts the following provisions that relate to the Committee's membership, terms of office, duties and responsibilities:

1. MEMBERSHIP: The membership shall consist of seven (7) core members appointed by the City Council. The core membership shall include seven at large members who represent a broad cross section of the community diversified by age, family status, ethnicity, gender, housing tenure and experience with the building/development industry. All members shall reside within the City limits of the City of Healdsburg. The City Council shall appoint additional members to the Committee, including a Council liaison to observe and report back to the Council, as deemed necessary based on expertise needed to fulfill the objectives.
2. TERM OF OFFICE OF MEMBERS: The term of office of all members of said Committee shall be three (3) years; provided that such members first appointed shall so classify themselves by lot such that three (3) members' terms shall terminate on the first day of January, 2020, three (3) on the first day of January 2019 and two (2) on the first day of January, 2018. Each member shall serve at the pleasure of the Mayor and the City Council until his or her successor is appointed and qualified.
3. VACANCY: Vacancies on said Committee, for whatever cause, shall be filled by the City Council. Any member missing three (3) consecutive regular meetings without approval of the Committee shall be deemed as having vacated his or her seat on the Committee.

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4. OFFICERS OF THE COMMITTEE: The Community Housing Committee shall select one of its members as Chairperson and one of its members as Vice-Chairperson whose terms of office for said positions shall be one year.
5. MEETINGS OF THE COMMITTEE: The Community Housing Committee shall meet the second Monday of every month. Meetings shall take place at the Healdsburg City Hall Council Chamber, 401 Grove Street, or at such other time and place as the Committee may establish from time to time following proper notice. Special meetings of the Committee may be called at any time by City Staff, the Chairperson, or by any four (4) or more members of the Committee, by providing notice of said meeting as required by law.
6. ORGANIZATION AND PROCEDURE: The Committee may make and alter all rules and regulations governing its organization and procedure not inconsistent with this Resolution or any other Resolution or any Ordinance of the City. The Committee is subject to and shall comply with the requirements of the Brown Act (Gov. Code §54950 et seq.) Minutes of Committee meetings shall be summary minutes.
7. STAFF TO THE COMMITTEE: The City Manager shall appoint an officer or an employee of the City who shall act as Secretary to the Committee and who shall provide clerical assistance.
8. DUTIES AND RESPONSIBILITIES OF THE COMMITTEE: The Committee shall advise the City Council on matters relating to policies and programs which will serve to further workforce and affordable housing inventories and programs.

The focus of the Committee shall be as follows:

- Update the Inclusionary Housing Ordinance (“IHO”) to ensure it is meeting the City's affordable housing objectives including reviewing the affordability requirement to determine the optimal affordability requirement that can be supported without overburdening developers.
- Review the Council adopted GMO Policies and Procedures to ensure they align with the City's affordable housing objectives including assessing the way allocations are currently distributed.
- Assess alternatives for providing additional affordable housing including an enhanced infrastructure financing district, commercial linkage fee, or commercial inclusionary housing ordinance.

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- Review the Accessory Dwelling Unit (ADU) Ordinance for further local amendments in order to further encourage ADUs.

BE IT FURTHER RESOLVED that it is the intention of the City Council that the Community Housing Committee shall function in an advisory capacity and shall not be an administrative body, and shall direct its activities to further housing and the affordability of housing within the City of Healdsburg.

PASSED, APPROVED AND ADOPTED, this 6th day of February, 2017, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAINING: Councilmembers:

SO ORDERED:

ATTEST:

Shaun F. McCaffery, Mayor

Maria Curiel, City Clerk

Attachment: Resolution (1484 : Review of Community Housing Committee)



**CITY OF HEALDSBURG
CITY COUNCIL AGENDA STAFF REPORT**

MEETING DATE: February 6, 2017

SUBJECT: Written Communication from Planning and Building Director Nelson regarding Planning Commission actions taken on January 24, 2017

PREPARED BY: Shawn Sumpter, Administrative Specialist

STRATEGIC INITIATIVE(S):
Effective & Efficient Government

RECOMMENDED ACTION(S):
No action required.

BACKGROUND:

Since the formation of the Planning Commission, a report on actions taken at the immediately prior Commission meeting has been provided to the City Council as a way of keeping the Council informed of the matters/issues before the Commission.

This report is not required by the Healdsburg Municipal Code, City Council resolution or state law and requires no action from the City Council.

DISCUSSION/ANALYSIS:

Attached, for your information and receipt, is the report on the actions taken by the Planning Commission at its January 24, 2017 meeting.

ALTERNATIVES:

None

FISCAL IMPACT:

There is no fiscal impact as a direct result from the proposed action.

ENVIRONMENTAL ANALYSIS:

Pursuant to Title 14, the California Code of Regulations, Section 15302(c) of the California Environmental Quality Act (“CEQA”) guidelines, the proposed action is an administrative activity of the City that will not result in direct or indirect physical changes to the environment.

ATTACHMENT(S):

PC_MeetingSummary_20170124-Jan 24



REPORT TO THE CITY COUNCIL

Subject: Summary of January 24, 2017 Planning Commission Meeting

1. ROLL CALL

Commissioners present: Bottarini, Civian, Eddinger, Luks, Lickey, Tracy

Commissioners absent: Engler

City Staff present: Planning & Building Department Director Barbara Nelson, City Engineer/Public Works Director Brent Salmi, Community Housing and Development Director Karen Massey, Fire Marshall Linda Collister, Senior Planner Kraig Tambornini, Attorney's Office Ben Stock, Administrative Specialist Shawn Sumpter

2. ADMINISTRATIVE ACTIONS

- A. The Commission voted 6-0 to approve the January 24, 2017 Agenda subject to reordering item 4B to be the first item under Item 4, Public Hearings.
- B. The Commission voted 6-0 to approve the December 13, 2016 Planning Commission Minutes
Note: the January 10, 2017 meeting was cancelled
- C. Acceptance of Communications and Correspondence: None
- D. Declarations of Conflicts of Interest: Commissioners Civian, Eddinger, and Lickey declared conflicts with item 4B, 165 Grove Court.
- E. Disclosures of Ex Parte Communications: Commissioners Civian and Bottarini each reported meeting with the applicant for item 4A, 157 Chiquita Road.

3. **PUBLIC COMMENT:** None

4. PUBLIC HEARINGS

- A. The Commission voted 4-0 (Engler absent, Lickey and Eddinger abstain; *Commissioner Civian was chosen by lot to fill the quorum for the item under the Rule of Necessity*) to approve design review DR 2016-20 for a new 12,000 square foot industrial building and related site improvements on a portion of 1.81 acre parcel at 165 Grove Court.
- B. The Commission voted 6-0 (Engler absent) to continue the hearing for The Oaks at Foss Creek a proposed residential subdivision including: General Plan Amendment GPA 2015-01, Land Use Code Amendment LUA 2015-02, Design Review DR 2015-20 and Tentative Map TM 2015-08. The continuance was granted to allow the applicant time to address Commission concerns regarding parking and project configuration.

5. **NEW BUSINESS:** None

6. **COMMISSIONER AND SUBCOMMITTEE REPORTS:** None

7. **DIRECTOR'S REPORT:** None

8. **ADJOURNMENT:** The meeting was adjourned at 9:31 PM.