City of St. Helena
Special City Council Meeting
Tuesday, January 17, 2017 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the "public comment" portion of the agenda may do so, but please observe the time limit of three minutes.

Page

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL
Mayor: Alan Galbraith
Vice Mayor: Peter White
City Council: Paul Dohring
Geoff Ellsworth
Mary Koberstein

4. PUBLIC FORUM:
Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 3 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:
Reports by staff and/or Councilmembers on items of general interest. Brief questions for clarification may be posed and answered, and Councilmembers may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

7. STAFF BRIEFING

8. CONSENT ITEMS:

8.1. Consideration and proposed approval of Regular Meeting Minutes of: 23 - 44

a. November 29, 2016
b. December 13, 2016
c. December 19, 2016

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Approve

Item 8.1

8.2. Consideration and proposed approval of a Resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes revised salary schedule for St. Helena Employees Association (SHEA) and part-time Casual Worker classification 45 - 54

CEQA Determination: Not a CEQA project
Prepared By: Kathy Robinson, Human Resources & IT Director
Recommendation: Adopt

Item 8.2

8.3. Consideration and proposed approval of the following: 55 - 97

(a) Resolution accepting the results of the vote for the November 8, 2016 General Municipal Election for Measure D and confirming the adoption of Ordinance No. 2016-10

(b) Resolution authorizing the execution of agreements with the State Board of Equalization for implementation of a local Transactions and Use Tax as approved by the voters

(c) Resolution authorizing the examination of transactions and use tax records

CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Cindy Black, City Clerk
Recommendation: Adopt

Item 8.3

8.4. Consideration and Proposed Adoption of a Resolution Reaffirming the City's Requirements for the Land and Water Conservation Fund Grant to Maintain Lyman Park in Perpetuity for Outdoor Recreation Purposes 99 - 105

CEQA Determination: The project has been found to qualify for a Class I Categorical Exclusion under §15301 and is covered by the General Rule Exemption under CEQA §15061(b)3 in that it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.
Prepared By: Tracey Perkosky, Grants and Finance Manager
Recommendation: Adopt

Item 8.4

8.5. Consideration and Proposed Adoption of a Resolution Terminating a 107 - 113

Phase 1 Water Emergency

CEQA Determination: Not a CEQA project
Prepared By: Jennifer Tuell, Water Conservation Coordinator
Reviewed By: Steven Palmer, PE, Director of Public Works/ City Engineer
Recommendation: Adopt
Item 8.5

9. NEW BUSINESS

9.1. Consideration and proposed approval of a resolution appointing an applicant to the Tree Committee — 115 - 119

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Adopt
Item 9.1

9.2. 2017 City Council assignments to various City and Napa County Committees, Boards and Commissions — 121 - 127

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Affirm or Reappoint
Item 9.2

9.3. 1. Consider and proposed approval of request from Calistoga Affordable Housing for up to an additional $200,000 from the Affordable Housing Trust Fund for the Turley Flats affordable housing project (for a not to exceed total of $700,000 in a loan from the AHTF) and authorize drawdown of previously committed funds; and — 129 - 288

2. Approve loan documents for the Turley Flats Affordable Housing Project including: (i) an Affordable Housing Loan Agreement that documents the disbursement and repayment conditions for the City loan, (ii) an Affordable Housing Regulatory Agreement that restricts occupancy in the Turley Flats units to low income households and restricts rents to affordable rents for a term of 55 years, (iii) a Promissory Note that memorializes the Developer's obligation to repay the City Loan; and (iv) a Deed of Trust that will be recorded against the Project property at 1105 Pope Street to secure repayment of the City loan; and

3. Acceptance of Emergency Vehicle Access Easement across the adjacent property at 1127 Pope Street.

4. Authorize the City Manager (or designated signee) to execute the loan documents on behalf of the City substantially in the form presented to the City Council.

CEQA Determination: This item is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the

"General Rule" Section 15061(b)(3), where is can be seen with certainty that the proposed action will have no significant effect on the environment.

Prepared By: Noah Housh, Planning Director

Recommendation: 1. Approve; and 2. Accept; and 3. Review, provide direction, approve; and 4. Accept; and 5. Accept

Item 9.3

9.4. Council discussion and direction regarding rotating Council members to attend the City Council agenda review meetings, with the Mayor, City Manager and City Clerk

CEQA Determination: Not a CEQA project
Requested By: Councilmember Koberstein

9.5. Council discussion and direction regarding Council Team Building Session and Facilitated Community Goal Setting Workshop prior to Budget hearings

CEQA Determination: Not a CEQA project
Requested By: Councilmember Dohring

9.6. Council discussion and direction regarding Overview and Exploration of Financing Mechanisms and Alternatives for water and wastewater capital improvements, including potential use of grants, loans, bonds and General Fund monies; and exploration with Hansford Economic Consulting for a potential re-allocation of fixed costs to residential and industrial users to rectify any perceived rate inequities.

CEQA Determination: Not a CEQA project
Requested By: Councilmember Dohring

10. ADJOURNMENT

The next Regular City Council meeting is scheduled for January 24, at 6:00 p.m. in the Vintage Hall Board Room located at 465 Main Street.

This agenda was posted at City Hall, 1480 Main Street, and at Vintage Hall, 465 Main Street, St. Helena, California on January 13, 2017.

Cindy Black

Cindy Black, City Clerk

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call the City Clerk's Office (707) 967-2792. Notification 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

11. CHALLENGING DECISIONS OF CITY ENTITIES

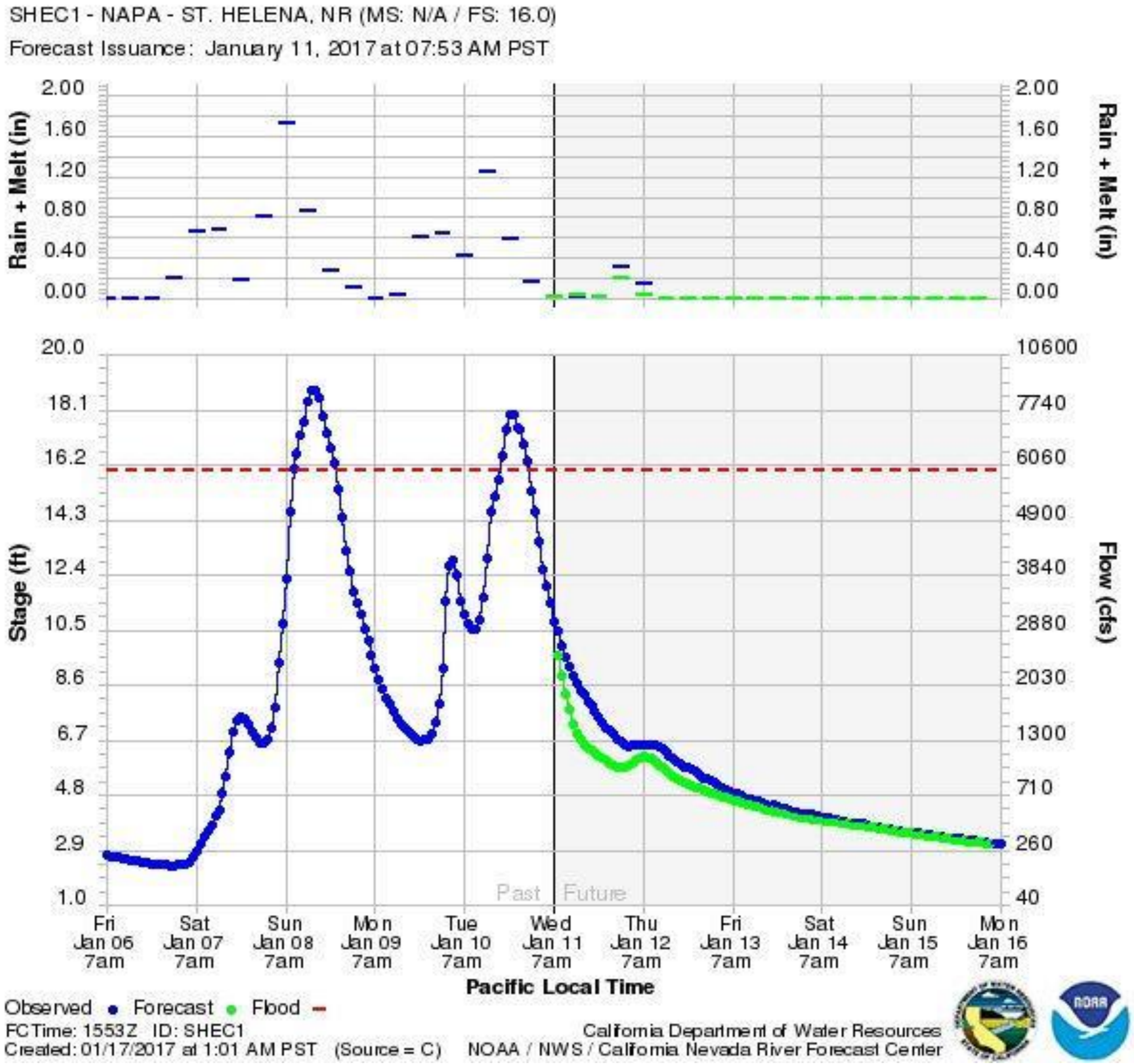
The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

12. SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1480 Main Street, St. Helena, California, during normal business hours. In addition, such writings or documents will be made available on the City's web site at https://sthelena.civicweb.net and will be available for public review at the respective meeting.


OC



SHEC1 - NAPA - ST. HELENA, NR (MS: N/A / FS: 16.0)
Forecast Issuance: January 11, 2017 at 07:53 AM PST
Rain + Melt (in)
2.00
1.60
1.20
0.80
0.40
0.00
Stage (ft)
20.0
18.1
16.2
14.3
12.4
10.5
8.6
6.7
4.8
2.9
1.0
Flow (cfs)
10600
7740
6060
4900
3840
2880
2030
1300
710
260
40
Past
Future
Fri Jan 06 7am
Sat Jan 07 7am
Sun Jan 08 7am
Mon Jan 09 7am
Tue Jan 10 7am
Wed Jan 11 7am
Thu Jan 12 7am
Fri Jan 13 7am
Sat Jan 14 7am
Sun Jan 15 7am
Mon Jan 16 7am
Pacific Local Time
Observed • Forecast • Flood —
FCTime: 1553Z ID: SHEC1
Created: 01/17/2017 at 1:01 AM PST (Source = C)
California Department of Water Resources
NOAA / NWS / California Nevada River Forecast Center
NOAA


H.S.I
MFG

City of St. Helena
PROCLAMATION

ARBOR DAY

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, the City of St. Helena has been recognized as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting practices

NOW, THEREFORE, let it be known that the City of St. Helena declared the day of December 06, 2016 as Arbor Day and held tree plantings in recognition of Arbor Day for the purpose of expressing our support for efforts to protect our trees and woodlands.

Dated: January 17, 2017

____

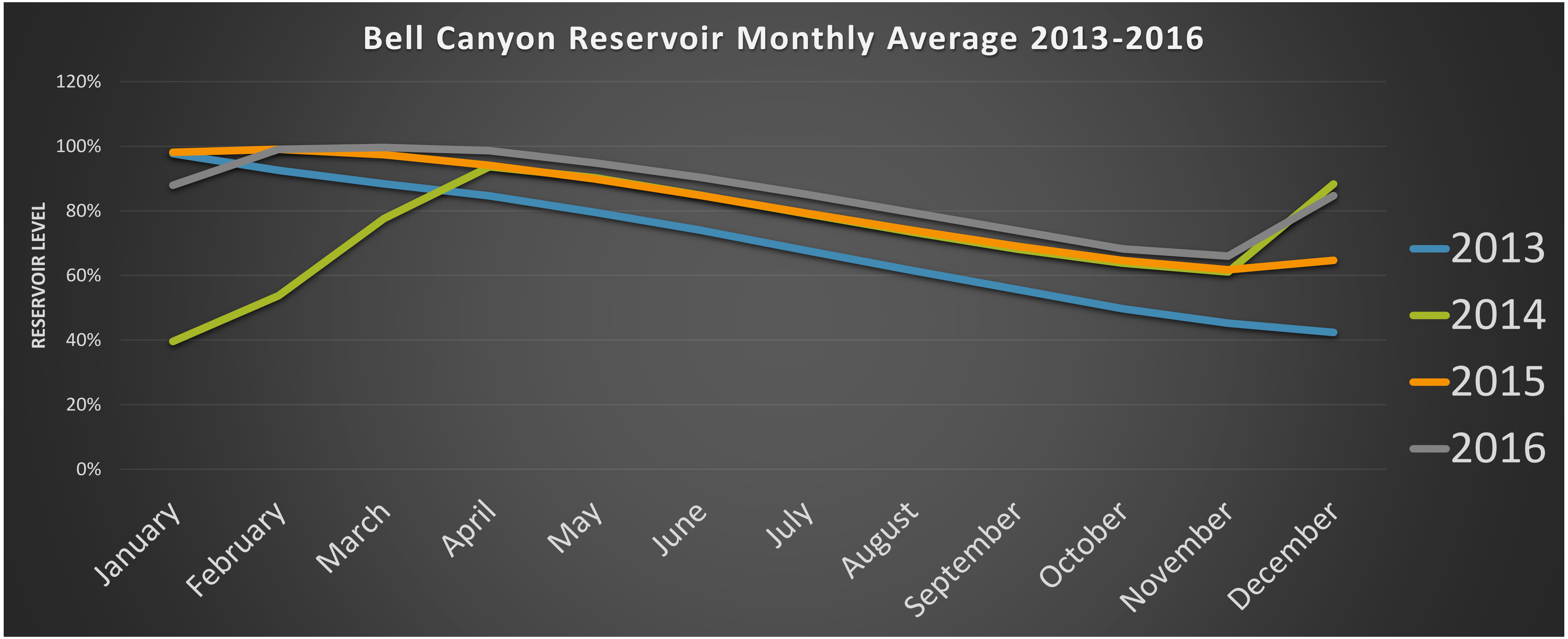
Alan Galbraith, Mayor
City of St. Helena

Water Conservation

By: Jennifer Tuell, Water Conservation Coordinator

Bell Canyon Reservoir Monthly Average 2013-2016

Month	2013	2014	2015	2016
December	42.36%	88.31%	64.66%	84.69%



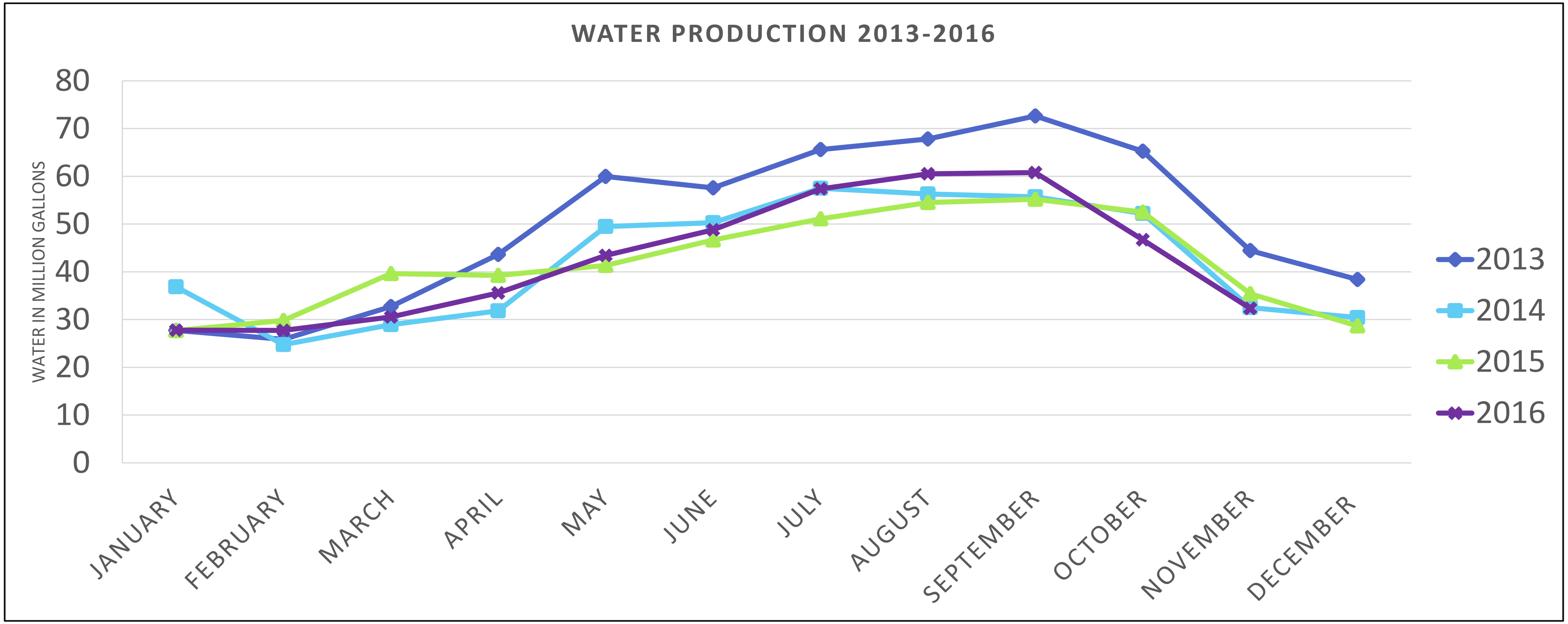
Historical Water Production

	2013-2015	2013-2016
January	-0.17%	0.07%
February	15.29%	7.18%
March	21.17%	-6.67%
April	-10.11%	-18.51%
May	-31.06%	-27.60%*
June	-18.91%	-15.26%*
July	-22.11%	-12.57%*
August	-19.66%	-10.78%
September	-24.05%	-16.31%
October	-19.59%	-28.43%
November	-20.37%	-27.33%
December	-25.37%	

Drought Reporting Regulations Began

*Changed from previous reports, due to a primary meter failing. Numbers have been updated using the reading from a secondary meter, after we learned the meter had failed.

Water Production



Water Conservation

- Continue outreach
  - Conservation
  - Fix a leak and Notifications
  - Water Neutrality
- Clothes Washer Rebate Program ended in 2016

Minutes
St. Helena City Council
Special Closed Session Meeting
Tuesday, November 29, 2016 @ 5:00 PM
Special City Council Meeting
Tuesday, November 29, 2016 @ 6:00 PM
Vintage Hall Board Room - Second Floor
465 Main Street, St. Helena

A complete video recording of this meeting, except for closed session, can be found at https://sthelena.civicweb.net/Portal/ or by calling the City Clerk at (707) 967-2792. The City Council video is the official record of the Council meeting.

1. CLOSED SESSION:

Present: Councilmembers Crull, Dohring, Pitts, White, Mayor Galbraith
Absent: None

1.1. PUBLIC COMMENTS PERTAINING TO THE CLOSED SESSION

No public comments were received.

1.2. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION; Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9: One case: Receipt of communication dated November 7, 2016 from San Francisco Bay Regional Water Quality Control Board re: “St. Helena Wastewater Treatment and Reclamation Plant – (1) Notice of Violation (2) Comments on the Draft Feasibility Study for Wastewater Treatment Plant Improvements, (3) Requirement for Report of Waste Discharge for Land Application of Treated Wastewater”, including requirement for technical information pursuant to Water Code section 13267.

2. CALL TO ORDER

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL
Present: Councilmembers Crull, Dohring, Pitts, White, Mayor Galbraith
Absent: None

5. PUBLIC COMMENT:
Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person’s comments shall be limited to 3 minutes. Each

person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Councilmembers for clarifications may be posed and answered, and Councilmembers may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.

Susan Kenward and Geoff Ellsworth addressed the City Council.

6. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:

6.1. Closed Session - announce actions taken if any from November 10, 2016 and November 29, 2016 - City Attorney Thomas B. Brown

On November 10, 2016 the City Council met in closed session and authorized initiating litigation only if settling matters informally fails. Only if and when it is necessary to file a lawsuit a copy will be made available upon request.

On November 29, 2016 the City Council met in closed session and no reportable action took place.

Finance Director Mitts reported that the annual audit has begun.

Public Works Director Palmer reported that PG&E erroneously replaced various streets lights with LED lights and PG&E will fix the error. The “Main” project work at Los Alcobas has begun and clarification was made regarding public comments related to the Grayson/Davies project.

Councilmember Crull made a public apology regarding the recent Roger Trinchero Planning Commission decision.

Mayor Galbraith thanked the citizens of St. Helena for supporting Measure D.

7. PRESENTATIONS AND PUBLIC RECOGNITIONS

City Clerk Cindy Black provided oath of office:

7.1. Oath of Office: Police Dispatcher Alicia Marciano

7.2. Oath of Office: Police Officer Jovi Oam

7.3. Oath of Office: Police Officer Melissa Brown

7.4. Oath of Office: Lieutenant Christopher Hartley

8. STAFF BRIEFING

8.1. None

9. CONSENT ITEMS

Item 9.1 was removed from Consent.

~~9.1. Consideration and proposed approval of minutes from:~~
~~1. Regular meeting minutes October 11, 2016~~
~~2. Special Joint City Council and Planning Commission Workshop meeting minutes October 22, 2016~~
~~3. Regular meeting minutes of October 25, 2016~~

9.2. Second reading and proposed adoption of an Ordinance 2016-13 to amend Chapters 13.04 Water Service System, 13.12 Water Use Efficiency and Use Guidelines, 13.20 Sewer Service System, and 17.112.140 Water Efficient Landscaping

CEQA Determination: This action is exempt from the requirements of CEQA under the "General Rule", Section 15061 (b) (3), in that it can be seen with certainty that no environmental impacts will result from this action; and Section 15273 given that CEQA does not apply to Rates, Tolls, Fares and Charges.
Prepared By: Steven Palmer, PE, Director of Public Works/City Engineer
Jennifer Tuell, Water Conservation Coordinator
Recommendation: Adopt

9.3. Consideration and proposed adoption of a resolution 2016-154 authorizing the City Manager to approve the display of flags, décor and wreaths on St Helena's historic electroliers

CEQA Determination: The project is categorically exempt from the California Environmental Quality Act, pursuant to CEQA guidelines section 15301, Existing Facilities Class I which exempts minor alteration of existing facilities involving negligible or no expansion of use.
Prepared By: Christina Cook, Public Works Administration
Jennifer Tuell, Water Conservation Coordinator
Steven Palmer, PE, Public Works Director/City Engineer
Recommendation: Adopt

9.4. Consideration and proposed approval of a resolution 2016-155 approving a contract amendment for $5,000 with ECS Imaging, Inc for additional professional services related to the implementation and file plan set-up of Laserfiche (electronic document imaging software) not to exceed $29,313.20

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Adopt

9.5. Second reading and proposed adoption of an Ordinance 2016-14 to amend Section 8.24.010 C. 2. of the St Helena Municipal Code (Noise Ordinance), to allow construction activities on Sundays and certain Holidays for owner-built, “self-help” affordable housing projects only

CEQA Determination: This project is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) under the “General Rule” given that City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3)
Prepared By: Noah Housh, Planning and Community Improvement Director
Recommendation: Adopt

9.6. Consideration and proposed approval of a resolution 2016-156 setting a hearing to approve the annexation of territory into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. 130 (1400 El Bonita Avenue, St Helena, CA. APN. 009-432-026)

CEQA Determination: Categorically Exempt, CEQA Guidelines Section 15319, Annexations of Existing Facilities and Lots for Exempt Facilities, and Section 15061, No Possibility of Significant Effect on the Environment
Prepared By: Christina Cook, Public Works Administrative Assistant
Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

Item 9.7 was removed from Consent.

~~9.7. Consideration of a resolution approving a contract extension/Consultant Services Agreement with M-Group to provide professional planning services for an additional amount of $75,000, and for a total contract amount not to exceed $100,000.~~

~~CEQA Determination: Not a CEQA project~~
~~Prepared By: Noah Housh, Planning and Community Improvement Director~~
~~Recommendation: Adopt~~

9.8. Consideration and proposed approval of a resolution 2016-158 disbanding the Multi Cultural Committee

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Adopt

9.9. Consideration and proposed adoption of a Resolution 2016-159 Authorizing the City Manager to Execute Grant Amendment No. 2 for the Pope Street Bicycle Lane Project, CIP R-30, to increase Transportation Fund for Clean Air (TFCA) Grant Award by $17,000 for a Total Grant Award Not to Exceed $57,000; and authorize the corresponding budget adjustments

CEQA Determination: Categorically Exempt, Section 15304, Minor Alterations to Land
Prepared By: Tobias Barr, Public Works Project Manager
Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

9.10. Consideration and proposed approval of a resolution 2016-160 approving a joint use agreement amendment with St. Helena Unified School District for the use of Vintage Hall Board Room through February 2017 for a total cost not to exceed $3,334

CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Adopt

9.11. Consideration and proposed approval of resolution 2016-161 implementing new water leak adjustment policy effective January 9, 2017 and rescind all other water or wastewater leak adjustment policies

CEQA Determination: Not a CEQA project
Prepared By: Tracey Perkosky, Grants & Finance Manager
Recommendation: Adopt

Councilmember Crull moved to approve Consent items 9.2 through 9.6 and 9.8 through 9.11. The motion was seconded by Vice Mayor White and on roll call carried by the following vote:

AYES: Councilmembers Crull, White, Dohring, Pitts and Mayor Galbraith
NOES: None
ABSENT: None

It was noted the Minutes of October 11, 2016 noted an incorrect vote which was:

Item 10.2 Consideration and Proposed Adoption of Resolution Authorizing the City Manager to opt into Pacific Gas & Electric's LED Street Lighting Program, Replacing Pacific Gas & Electric Owned High Pressure Sodium Vapor Streetlights with LED Streetlights

Vice Mayor White moved to opt into Pacific Gas & Electric's LED Street Lighting Program, Replacing Pacific Gas & Electric Owned High Pressure Sodium Vapor Streetlights with LED Streetlights. The motion was seconded by Mayor Galbraith and on roll call carried by the following vote:

AYES: Councilmembers ~~Dohring,~~ White and Mayor Galbraith
NOES: Councilmembers Dohring, Pitts and Crull
ABSENT: None

The motion failed due to lack of votes.

The October 11, 2016 minutes are corrected as follows:

Item 10.2 Consideration and Proposed Adoption of Resolution Authorizing the City Manager to opt into Pacific Gas & Electric's LED Street Lighting Program, Replacing Pacific Gas & Electric Owned High Pressure Sodium Vapor Streetlights with LED Streetlights

Vice Mayor White moved to opt into Pacific Gas & Electric's LED Street Lighting Program, Replacing Pacific Gas & Electric Owned High Pressure Sodium Vapor Streetlights with LED Streetlights. The motion was seconded by Mayor Galbraith and on roll call carried by the following vote:

AYES: Councilmembers White and Mayor Galbraith
NOES: Councilmembers Dohring, Pitts and Crull
ABSENT: None

9.1. Consideration and proposed approval of minutes from:
1. Regular meeting minutes October 11, 2016
2. Special Joint City Council and Planning Commission Workshop meeting minutes October 22, 2016
3. Regular meeting minutes of October 25, 2016
Vice Mayor White Councilmember Crull moved to approve Consent item 9.1 as amended. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers White, Crull, Dohring, Pitts and Mayor Galbraith

NOES: None
ABSENT: None

Planning and Community Improvement Director Housh reported on this item.

9.7. Consideration of a resolution approving a contract extension/Consultant Services Agreement with M-Group to provide professional planning services for an additional amount of $75,000, and for a total contract amount not to exceed $100,000.

CEQA Determination: Not a CEQA project
Prepared By: Noah Housh, Planning and Community Improvement Director
Recommendation: Adopt

Vice Mayor White Councilmember Crull moved to approve Consent item 9.7 with the understanding the contract will be amended to not to exceed $100,000. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers White, Crull, Dohring, Pitts and Mayor Galbraith
NOES: None
ABSENT: None

10. PUBLIC HEARING

10.1. Consideration and proposed adoption of a resolution accepting the 2016 Water and Wastewater Rate Study and adoption of new water and wastewater rates
a. Consideration and proposed approval of a Resolution 2016-162 Adopting City of St. Helena (2016) Water and Wastewater Rate Study; and
b. Consideration and proposed approval of a Resolution 2016-163 Adopting Water Rates and Rate Structure; and
c. Consideration and proposed approval of a Resolution 2016-164 Adopting Wastewater Rates and Rate Structure; and
d. Consideration and proposed approval of a Resolution 2016-165 Adopting Non-treated (raw) Water Rates.

CEQA Determination: This action is exempt from the requirements of CEQA under the "General Rule", Section 15061 (b) (3), in that it can be seen with certainty that no environmental impacts will result from this action; and Section 15273 given that CEQA does not apply to Rates, Tolls, Fares and Charges.
Prepared By: Jennifer Tuell, Water Conservation Coordinator
Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

Water Conservation Coordinator Jennifer Tuell and Hansford Economic Consultant Catherine Hansford reported on this item.

Mayor Galbraith opened the public hearing.

Jay Greene, Homer Dunn, Louise Batali, Tom Vence, Pat Dell, Greg Reynolds, Tom Belt, Mary Koberstein, Betty Antor, Jan Flinn, Grace Kistner, Skip Lane, Phil Murphy, citizen, Geoff Ellsworth, citizen, Carol Cotton, Dale Grossman, citizen, Mike Flinn, Priscella Upton, Tony Holzhauer, Richard Cypher, Donna Oldford and Mark Eversholt addressed the City Council.

Mayor Galbraith closed the public Hearing

Mayor Galbraith called for a recess at 8:15 pm.

Mayor Galbraith reconvened the meeting at 8:20 pm.

Water Conservation Coordinator Jennifer Tuell and Hansford Economic Consultant Catherine Hansford addressed questions from public comment and the City Council.

Mayor Galbraith closed the public hearing.

Vice Mayor White moved to accept the 2016 Water and Wastewater Rate Study and adoption of new water and wastewater rates. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers White, Crull, Dohring, Pitts and Mayor Galbraith
NOES: None
ABSENT: None

Councilmember Crull moved to adopt Water Rates and Rate Structure. The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers Crull, Pitts, Dohring, White and Mayor Galbraith
NOES: None
ABSENT: None

Vice Mayor White moved to adopting Wastewater Rates and Rate Structure. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers White, Crull, Dohring, Pitts and Mayor Galbraith
NOES: None
ABSENT: None

Councilmember Dohring moved to adopt Non-treated (raw) Water Rates. The motion was seconded by Vice Mayor White and on roll call carried by the following vote:

AYES: Councilmembers Dohring, White, Pitts, Crull and Mayor Galbraith
NOES: None
ABSENT: None

Mayor Galbraith called for a motion directing staff to review the subsidy program further.

Councilmember Dohring moved to direct staff to review the subsidy program further. The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers Dohring, Pitts, Crull, White and Mayor Galbraith
NOES: None
ABSENT: None

Mayor Galbraith called for a recess at 8:47 pm.

Mayor Galbraith reconvened the meeting at 8:58 pm.

10.2. Triannual California Building Standards Code Adoption Modifying Chapter 15 of the St Helena Municipal Code and Update of Building Permit and Code Enforcement Process Improvements:
a. Consideration and proposed approval of a resolution to double the Building Permit fee when the permit is filed as a result of Code Enforcement action; and
b. Introduce and hold first reading of the of Ordinance titled “Amendments to St. Helena Municipal Code Title 15 Buildings and Construction, Adopt and Amend in full the 2016 California Building Standards Code, Title 24

CEQA Determination: Categorical Exemption: It has been determined that the project is exempt for the requirements of the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) the ‘General Rule’ in that it can be seen with certainty that there is no possibility the proposed action may have a significant impact on the environment and therefor CEQA is not applicable.
Prepared By: Noah Housh, Planning, Building and Community Improvement Director
Darrell Mayes, Chief Building Official
Recommendation: a. Adopt; and
b. Introduce by title only and waive further reading

Planning, Building and Community Improvement Director Housh reported on this item and noted the resolution presented is for review only and will be coming back before the City Council at a later date for consideration to adopt.

Mayor Galbraith opened the public hearing.

No public comment was received.

Mayor Galbraith closed the public hearing.

Councilmember Dohring moved to introduce, as amended with a punctuation correction, by title only and waive further reading of the ordinance titled “Amendments to St. Helena Municipal Code Title 15 Buildings and Construction, Adopt and Amend in full the 2016 California Building Standards Code, Title 24. The motion was seconded by Vice Mayor White and on roll call carried by the following vote:

AYES: Councilmembers Dohring, White and Mayor Galbraith
NOES: Councilmembers Crull and Pitts
ABSENT: None

10.3. Consideration and proposed approval of a resolution 2016-166 approving the Annexation of Territory into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. No. 129 (1357 El Bonita Avenue, St Helena, CA. APN. 009-431-003)

CEQA Determination: Categorically Exempt, CEQA Guidelines Section 15319, Annexations of Existing Facilities and Lots for Exempt Facilities, and Section 15061(b)(3), No Possibility of Significant Effect on the Environment
Prepared By: Christina Cook, Administrative Assistant
Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

Public Works Director Palmer reported on this item.

Mayor Galbraith opened the public hearing.

No public comment was received.

Mayor Galbraith closed the public hearing.

Vice Mayor White moved to approve the Annexation of Territory into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. No. 129 (1357 El Bonita Avenue, St Helena, CA. APN. 009-431-003). The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers White, Pitts, Dohring and Mayor Galbraith
NOES: None
ABSENT: None

10.4. Resolution 2016-167 denying the appeal of the Planning Commission decision to approve five (5) new signs on the Davies Vineyards Winery property located at 1210 Grayson Avenue in the SC: Service Commercial district

CEQA Determination: Categorically Exempt pursuant to Section 15311 of the CEQA Guidelines
Prepared By: Aaron Hecock, Senior Planner
Reviewed By: Noah Housh, Planning and Community Improvement Director
Recommendation: Deny the appeal

Planning and Community Improvement Director Housh reported on this item.

Mayor Galbraith opened the public hearing.

Susan Kenward, Donna Oldford, Brian McMahon addressed the City Council.

Mayor Galbraith closed the public hearing.

Vice Mayor White moved to deny the appeal of the Planning Commission decision to approve five (5) new signs on the Davies Vineyards Winery property located at 1210 Grayson Avenue in the SC: Service Commercial district. The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers White, Pitts, Dohring, Crull and Mayor Galbraith
NOES: None
ABSENT: None

11. NEW BUSINESS

11.1. Consideration and proposed approval of a resolution adopting 2016-168 the Davies Winery Noise Attenuation Plan

CEQA Determination: Previously Adopted Mitigated Negative Declaration
Prepared By: Noah Housh, Planning and Community Improvement Director
Recommendation: Adopt

Planning and Community Improvement Director Housh reported on this item.

Mayor Galbraith opened the public comment.

Brian McMahon, Susan Kenward and Bobbie Monnette addressed the City Council.

Mayor Galbraith closed the public comment.

At 9:58 pm Councilmember Pitts moved to continue the meeting beyond 10:00 pm. The motion was seconded by Vice Mayor White and on roll call carried by the following vote:

AYES: Councilmembers Pitts, White, Dohring, Crull and Mayor Galbraith
NOES: None
ABSENT: None

At 10:26 pm Councilmember Pitts moved to continue the meeting beyond 10:30 pm. The motion was seconded by Vice Mayor White and on roll call carried by the following vote:

AYES: Councilmembers Pitts, White, Dohring, Crull and Mayor Galbraith
NOES: None
ABSENT: None

It was the consensus of the City Council to amend Resolution 2016-168, Exhibit A, section 3, amending language (a), (b) and (c):

(3) Music/Sound Amplification:
~~(a) Although rooftop patio music is not part of the Project, music on the rooftop patio is not prohibited under the St. Helena Municipal Code. If music is played at any activity occurring on the rooftop patio, it shall be played only during the hours set forth in Section 2 above.~~

~~(b) Music, if any, played on the rooftop patio shall consist of occasional live vocal or instrumental performances or recorded music played through stereo speakers.~~

~~(c) Rock concerts or other similarly loud noise generating types of music, shall not be played.~~

Amending to:

(3) Music/Sound Amplification:

(a) No music on the rooftop patio shall be permitted, until future acoustical analysis analyzing any impacts associated with this music, is conducted and approved by the City Council.

Vice Mayor White moved to approve of a resolution adopting the Davies Winery Noise Attenuation Plan. The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers White, Pitts, Crull and Mayor Galbraith
NOES: Councilmembers Dohring
ABSENT: None

12. ADJOURNMENT

ADJOURNMENT

Mayor Galbraith adjourned the meeting at 10:39 p.m.

APPROVED:	**ATTEST:**
______________________________	______________________________
Alan Galbraith, Mayor	Cindy Black, City Clerk

Minutes
St. Helena City Council
December 13, 2016

6:00 P.M. REGULAR MEETING
465 MAIN STREET, ST. HELENA
VINTAGE HALL BOARD ROOM – SECOND FLOOR

A complete video recording of this meeting, except for closed session, can be found at https://sthelena.civicweb.net/Portal/ or by calling the City Clerk at (707) 967-2792. The City Council video is the official record of the Council meeting.

The recording audio/video encountered technical difficulties during the first nine minutes of the recorded video and cleared at the point of Item 6.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

Councilmember Crull led the flag salute.

3. ROLL CALL
Present: Councilmembers Crull, Dohring, Pitts, White, Mayor Galbraith
Absent: None

4. PUBLIC FORUM:

Anthony McKelly, Mike Griffen and Marina Hoffman addressed the City Council.

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:

None

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1. Proclamation - Recognition of City Manager Jennifer Phillips for dedication and service to the City of St. Helena

7. STAFF BRIEFING

7.1. Mayor Alan Galbraith will provide an update regarding the process for selecting an Interim City Manager and recruitment process for the selection of a new City Manager.

Mayor Galbraith reported the City has engaged in searching for an Interim City Manager and has identified three applicants. The new City Council will interview applicants during a special closed session to take place on December 19, 2016 and hopeful a selection will be made. Announcement will be made following negotiation of a contract and anticipate the contract coming before the City Council for consideration at the January 10, 2017 meeting. The recruitment process will begin the first part of 2017 and conclude with a new City Manager by early summer.

8. CONSENT ITEMS

Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

8.1. Receive and File FY 15-16 Annual AB 1600 Report on Development Impact Fees. This Report Provides: Descriptions of each Development Impact Fee, Amount of the Fee, Beginning and Ending Balances of each Impact Fee Account, Identification of Public Improvements in which Fees were Expended, Schedule for Commencement of Certain Public Improvements to be Funded with Impact Fees, Description of any Interfund Transfer or Loan, and the Amount of Refunds Paid, if any, from Development Impact Fees.
CEQA Determination: Not a CEQA project
Prepared By: April Mitts, Finance Director
Reviewed By: Jennifer Phillips, City Manager
Recommendation: Receive and file

8.2. Triannual California Building Standards Code Adoption Modifying Chapter 15 of the St Helena Municipal Code and Update of Building Permit and Code Enforcement Process Improvements
a. Consideration and proposed approval of a resolution 2016-169 to double the Building Permit fee when the permit is filed as a result of Code Enforcement action; and
b. Second reading and proposed adoption of Ordinance 2016-15 titled “Amendments to St. Helena Municipal Code Title 15 Buildings and Construction, Adopt and Amend in full the 2016 California Building Standards Code, Title 24
CEQA Determination: Categorical Exemption: It has been determined that the project is exempt for the requirements of the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) the ‘General Rule’ in that it can be seen with certainty that there is no possibility the proposed action may have a significant impact on the environment and therefor CEQA is not applicable.
Prepared By: Noah Housh, Planning, Building and Community Improvement Director
Darrell Mayes, Chief Building Official
Recommendation: Adopt, hold second reading and adopt by title only and waive further reading

8.3. Consideration and Proposed Approval of a Resolution 2016-170 Adopting Administrative Policy P-FI-0006 Escheat Policy for Unclaimed Money and Rescinding any Previous Policies or Administrative Memorandum which are Inconsistent with Finance Policy P-FI-0006 Escheat Policy for Unclaimed Money
CEQA Determination: Not a CEQA Project
Prepared By: April Mitts, Finance Director
Reviewed By: Jennifer Phillips, City Manager
Recommendation: Adopt

8.4. Consideration and proposed adoption of a resolution 2016-171 approving a Professional Services Agreement with Franks Janitorial Service in the amount of $220,770 to provide janitorial services to City facilities for three years

CEQA Determination: Not a CEQA Project
Prepared By: Carlos Uribe, Public Works Maintenance Manager
Reviewed by: Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

8.5. Consideration and proposed adoption of a resolution 2016-172 authorizing the City Manager to submit Grayson Avenue Improvements and Main Street Corridor Improvements for the One Bay Area Grant-2
CEQA Determination: This item is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the “General Rule” Section 15061(b)(3), where is can be seen with certainty that the proposed action will have no significant effect on the environment.
Prepared By: Erica Ahmann Smithies, Asst PW Director
Reviewed By: Steve Palmer, Public Works Director and City Engineer
Recommendation: Adopt

Item 8.6 was removed from Consent.

~~8.6. Consideration and proposed authorization for the Police Department to hire and train Per Diem Dispatchers beginning January, 2017, at a rate of not more than $30.56 per hour; employ the Dispatchers through June 2017, for a total of not more than $34,209.72; and use of General Fund reserves for an amount not to exceed $34,210~~
~~CEQA Determination: Not a CEQA project~~
~~Prepared By: William Imboden, Chief of Police~~
~~Recommendation: Adopt~~

8.7. Consideration and proposed adoption of a resolution 2016-174 to remove Appendix A; Section 9, Subsection B, (Page 42) of the City Employees’ Handbook – Use

of City Vehicles, and replace it with the updated Appendix A; Section 9, Subsection B – Use of City Vehicles, dated 16 September, 2016.
CEQA Determination: Not a CEQA project
Prepared By: William Imboden; Police Chief
Recommendation: Adopt

8.8. Consideration and proposed approval of a Resolution 2016-175 Amending the Rate of Pay for Fire Department Battalion Coverage from the established rate of $50 per 24-hour period to $105 per 24-hour period and establishing the 24-hour period to be from 08:00 am to 07:59 am for Resolution 2016-11
CEQA Determination: Not a CEQA project
Prepared By: Allison Mattioli, Management Analyst
Kathy Robinson, Human Resources & IT Director
John Sorensen, Fire Chief
Recommendation: Adopt

8.9. Consideration and proposed approval of a Resolution 2016-176 accepting the certification of the vote for the November 8, 2016 General Municipal Election
CEQA Determination: Not a CEQA project
Prepared By: Cindy Black, City Clerk
Recommendation: Adopt

Councilmember Pitts moved to approve Consent Items 8.1 through 8.5 and 8.7 through 8.9. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers Pitts, Crull Dohring, White and Mayor Galbraith

NOES: None

ABSENT: None

8.6. Consideration and proposed authorization for the Police Department to hire and train Per Diem Dispatchers beginning January, 2017, at a rate of not more than $30.56 per hour; employ the Dispatchers through June 2017, for a total of not more than $34,209.72; and use of General Fund reserves for an amount not to exceed $34,210
CEQA Determination: Not a CEQA project
Prepared By: William Imboden, Chief of Police
Recommendation: Adopt

Chief of Police Imboden reported on this item.

Vice Mayor White moved to approve Consent Item 8.6. The motion was seconded by Councilmember Crull and on roll call carried by the following vote:

AYES: Councilmembers White, Crull, Pitts, Dohring, White and Mayor Galbraith

NOES: None

ABSENT: None

9. PUBLIC HEARINGS

9.1. Item 9.1 will not be heard at the December 13, 2016 City Council meeting. It will be heard at the Special City Council Meeting on Monday, December 19, 2016 at 6:00 pm.

Request by Our Town St. Helena (OTSH) for Tentative Subdivision Map approval and a waiver of the City's water neutrality requirement in the form of an in-lieu fee payment proposed to be paid from the City of St Helena Affordable Housing Trust Fund for an 8 unit affordable housing project on the property located at 684 McCorkle Avenue in the HR: High Density Residential district (File No. PL16-022)
CEQA Determination: Exempt pursuant to Section 15332
Prepared By: Aaron Hecock, Senior Planner
Reviewed By: Noah Housh, Planning and Community Improvement Director
Recommendation: Adopt

9.2. Consideration and proposed approval of resolution 2016-177 to approve the Annexation of Territory into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. 130 (1400 El Bonita Avenue, St Helena, CA. APN. 009-432-026)
CEQA Determination: Categorically Exempt, CEQA Guidelines Section 15319, Annexations of Existing Facilities and Lots for Exempt Facilities, and Section 15061(b)(3), No Possibility of Significant Effect on the Environment
Prepared By: Christina Cook, Administrative Assistant
Steven Palmer, PE, Director of Public Works/City Engineer
Recommendation: Adopt

Mayor Galbraith opened the public hearing.

No public comment received.

Mayor Galbraith closed the public hearing.

Public Works Director Palmer reported on this item.

Councilmember Dohring moved to approve the Annexation of Territory into the St. Helena Municipal Sewer District No. 1, MSD Annexation No. 130 (1400 El Bonita Avenue, St Helena, CA. APN. 009-432-026). The motion was seconded by Councilmember Pitts and on roll call carried by the following vote:

AYES: Councilmembers Dohring, Pitts, White, Crull and Mayor Galbraith

NOES: None

ABSENT: None

10. NEW BUSINESS

10.1. Recognition of Outgoing Councilmembers Sharon Crull and Greg Pitts (A recess in recognition of outgoing Councilmembers Sharon Crull and Greg Pitts will be held.)

Recognition of service was proclaimed for outgoing Councilmember Sharon Crull and Greg Pitts.

Recognition of service was also recognized for outgoing City Manager Jennifer Phillips.

Mayor Galbraith called for a recess.

Mayor Galbraith reconvened the meeting.

10.2. Oath of Office administered by City Clerk Cindy Black to Mayor-Elect Alan Galbraith, Councilmembers-Elect Mary Koberstein and Geoff Ellsworth

Amy Martenson and Bobbie Monnette addressed the City Council.

City Clerk Cindy Black administered the Oath of Office to Councilmember-Elect Mary Koberstein and Geoff Ellsworth.

10.3. New Councilmembers are seated

Councilmembers Koberstein and Ellsworth were seated at the dais.

10.4. Mayor nomination and Council approval of Vice Mayor
CEQA Determination: Not a CEQA Project
Prepared By: Cindy Black
Recommendation: Mayor nomination and Council approval

No public comment received.

Mayor Galbraith moved to appoint Vice Mayor White to an additional term as Vice Mayor. The motion was seconded by Councilmember Dohring and on roll call carried by the following vote:

AYES: Mayor Galbraith and Councilmembers Dohring, Ellsworth, White, Koberstein

NOES: None

ABSENT: None

ADJOURNMENT

Mayor Galbraith adjourned the meeting at 6:51 p.m.

APPROVED:	**ATTEST:**
______________________________	______________________________
Alan Galbraith, Mayor	Cindy Black, City Clerk

Minutes
St. Helena City Council
December 19, 2016

6:00 P.M. SPECIAL MEETING
465 MAIN STREET, ST. HELENA
VINTAGE HALL BOARD ROOM – SECOND FLOOR

A complete video recording of this meeting, except for closed session, can be found at https://sthelena.civicweb.net/Portal/ or by calling the City Clerk at (707) 967-2792. The City Council video is the official record of the Council meeting.

1. CALL TO ORDER

2. ROLL CALL
Present: Councilmembers Dohring, Ellsworth, Koberstein, Mayor Galbraith
Absent: Vice Mayor White

3. PUBLIC COMMENT:

No public comment received.

4. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:

4.1. Closed Session - Announce actions taken if any from December 19, 2016

Mayor Galbraith reported that the City Council has chosen an Interim City Manager and has directed City Manager Phillips to begin the work on the Interim City Manager contract.

City Clerk Cindy Black announced applications are being taken for the vacant Planning Commission position.

Councilmember Ellsworth announced there will be an upcoming Napa County Board of Supervisors meeting regarding the definition of “Agriculture”.

Councilmember Koberstein thanked the community for their support in the recent election.

Councilmember Dohring reported on the recent Up Valley Waste Management meeting.

5. PUBLIC HEARING

5.1. Consideration and proposed approval of a resolution 2016-178 granting the request by Our Town St. Helena (OTSH) for Tentative Subdivision Map approval and a waiver of the City's water neutrality requirement in the form of an in-lieu fee payment proposed to be paid from the City of St Helena Affordable Housing Trust Fund for an 8 unit affordable housing project on the property located at 684 McCorkle Avenue in the HR: High Density Residential district (File No. PL16-022). By a 3-0 vote, the Planning Commission recommended that the City Council approve the applicant's request for a tentative subdivision map and grant the applicant's request for an alternative method of meeting the City's water neutrality requirement.

CEQA Determination: Exempt pursuant to Section 15332
Prepared By: Aaron Hecock, Senior Planner
Reviewed By: Noah Housh, Planning and Community Improvement Director
Recommendation: Adopt

Mayor Galbraith opened the public hearing.

Mary Stephenson and Bobbie Monnette addressed the City Council.

Mayor Galbraith closed the public hearing.

Councilmember Dohring moved to approve a resolution granting the request by Our Town St. Helena (OTSH) for Tentative Subdivision Map approval and a waiver of the City's water neutrality requirement in the form of an in-lieu fee payment proposed to be paid from the City of St Helena Affordable Housing Trust Fund for an 8 unit affordable housing project on the property located at 684 McCorkle Avenue in the HR: High Density Residential district (File No. PL16-022). The motion was seconded by Councilmember Koberstein and on roll call carried by the following vote:

AYES: Councilmembers Dohring, Koberstein, Ellsworth and Mayor Galbraith

NOES: None

ABSENT: Vice Mayor White

6. ADJOURNMENT

Mayor Galbraith adjourned the meeting at 6:22 p.m.

APPROVED: **ATTEST:**

Alan Galbraith, Mayor Cindy Black, City Clerk

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **Consent**

Subject: **Consideration and proposed approval of a Resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes revised salary schedule for St. Helena Employees Association (SHEA) and part-time Casual Worker classification**

CEQA Determination: **Not a project**

Prepared By:

Kathy Robinson, Director of HR & IT

Approved By:

Steven Palmer, Director of Public Works, Acting City Manager

BACKGROUND

The City of St. Helena contracts with the California Public Employees Retirement System (CalPERS) to provide retirement benefits for its employees. As a public employer, the City must abide by the government code when establishing and reporting compensation for its employees. The California Code of Regulations (CCR) Title 2, Section 570.5 (Section 570.5) provides that each pay schedule meet the following requirements:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws
- Identifies the position title for every employee position
- Shows the pay rate for each position
- Indicates the time base for each pay rate

CalPERS uses the City's pay schedules to determine final compensation and to calculate retirement benefits for the City's employees. Inaccurate pay schedules could negatively impact an employee's final retirement calculation or delay receipt of the appropriate retirement compensation. To ensure that the City remains compliant with its obligation under Section 570.5 staff will, at a minimum, biannually present pay schedules to City Council to be duly authorized and approved. The biannual presentation to the City Council will coincide with the start of a new fiscal year, and at the beginning of each calendar year as these times have historically coincided with the ratification of negotiated memorandum of understandings with the City's labor unions.

DISCUSSION

The St. Helena Employees Association (SHEA) Memorandum of Understanding for the period of January 1, 2016 through December 31, 2017 authorizes a salary increase on January 9, 2017 of 2.5% over the 2016 salary schedule. These increases to base salaries have been updated and are reflected in the salary schedule herein attached as Appendix A. City of St. Helena Publicly Available Salary Schedule Duly Approved and Adopted January 10, 2017.

On January 1, 2017, the California minimum wage increased from $10.00 per hour to $10.50 per hour. The increase to the State minimum wage impacts the compensation schedule for part-time Casual Worker position. The increases to the base hourly rate have been updated and are also reflected in Appendix A. City of St. Helena Publicly Available Salary Schedule Duly Approved and Adopted January 10, 2017.

The California Code of Regulations (CCR) Title 2, Section 570.5 (Section 570.5) provides that position title, pay rate, and time base for each employee position the City has in the CalPERS system to be included in a publicly available compensation schedule. Per the CCR, the City Council, part-time seasonal employees, and prior positions (retired and/or vacant) are included in the salary schedules and will continue to be included in all future updates.

FISCAL IMPACT

There are no financial impacts to the budget as St. Helena's Employee Association's salary increases and minimum wage increases were considered and budgeted for FY 2016/17.

RECOMMENDED ACTION

Approve.

ATTACHMENTS

1. Bi-Annual Duly Adopt and Approve Comp Schedule Reso
2. Publicly Available Salary Schedule FY16 Effective January 2017

CITY OF ST. HELENA
RESOLUTION No. 2017-

Approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes revised salary schedule for St. Helena Employees Association (SHEA) and part-time Casual Worker classification

RECITALS

A. The City of St. Helena contracts with the California Public Employee' Retirement System ("CalPERS") to provide retirement benefits for its employees; and

B. Pursuant to California Code of Regulations, Title 2, Section 570.5, CalPERS requires governing bodies of local agencies contracting with CalPERS to approve and adopt a publicly available pay schedule in accordance with public meeting laws; and

C. The pay schedule must identify the position title for every employee position, the pay rate for each position title, and the applicable time base for the pay rate; and

D. The City Council of the City of St. Helena desires to approve and adopt a publicly available pay schedule, showing all established employee positions and pay rates, in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5.

Now, therefore, the City Council of the City of St. Helena resolves as follows:

1. That the City of St. Helena Publicly Available Salary Schedule which includes revised salary schedule for St. Helena Employees Association (SHEA) and part-time Casual Worker classification contained in Exhibit A is hereby approved and adopted in accordance with the requirements of California Code of Regulations, Title 2, Section 570.5; and

2. That the City of St. Helena Publicly Available Salary Schedule will be posted on the City's website, and will be made available for public inspection for not less than five years.

Approved at a special meeting of the St. Helena City Council on January 17, 2017 by the following vote:

Mayor Galbraith: ____________
Vice Mayor White: ____________
Councilmember Ellsworth: ____________
Councilmember Dohring: ____________
Councilmember Koberstein: ____________

APPROVED: ATTEST:

Alan Galbraith, Mayor Cindy Black, City Clerk

City of St. Helena
Publicly Available Salary Schedule FY 2016-2017
Duly Approved and Adopted January 10, 2017

**Effective January 2017*

Position		Steps A	Steps B	Steps C	Steps D	Steps E
St. Helena Employee Association - Miscellaneous Group						
Accounting Assistant I	Annual	41,684.00	43,768.00	45,956.00	48,254.00	50,667.00
Accounting & HR Assistant I (6)	Monthly	3,474.00	3,647.00	3,829.00	4,021.00	4,222.00
Office Assistant 75%	Pay Period	1,736.80	1,823.65	1,914.82	2,010.57	2,111.10
Office Assistant	Hourly	20.04	21.04	22.09	23.20	24.36
Library Assistant I						
Maintenance Worker I	Annual	42,524.00	44,650.00	46,884.00	49,228.00	51,689.00
	Monthly	3,543.00	3,721.00	3,907.00	4,102.00	4,307.00
	Pay Period	1,771.85	1,860.44	1,953.46	2,051.14	2,153.69
	Hourly	20.44	21.47	22.54	23.67	24.85
Library Assistant II	Annual	43,274.00	45,438.00	47,710.00	50,095.00	52,600.00
	Monthly	3,606.00	3,786.00	3,976.00	4,175.00	4,383.00
	Pay Period	1,803.09	1,893.24	1,987.91	2,087.30	2,191.67
	Hourly	20.80	21.84	22.94	24.08	25.29
Plant Operator in Training	Annual	44,147.00	46,355.00	48,672.00	51,105.00	53,661.00
Maintenance Worker I-Water Dist.	Monthly	3,679.00	3,863.00	4,056.00	4,259.00	4,472.00
	Pay Period	1,839.47	1,931.44	2,028.01	2,129.41	2,235.88
	Hourly	21.22	22.29	23.40	24.57	25.80
Building Permit Technician I	Annual	47,108.00	49,463.00	51,937.00	54,534.00	57,261.00
Recreation Coordinator	Monthly	3,926.00	4,122.00	4,329.00	4,545.00	4,771.00
	Pay Period	1,962.84	2,060.99	2,164.03	2,272.24	2,385.85
	Hourly	22.65	23.78	24.97	26.22	27.53
Accounting Assistant II	Annual	48,059.00	50,462.00	52,984.00	55,634.00	58,416.00
Accounting & HR Assistant II (6)	Monthly	4,005.00	4,206.00	4,416.00	4,636.00	4,868.00
	Pay Period	2,002.44	2,102.56	2,207.70	2,318.08	2,433.99
	Hourly	23.11	24.26	25.47	26.75	28.08
Senior Library Assistant	Annual	49,151.00	51,609.00	54,189.00	56,899.00	59,743.00
	Monthly	4,096.00	4,301.00	4,516.00	4,742.00	4,978.00
	Pay Period	2,047.95	2,150.35	2,257.87	2,370.76	2,489.29
	Hourly	23.63	24.81	26.05	27.36	28.72
Plant Operator I - Wastewater	Annual	49,893.00	52,388.00	55,007.00	57,757.00	60,645.00
Plant Operator I - Water	Monthly	4,157.00	4,365.00	4,584.00	4,813.00	5,053.00
	Pay Period	2,078.86	2,182.81	2,291.95	2,406.55	2,526.87
	Hourly	23.99	25.19	26.45	27.77	29.16
Accounting Assistant III	Annual	50,519.00	53,046.00	55,697.00	58,482.00	61,407.00
Accounting & HR Assistant III (6)	Monthly	4,210.00	4,421.00	4,641.00	4,874.00	5,117.00
	Pay Period	2,104.98	2,210.23	2,320.74	2,436.77	2,558.62
	Hourly	24.29	25.50	26.78	28.12	29.52
Librarian I	Annual	50,646.00	53,178.00	55,837.00	58,629.00	61,560.00
Lib Assoc Bilingual Services	Monthly	4,221.00	4,431.00	4,654.00	4,886.00	5,130.00
	Pay Period	2,110.24	2,215.75	2,326.55	2,442.87	2,565.01
	Hourly	24.35	25.57	26.84	28.19	29.60
Administrative Assistant	Annual	50,899.00	53,445.00	56,117.00	58,922.00	61,869.00
	Monthly	4,241.00	4,454.00	4,676.00	4,910.00	5,156.00
	Pay Period	2,120.81	2,226.84	2,338.19	2,455.10	2,577.85
	Hourly	24.47	25.69	26.98	28.33	29.74
Maintenance Worker II	Annual	51,796.00	54,387.00	57,106.00	59,961.00	62,960.00
	Monthly	4,316.00	4,533.00	4,759.00	4,997.00	5,247.00
	Pay Period	2,158.20	2,266.11	2,379.41	2,498.39	2,623.30
	Hourly	24.90	26.15	27.45	28.83	30.27

Position		Steps A	B	C	D	E
Equipment Operator/Maint Worker III	Annual	52,317.00	54,933.00	57,679.00	60,563.00	63,591.00
	Monthly	4,359.00	4,578.00	4,806.00	5,047.00	5,299.00
	Pay Period	2,179.87	2,288.86	2,403.30	2,523.47	2,649.64
	Hourly	25.15	26.41	27.73	29.12	30.57
Building Permit Technician II	Annual	52,447.00	55,070.00	57,823.00	60,715.00	63,750.00
	Monthly	4,371.00	4,589.00	4,819.00	5,059.00	5,313.00
	Pay Period	2,185.31	2,294.58	2,409.31	2,529.77	2,656.27
	Hourly	25.22	26.48	27.80	29.19	30.65
Maintenance Lead Worker	Annual	52,842.00	55,484.00	58,258.00	61,171.00	64,230.00
Accounting Assistant/Building Tech	Monthly	4,403.00	4,624.00	4,854.00	5,097.00	5,353.00
	Pay Period	2,201.74	2,311.84	2,427.43	2,548.80	2,676.23
	Hourly	25.40	26.67	28.01	29.41	30.88
Maintenance Worker II-Water Dist.	Annual	53,908.00	56,604.00	59,434.00	62,405.00	65,525.00
	Monthly	4,493.00	4,717.00	4,953.00	5,201.00	5,460.00
	Pay Period	2,246.16	2,358.47	2,476.40	2,600.22	2,730.23
	Hourly	25.92	27.21	28.57	30.00	31.50
Plant Operator II - WW	Annual	54,995.00	57,745.00	60,633.00	63,665.00	66,847.00
Plant Operator II - Water	Monthly	4,583.00	4,812.00	5,052.00	5,305.00	5,571.00
Maintenance Lead Worker-Water Dist.	Pay Period	2,291.49	2,406.06	2,526.36	2,652.68	2,785.31
	Hourly	26.44	27.76	29.15	30.61	32.14
Librarian II	Annual	55,271.00	58,034.00	60,936.00	63,984.00	67,183.00
	Monthly	4,606.00	4,836.00	5,078.00	5,332.00	5,599.00
	Pay Period	2,302.96	2,418.11	2,539.01	2,665.96	2,799.25
	Hourly	26.57	27.90	29.30	30.76	32.30
Project Coordinator/Admin Asst.	Annual	56,105.00	58,911.00	61,856.00	64,949.00	68,196.00
Building Permit Technician III	Monthly	4,675.00	4,909.00	5,155.00	5,412.00	5,683.00
	Pay Period	2,337.72	2,454.61	2,577.33	2,706.21	2,841.52
	Hourly	26.97	28.32	29.74	31.23	32.79
Plant Operator III - Water	Annual	56,246.00	59,057.00	62,010.00	65,111.00	68,366.00
	Monthly	4,687.00	4,921.00	5,168.00	5,426.00	5,697.00
	Pay Period	2,343.56	2,460.74	2,583.78	2,712.97	2,848.62
	Hourly	27.04	28.39	29.81	31.30	32.87
Recreation Supervisor	Annual	56,527.00	59,354.00	62,321.00	65,437.00	68,709.00
	Monthly	4,711.00	4,946.00	5,194.00	5,453.00	5,726.00
	Pay Period	2,355.30	2,473.06	2,596.71	2,726.55	2,862.88
	Hourly	27.18	28.53	29.96	31.46	33.03
Accounting Technician	Annual	56,952.00	59,800.00	62,789.00	65,929.00	69,225.00
	Monthly	4,746.00	4,984.00	5,233.00	5,494.00	5,769.00
	Pay Period	2,373.01	2,491.65	2,616.24	2,747.05	2,884.40
	Hourly	27.38	28.75	30.19	31.70	33.28
Senior Librarian	Annual	57,524.00	60,400.00	63,420.00	66,591.00	69,920.00
	Monthly	4,794.00	5,034.00	5,285.00	5,549.00	5,827.00
	Pay Period	2,396.82	2,516.66	2,642.50	2,774.62	2,913.36
	Hourly	27.66	29.04	30.49	32.01	33.62
Equipment Mechanic	Annual	28,247.00	61,159.00	64,216.00	67,428.00	70,799.00
	Monthly	4,853.00	5,096.00	5,352.00	5,619.00	5,900.00
	Pay Period	2,426.93	2,548.28	2,675.69	2,809.48	2,949.95
	Hourly	28.00	29.40	30.87	32.42	34.04
Plant Operator III - Water & WW	Annual	62,309.00	65,424.00	68,696.00	72,130.00	75,736.00
Building Technician III/Office Manager	Monthly	5,193.00	5,452.00	5,725.00	6,011.00	6,311.00
	Pay Period	2,596.19	2,726.00	2,862.30	3,005.41	3,155.69
	Hourly	29.96	31.45	33.03	34.68	36.41

Position		Steps A	B	C	D	E
Jr. Engineer	Annual	68,848.00	68,091.00	71,495.00	75,070.00	78,824.00
Assistant Planner	Monthly	5,404.00	5,674.00	5,958.00	6,256.00	6,568.00
HR Manager / Acctg Technician II	Pay Period	2,702.00	2,837.11	2,978.96	3,127.91	3,284.31
	Hourly	31.18	32.74	34.37	36.09	37.90
Public Works Supervisor	Annual	66,322.00	69,639.00	73,119.00	76,776.00	80,614.00
	Monthly	5,527.00	5,804.00	6,094.00	6,398.00	6,718.00
	Pay Period	2,763.41	2,901.58	3,046.66	3,198.99	3,358.95
	Hourly	31.89	33.48	35.15	36.91	38.76
Public Works Supervisor-Parks	Annual	69,178.00	73,203.00	76,864.00	80,707.00	84,743.00
	Monthly	5,810.00	6,101.00	6,405.00	6,726.00	7,062.00
	Pay Period	2,904.91	3,050.16	3,202.66	3,362.80	3,530.94
	Hourly	33.52	35.19	36.95	38.80	40.74
Associate Planner*	Annual	69,893.00	73,387.00	77,056.00	80,909.00	84,954.00
	Monthly	5,824.00	6,115.00	6,422.00	6,742.00	7,080.00
	Pay Period	2,912.18	3,057.79	3,210.68	3,371.20	3,539.77
	Hourly	33.60	35.28	37.05	38.90	40.84
Chief Plant Operator - Water	Annual	72,378.00	75,998.00	79,797.00	83,788.00	87,977.00
Chief Plant Operator - Wastewater	Monthly	6,031.00	6,333.00	6,650.00	6,982.00	7,332.00
Chief Water Distribution Operator	Pay Period	3,015.78	3,166.56	3,324.90	3,491.14	3,665.70
PW Supervisor - Parks & Govt Bldgs	Hourly	34.80	36.54	38.36	40.28	42.30

(1) Longevity Pay - Employees are eligible to receive longevity based on continuous years of employment according to the dates and rates below:

5 years - 2.5% of base salary
10 years - 5.0% of base salary
15 years - 7.5% of base salary
20 years - 10% of base salary

(2) Bilingual Pay - Employees who are certified as fluent in both written and verbal Spanish language will receive a 5% pay differential that is added to the employee's base salary. Employees who are certified as fluent only in verbal Spanish language will receive a 2.5% pay differential that is added to the employee's base salary.

(3) Standby Pay - Shall be paid at a rate of $75.00 per weekend to those employees in the Public Works Department who are required to be on Standby on weekends (3:30 p.m. Friday to 7:00 a.m. Monday), $75.00 per week for those employees who are required to Standby for the week (Monday - Friday) and $75.00 for those employees who are required to Standby on holidays (3:30 p.m. to 7:00 a.m. of the next regular work day).

(4) Certification Pay - $50.00 per month for each governmental certificate or licensing as follow:

"Operator Cross-certification" (Class I or above) for employees assigned to the Water Treatment Plant or Waste Water Treatment Plant, enabling those employees to perform duties at the other plant

A necessary pesticide certificate, for Public Works employees responsible for pesticide applications programs for the city

Certification for back-flow prevention devices for Public Works employees

Playground Inspection Certification for employees working in the Parks Division

Arborist Certificate for employees working in the Parks Division

(5) Uniform Allowance - The city will provide uniforms to employees in the following Public Works positions: Public Works Supervisor, Maintenance Worker I, Maintenance Worker II, Maintenance Lead Worker, Chief Water Distribution Operator, Plant Operator in Training, Plant Operator I, Planter Operator II, Planter Operator III, Chief Operator. The City will provide and pay for cleaning services for the uniforms of employees. These costs will be reported each pay period as follows:

Employees assigned to Water Distribution and Public Works - $35.49 per pay period
Employees assigned to Parks-Trees-Buildings - $33.06 per pay period
Employees assigned to the Wastewater Treatment Plant (Chief Plant Operator and Plant Operator II) - $9.29 per pay period
Employees assigned to the Wastewater Treatment Plant (Plant Operator III) - $5.79 per pay period
Employees assigned to the Water Treatment Plant - $11.49 per pay period

(6) Confidential Positions receive a 3% pay differential that is added to the employee's base salary

Police Officers Association

Dispatcher	Annual	52,287.00	54,901.00	57,646.00	60,528.00	63,555.00
	Monthly	4,358.00	4,575.00	4,804.00	5,044.00	5,296.00
	Pay Period	2,178.61	2,287.54	2,401.91	2,522.01	2,648.11
	Hourly	25.14	26.40	27.71	29.10	30.56
Dispatch Supervisor	Annual	62,764.00	65,903.00	69,198.00	72,657.00	76,290.00
	Monthly	5,231.00	5,492.00	5,766.00	6,055.00	6,358.00
	Pay Period	2,615.18	2,746.00	2,883.26	3,027.39	3,178.76
	Hourly	30.18	31.68	33.27	34.94	36.67
Police Officer	Annual	60,984.00	64,033.00	67,235.00	70,597.00	74,127.00
	Monthly	5,082.00	5,336.00	5,603.00	5,883.00	6,177.00
	Pay Period	2,541.00	2,668.05	2,801.46	2,941.53	3,088.61
	Hourly	29.32	30.79	32.32	33.94	35.63
Corporal	Annual	65,927.00	69,223.00	72,684.00	76,318.00	80,134.00
	Monthly	5,494.00	5,768.00	6,057.00	6,360.00	6,678.00
	Pay Period	2,746.96	2,884.28	3,028.50	3,179.92	3,338.92
	Hourly	31.69	33.28	34.94	36.68	38.53
Sergeant	Annual	72,684.00	76,318.00	80,134.00	84,141.00	88,348.00
	Monthly	6,057.00	6,360.00	6,678.00	7,012.00	7,362.00
	Pay Period	3,028.50	3,179.92	3,338.92	3,505.87	3,681.17
	Hourly	34.94	36.68	38.53	40.45	42.48

(1) Longevity Pay - Employees are eligible to receive longevity based on continuous years of employment according to the dates and rates below:

5 years - 2.5% of base salary
10 years - 5.0% of base salary
15 years - 7.5% of base salary
20 years - 10% of base salary

(2) Bilingual Pay - Employees who are certified as fluent in both written and verbal Spanish language will receive a 5% pay differential that is added to the employee's base salary. Employees determined to be able to communicate in Spanish at a level adequate for law enforcement purposes will receive incentive pay of an additional $150.00 per month.

(3) POST Certificates - Additional monthly salary compensation shall be received by an employee attaining certificates, as follows:

POST Intermediate Certificate - $100.00
POST Advanced Certificate - $200.00
POST Records Supervisor Certificate - $100.00

(4) Special Assignment Pay:

Motorcycle Officer, Range Master or Reserve Coordinator - $100.00 per month
Field Training Officers or Communication Training Officers - 7% of their daily salary, per day, while assigned to the trainee
Records Coordinator - 5% of regular salary
Investigator Position - 2 1/2% of base salary
Police Service Dog Handler - $228.13 per pay period

(5) Holiday Accrual - Full-time employees will accrue 3.833 hours per pay period, which will be paid out twice a year (in June and December) at the employee's current hourly rate.

(6) Uniform Allowance - Employees shall receive an annual uniform allowance as follows:

Sworn Personnel - $750.00
Dispatch and CSO Personnel - $750.00
Motorcycle Officers - 1 pair of Police motorcycle boots, 2 pairs of Police motorcycle pants, 1 Police motorcycle leather jacket, 2 sets of riding gloves (1 cold weather and 1 warm set) and Protective eyeglasses (not to exceed $150.00)
Bicycle Patrol - Gloves, Helmet, Padded Shorts, Padded Pants, Protective Eyeglasses, Pedal Retention Devices, and Inclement Weather Clothing

City of St. Helena
Publicly Available Salary Schedule
FY 2016-2017[1]

Position		Steps A	B	C	D	E
Mid-Management Exempt						
Assistant Public Works Director	Annual	105,315.00	110,581.00	116,110.00	121,915.00	128,010.00
	Monthly	8,776.00	9,215.00	9,676.00	10,160.00	10,668.00
	Pay Period	4,388.45	4,607.62	4,837.90	5,079.29	5,333.81
	Hourly	50.63	53.17	55.82	58.61	61.54
Chief Building Official	Annual	91,659.00	96,242.00	101,054.00	106,107.00	111,411.00
	Monthly	7,638.00	8,020.00	8,421.00	8,842.00	9,284.00
	Pay Period	3,819.00	4,010.00	4,211.00	4,421.00	4,642.00
	Hourly	44.07	46.27	48.58	51.01	53.56
Grants and Finance Manager	Annual	79,874.00	83,867.00	88,061.00	92,463.00	97,087.00
Public Works Project Manager	Monthly	6,656.00	6,989.00	7,338.00	7,705.00	8,091.00
Senior Management Analyst	Pay Period	3,328.00	3,494.00	3,669.00	3,853.00	4,045.00
Water Conservation Coordinator	Hourly	38.40	40.32	42.34	44.45	46.68
Library Manager	Annual	88,704.00	93,139.00	97,796.00	102,687.00	107,821.00
	Monthly	7,392.00	7,762.00	8,150.00	8,557.00	8,985.00
	Pay Period	3,696.00	3,881.00	4,075.00	4,279.00	4,493.00
	Hourly	42.65	44.78	47.02	49.37	51.84
Lieutenant	Annual	87,504.00	91,880.00	96,473.00	101,297.00	106,362.00
	Monthly	7,292.00	7,657.00	8,040.00	8,442.00	8,864.00
	Pay Period	3,646.00	3,828.00	4,020.00	4,221.00	4,432.00
	Hourly	42.07	44.18	46.38	48.70	51.14
Management Analyst	Annual	73,047.00	76,699.00	80,534.00	84,561.00	88,789.00
Public Works Maintenance Manager	Monthly	6,087.00	6,392.00	6,711.00	7,047.00	7,399.00
	Pay Period	3,044.00	3,196.00	3,356.00	3,523.00	3,700.00
	Hourly	35.12	36.88	38.72	40.65	42.69
Senior Planner	Annual	84,867.00	89,110.00	93,566.00	98,245.00	103,156.00
	Monthly	7,072.00	7,426.00	7,797.00	8,187.00	8,596.00
	Pay Period	3,536.00	3,713.00	3,898.00	4,094.00	4,298.00
	Hourly	40.80	42.84	44.98	47.23	49.59
Confidential Positions						
Administrative Services Manager [4]	Annual	93,139.00	97,796.00	102,686.00	107,821.00	113,211.00
	Monthly	7,762.00	8,150.00	8,557.00	8,985.00	9,434.00
	Pay Period	3,880.42	4,074.34	4,278.36	4,492.48	4,716.70
	Hourly	44.78	47.02	49.37	51.83	54.43
Executive Management						
City Manager [2]	Annual					189,880.00
	Monthly					15,823.00
	Pay Period					7,912.00
	Hourly					91.29
City Clerk	Annual	95,524.00	100,300.00	105,315.00	110,581.00	116,110.00
	Monthly	7,960.00	83.58	8,776.00	9,215.00	9,676.00
	Pay Period	3,980.00	4,179.00	4,388.00	4,608.00	4,838.00
	Hourly	45.93	48.23	50.64	53.17	55.83
Fire Chief [2] [3]	Annual					31,000.00
Finance Director	Annual	110,157.00	115,664.00	121,447.00	127,521.00	133,897.00
	Monthly	9,180.00	9,638.00	10,120.00	10,626.00	11,158.00
	Pay Period	4,589.44	4,819.72	5,060.10	5,313.61	5,579.24
	Hourly	52.96	55.61	58.39	61.31	64.38

Position		Steps A	B	C	D	E
Human Resources/IT Director	Annual	110,157.00	115,664.00	121,447.00	127,521.00	133,897.00
	Monthly	9,180.00	9,638.00	10,120.00	10,626.00	11,158.00
	Pay Period	4,589.44	4,819.72	5,060.10	5,313.61	5,579.24
	Hourly	52.96	55.61	58.39	61.31	64.38
Library Director	Annual	99,915.00	104,911.00	110,157.00	115,664.00	121,447.00
	Monthly	8,326.00	8,743.00	9,180.00	9,639.00	10,121.00
	Pay Period	4,163.00	4,371.00	4,590.00	4,819.00	5,060.00
	Hourly	48.04	50.44	52.96	55.61	58.39
Planning/Community Services Director	Annual	128,668.00	135,102.00	141,857.00	148,949.00	156,397.00
	Monthly	10,722.00	11,258.00	11,821.00	12,413.00	13,033.00
	Pay Period	5,361.08	5,629.00	5,910.52	6,206.45	6,516.52
	Hourly	61.86	64.95	68.20	71.61	75.19
Police Chief	Annual	132,528.00	139,154.00	146,112.00	153,417.00	161,088.00
	Monthly	11,044.00	11,596.00	12,176.00	12,785.00	13,424.00
	Pay Period	5,522.00	5,798.00	6,088.00	6,392.00	6,712.00
	Hourly	63.71	66.90	70.25	73.76	77.45
Public Works Director	Annual	139,596.00	146,576.00	153,905.00	161,600.00	169,680.00
	Monthly	11,633.00	12,215.00	12,825.00	13,467.00	14,140.00
	Pay Period	5,817.00	6,107.00	6,413.00	6,733.00	7,070.00
	Hourly	67.11	70.47	73.99	77.69	81.58
Recreation Director	Annual	105,315.00	110,581.00	116,110.00	121,915.00	128,010.00
	Monthly	8,776.00	9,215.00	9,676.00	10,160.00	10,668.00
	Pay Period	4,388.45	4,607.62	4,837.90	5,079.29	5,333.81
	Hourly	50.63	53.17	55.82	58.61	61.54

(1) Mid-Management, Confidential and Executive salary ranges include a 1% salary increase that is expressly contingent upon the implentation of the pension cost sharing arrangement, and will not be implemented unless and until the cost sharing arrangement is implemented.

(2) Positions do not have a pay range

(3) 1% Increase was not applied to Safety Fire Position: Fire Chief

(4) Confidential Positions receive a 3% pay differential that is added to the employee's base salary

(5) Bilingual Pay - Employees who are certified as fluent in both written and verbal Spanish language will receive a 5% pay differential that is added to the employee's base salary. Employees who are certified as fluent only in verbal Spanish language will receive a 2.5% pay differential that is added to the employee's base salary.

Position		Steps A	B	C	D	E
Part-time Positions						
Casual Worker I	Hourly	10.50	11.03	11.58	12.16	12.77
Casual Worker II	Hourly	13.43	14.10	14.79	15.54	16.31
Casual Worker III	Hourly	17.14	17.99	18.88	19.83	20.80
Casual Worker IV	Hourly	21.86	22.95	24.09	25.30	26.54
Casual Worker V	Hourly	27.90	29.28	30.73	32.27	33.89
Firefighter (1) (2) (3)	Hourly					25.00
Fire Marshal (1)	Hourly					45.00
Elected Positions						
Mayor (1)	Annual					3,600.00
Vice Mayor (1)						
Council Member (1)						
Planning Chairperson (1)	Annual					1,200.00
Planning Vice Chairperson (1)						
Planning Commissioner (1)						

(1) Positions do not have a pay range

(2) Standby Pay - Shall be paid at a rate of $50.00 per 24 hour period.

(3) Classification Pay - Additional monthly salary compensation shall be received as follows:

1st and 2nd Assistant Chief Classification - $315.00
Captain Classification - $210.00
Engineer Classification - $105.00

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **New Business**

Subject: **Consideration and proposed approval of the following:**
(a) Resolution accepting the results of the vote for the November 8, 2016 General Municipal Election for Measure D and confirming the adoption of Ordinance No. 2016-10
(b) Resolution authorizing the execution of agreements with the State Board of Equalization for implementation of a local Transactions and Use Tax as approved by the voters
(c) Resolution authorizing the examination of transactions and use tax records

CEQA Determination: **Not a CEQA Project**

Prepared By:

April Mitts, Director of Finance

Cindy Black

Cindy Black, City Clerk

Approved By:

Steven Palmer, Director of Public Works,
Acting City Manager

BACKGROUND

Consideration and proposed approval of the following:

(a) Resolution accepting the results of the vote for the November 8, 2016 General Municipal Election for Measure D and confirming the adoption of Ordinance No. 2016-10

(b) Resolution authorizing the execution of agreements with the State Board of Equalization for implementation of a local Transactions and Use Tax as approved by the voters

(c) Resolution authorizing the examination of transactions and use tax records

DISCUSSION

On December 5, 2016, the Napa County Registrar of Voters canvassed the vote and certified the final count on the question of whether a one-half of one percent (0.5%) Transactions and Use Taxes should be imposed. Measure D passed and a one-half of one percent (0.5%) Transactions and Use Tax will be imposed and become operative on April 1, 2017. Attachment 6 is the Statement of Votes Cast.

To implement the one-half of one percent (0.5%) Transactions and Use Tax, the City of St. Helena must submit the following documents to the State Board of Equalization no later than February 1, 2017:

1. Five (5) original Agreement for Preparation to Administer and Operate City's Transactions and Use Tax Ordinance – Attachment 4
2. Five (5) original Agreement for State Administration of City Transactions and use Taxes – Attachment 5
3. One (1) Certification of Final Election Results – Attachment 6
4. Five (5) certified copies of the Transactions and Use Tax Ordinance – Attachment 2
5. Five (5) certified copies the City's resolution authorizing the agreements and designating who may execute said agreements – Attachment 3
6. One (1) Address Information Form – Attachment 7
7. One (1) Designation Letter – Attachment 8
8. One (1) City Resolution – Attachment 9
9. One (1) Jurisdiction Contact Form – Attachment 10
10. One (1) BOE 555-LJ – Attachment 11
11. One (1) Media and Registration Request Form – Attachment 1

FISCAL IMPACT

Based on prior sales tax revenue and future projections, it is estimated that a one-half of one percent (0.5%) transactions and use tax would generate approximately $1.4 million in revenue per year for the General Fund.

The State Board of Equalization (Board) will prepare to administer and operate the transactions and use tax. Preparatory costs incurred by the Board will be billed to the City of St. Helena by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. Although the Revenue and Taxation Code 7272 states preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000), it is estimated the preparatory costs will be between $3,000 and $5,000 for the City of St. Helena. The costs can be absorbed within the adopted FY 2016-17 budget

RECOMMENDED ACTION

Staff recommends the City Council adopt the following Resolutions:

a. Resolution accepting the results of the November 8, 2016 General Municipal Election in regards to Measure D (Attachment 1) and confirming the adoption of

Ordinance No. 2016-10 an Ordinance of the City of St. Helena Imposing Transactions and Use Taxes (Attachment 2);

b. Resolution authorizing the execution of agreements with the State Board of Equalization for the implementation of a local Transactions and Use Tax as approved by the voters (Attachment 3); and
c. Resolution authorizing the examination of transactions (sales) and use tax records (Attachment 9).

ATTACHMENTS

Attachment 1 Resolution certifying election results
Attachment 2 Ordinance 2016-10
Attachment 3 Authorizing the Execution of the Agreements with BOE
Attachment 4 Agreement for the Preparation to Administer
Attachment 5 Agreement for State Administration of City Transactions and Use Taxes
Attachment 6 Election Certification
Attachment 7 Address Information Form
Attachment 8 Designation Letter
Attachment 9 Resolution Authorizing the Examination of Transactions (Sales) and Use Tax Records
Attachment 10 Jurisdiction Contact Form
Attachment 11 BOE 555-LJ Copy
Attachment 12 Media and Registration Request Form

Attachment 1

CITY OF ST. HELENA

RESOLUTION NO. 2017-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA ACCEPTING THE CANVASS AND STATEMENT OF VOTES CAST FOR THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2016 REGARDING MEASURE D

RECITALS

A. Regular General Municipal Election was held and conducted in the City of St. Helena, County of Napa, State of California, on Tuesday, November 8, 2016 as required by law; and

B. At said election, in accordance with applicable law, votes were received and canvassed and the results determined; and

C. Pursuant to City of St. Helena Resolution No. 2016-98, a ballot measure, Measure D, was also placed before the voters seeking approval of a one-half of one percent (0.5%) Transactions and Use Tax for general purposes;

D. Notice of said election was given in time, form, and manner as provided by law; and

E. The votes cast for Measure D are:

Measure D – Seeking approval of a one-half of one percent (0.5%) Transactions and Use Taxes for general purposes by majority vote

Yes	1,868
No	825

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The results of the General Municipal Election held on November 8, 2016 regarding Measure D shall be entered into the record through adoption of this resolution.
2. That a complete and correct copy of the results of said election as canvassed as certified by the office of John Tuteur, County Registrar of Voters, is attached as "Exhibit A" and shows:

a. Measure D passed and the voters approved a one-half of one percent (0.5%) Transactions and Use Tax for general purposes which will become operative on April 1, 2017.

3. By passage of Measure D, the people of the City of St. Helena authorize adoption of Ordinance 2016-10.

4. That the City Clerk is hereby directed to provide a certified copy of this resolution to the Office of the County Registrar of Voters.

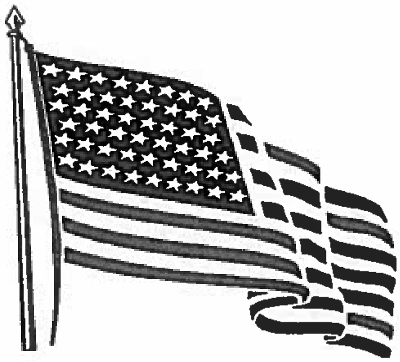
Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith:	___________
Vice Mayor White:	___________
Councilmember Dohring:	___________
Councilmember Koberstein:	___________
Councilmember Ellsworth:	___________

APPROVED: ATTEST:

Alan Galbraith, Mayor	Cindy Black, City Clerk

Exhibit A



STATEMENT OF VOTES CAST

NOVEMBER 8, 2016 PRESIDENTIAL GENERAL ELECTION

CANVASS AND STATEMENT OF VOTE

CITY OF SAINT HELENA – MAYOR AND COUNCIL
MEASURE D

I HEREBY CERTIFY THAT ON DECEMBER 5, 2016 THE OFFICIAL CANVASS WAS COMPLETED FOR THE PRESIDENTIAL GENERAL ELECTION HELD ON NOVEMBER 8, 2016 IN NAPA COUNTY. THE TOTAL NUMBER OF VOTES CAST IN THE RESPECTIVE PRECINCTS IS ATTACHED AND THE TOTALS AS SHOWN ARE TRUE AND CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL THIS 5TH DAY OF DECEMBER, 2016.

JOHN TUTEUR
REGISTRAR OF VOTERS

SEAL AFFIXED

Exhibit A

MEASURE D

Precinct	Registration	Ballots Cast	Turnout	YES	NO
332601 MB	804	656	81.59%	410	197
332602 MB	526	462	87.83%	295	122
332603 MB	666	605	90.84%	369	189
332604 MB	683	594	86.97%	405	158
332605 MB	450	372	82.67%	216	115
332606 MB	265	238	89.81%	173	44
Countywide - Total	3,394	2,927	86.24%	1,868	825

Attachment 2

ORDINANCE NO. 2016-10

ORDINANCE OF THE CITY OF ST. HELENA IMPOSING TRANSACTIONS AND USE TAXES

The people of the City of St. Helena do ordain as follows:

SECTION 1.

A new Chapter 3.25 entitled "Transactions and Use Taxes" of Title 3 entitled "Revenue and Finance" of the St. Helena Municipal Code is hereby added as follows:

3.25.010. TITLE. This chapter shall be known as the City of St. Helena Transactions and Use Taxes. The City of St. Helena hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

3.25.020. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the effective date of this chapter. This chapter relates to the levying and collecting of the City of St. Helena Transactions and Use Taxes authorized pursuant to Revenue and Taxation Code §7285.9 for general purposes, and submitted to the City of St. Helena electorate at an election called for November 8, 2016. If approved by a majority of the electors voting on the measure, then the effective date of this chapter shall be ten (10) days following the date the vote on the measure is declared by the City Council in accordance with Elections Code §9217.

3.25.030. PURPOSE. This chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose retail transactions and use taxes in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this ordinance which shall be effective if a majority of the electors voting on the measure vote to approve the imposition of the taxes at an election called for that purpose.

B. To adopt retail transactions and use taxes that incorporate provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt retail transactions and use taxes that impose a tax and provide a measure therefore that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

Attachment 2

D. To adopt retail transactions and use taxes that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter.

3.25.040. CONTRACT WITH STATE. Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this transactions and use taxes law; provided, that if the City shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.25.050. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one half of one percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this chapter.

3.25.060. PLACE OF SALE. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.25.070. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this chapter for storage, use or other consumption in said territory at the rate of one half of one percent (0.5%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.25.080. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this chapter as though fully set forth herein.

Attachment 2

3.25.090. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

(a). Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

(b). Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.25.100. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this chapter.

3.25.110. EXEMPTIONS AND EXCLUSIONS.

Attachment 2

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any City, City and County, or County pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(a). With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(b). With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

Attachment 2

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax law.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this chapter.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.25.120. AMENDMENTS. All amendments subsequent to the effective date of this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

3.25.130. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this chapter, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.25.140. VIOLATIONS-PENALTIES. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

SECTION 2.

SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 3.

COMPLIANCE WITH CEQA. The City Council hereby finds that the action to adopt this ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because the City Council hereby finds that it can be seen with certainty that there is no possibility the adoption and implementation of this ordinance may have a significant effect on the environment, and accordingly the adoption of this ordinance is not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3). Additionally, the ordinance involves the creation of a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus is not a project subject to the requirements of CEQA pursuant to CEQA Guidelines Section 15378 (b)(4).

Attachment 2

SECTION 4.

EFFECTIVE DATE. This ordinance relates to the levying and collecting of the City of St. Helena Transactions and Use Taxes authorized pursuant to Revenue and Taxation Code §7285.9 for general purposes, and submitted to the City of St. Helena electorate at an election called for November 8, 2016. If this ordinance is approved by a majority of the electors voting on the measure, then the ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code §9217.

The foregoing ordinance was introduced before the City Council of the City of St. Helena, at its regular meeting of Tuesday, June 28, 2016, and adopted at its regular meeting held on Tuesday, July 12, 2016, by the following vote:

Mayor Galbraith:	yes
Vice Mayor White:	yes
Councilmember Crull:	yes
Councilmember Dohring:	yes
Councilmember Pitts:	absent

APPROVED:

Alan Galbraith, Mayor

ATTEST:

Cindy Black, City Clerk

Attachment 3

CITY OF ST. HELENA

RESOLUTION NO. 2017-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING THE EXECUTION OF AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR THE IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

RECITALS

A. On June 28, 2016, the City Council of the City of St. Helena approved Ordinance No. 2016-10 amending the St. Helena Municipal Code and providing for a local Transactions and Use Tax to be approved by voters; and

B. On November 8, 2016, the voters of the City of St. Helena approved, by the passage of Measure D by majority vote, a general transaction and use tax that shall be in effect at a rate of one-half of one percent (0.5%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City; and specifying that the rate of the use tax shall be at the same rate on the sales price of tangible personal property stored, used, or otherwise consumed in the City; and

C. The State Board of Equalization (Board) administers and collects the Transactions and Use tax for all applicable jurisdictions within the state, including the City of St. Helena; and

D. The Board will be responsible to administer and collect the Transactions and Use tax for the City; and

E. The Board requires that the City enter into a “Preparatory Agreement” and an “Administrative Agreement” prior to implementation of said taxes; and

F. The Board requires that the City Council authorize the execution of the agreements.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. Approves the “Preparatory Agreement” attached as Exhibit A to this Resolution and authorizes the Finance Director to execute the Agreement.
2. Approves the “Administrative Agreement” attached as Exhibit B to this Resolution and authorizes the Finance Director to execute the Agreement.
3. This resolution shall become effective immediately upon its passage and adoption.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith: ___________
Vice Mayor White: ___________
Councilmember Dohring: ___________
Councilmember Koberstein: ___________
Councilmember Ellsworth: ___________

APPROVED: ATTEST:

_________________________ _________________________
Alan Galbraith, Mayor Cindy Black, City Clerk

Exhibit A – Preparatory Agreement

Exhibit B – Administrative Agreement

Exhibit A - Preparatory Agreement

AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE CITY'S TRANSACTIONS AND USE TAX ORDINANCE

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of St. Helena, hereinafter called *City*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000) (Revenue and Taxation Code Section 7272.)

Exhibit A - Preparatory Agreement

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879, MIC: 27
Sacramento, California 94279-0027

Attention: Administrator,
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

City of St. Helena - City Clerk
1480 Main Street
St. Helena, CA 94574

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

CITY OF St. Helena

By ______________________
(Signature)

April Mitts
(Typed Name)

Finance Director
(Title)

STATE BOARD OF EQUALIZATION

By ______________________
Administrator

(Rev. 11/16)

Exhibit B - Administrative Agreement

AGREEMENT FOR STATE ADMINISTRATION OF CITY TRANSACTIONS AND USE TAXES

The City Council of the City of St. Helena has adopted, and the voters of the City of St. Helena (hereafter called "City" or "District") have approved by the required majority vote, the City of St. Helena Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the City do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 2016-10, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II
ADMINISTRATION AND COLLECTION OF CITY TAXES

A. Administration. The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Board.

G. Records of the Board.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the City to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Board's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III
ALLOCATION OF TAX

A. Allocation. In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

ARTICLE IV
COMPENSATION

The City agrees to pay to the Board as the Board's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V
MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879, MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

City of St. Helena - City Clerk
1480 Main Street
St. Helena, CA 94574

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2017. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI

ADMINISTRATION OF TAXES IF THE ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by City to Board to prepare to administer the City Ordinance.

2. City will pay to Board and allow Board to retain Board's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

Exhibit B - Administrative Agreement

4. City will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

CITY OF	STATE BOARD OF EQUALIZATION
By ____________________	By ____________________
(Signature)	Administrator
April Mitts	
(Typed Name)	
Finance Director	
(Title)	

Attachment 4

AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE CITY'S TRANSACTIONS AND USE TAX ORDINANCE

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of St. Helena, hereinafter called *City*, and the STATE BOARD OF EQUALIZATION, hereinafter called *Board*, do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000) (Revenue and Taxation Code Section 7272.)

Attachment 4

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879, MIC: 27
Sacramento, California 94279-0027

Attention: Administrator,
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

City of St. Helena - City Clerk
1480 Main Street
St. Helena, CA 94574

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Board has received all payments due from City under the terms of this agreement.

CITY OF St. Helena

By ______________________
(Signature)

April Mitts
(Typed Name)

Finance Director
(Title)

STATE BOARD OF EQUALIZATION

By ______________________
Administrator

(Rev. 11/16)

Attachment 5

AGREEMENT FOR STATE ADMINISTRATION OF CITY TRANSACTIONS AND USE TAXES

The City Council of the City of St. Helena has adopted, and the voters of the City of St. Helena (hereafter called "City" or "District") have approved by the required majority vote, the City of St. Helena Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the City do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 2016-10, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II
ADMINISTRATION AND COLLECTION OF CITY TAXES

A. Administration. The Board and City agree that the Board shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

Attachment 5

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Board.

G. Records of the Board.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the City to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Board's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. City agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

Attachment 5

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

ARTICLE IV
COMPENSATION

The City agrees to pay to the Board as the Board's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the City.

ARTICLE V
MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Attachment 5

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization
P.O. Box 942879, MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

City of St. Helena - City Clerk

1480 Main Street

St. Helena, CA 94574

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2017. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Board written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

Attachment 5

ARTICLE VI

ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by City to Board to prepare to administer the City Ordinance.

2. City will pay to Board and allow Board to retain Board's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

Attachment 5

4. City will pay to Board its costs for rebating or refunding such taxes, interest, or penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Board shall bill City on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. City shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

CITY OF

By ______________________________
(Signature)

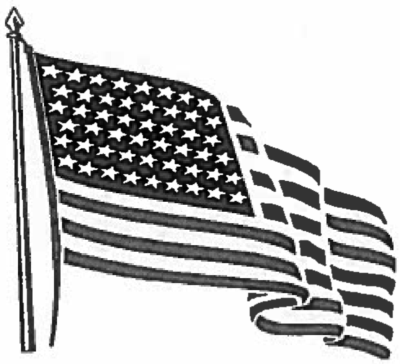
April Mitts
(Typed Name)

Finance Director
(Title)

STATE BOARD OF EQUALIZATION

By ______________________________
Administrator

Attachment 6



STATEMENT OF VOTES CAST

NOVEMBER 8, 2016 PRESIDENTIAL GENERAL ELECTION

CANVASS AND STATEMENT OF VOTE

CITY OF SAINT HELENA – MAYOR AND COUNCIL
MEASURE D

I HEREBY CERTIFY THAT ON DECEMBER 5, 2016 THE OFFICIAL CANVASS WAS COMPLETED FOR THE PRESIDENTIAL GENERAL ELECTION HELD ON NOVEMBER 8, 2016 IN NAPA COUNTY. THE TOTAL NUMBER OF VOTES CAST IN THE RESPECTIVE PRECINCTS IS ATTACHED AND THE TOTALS AS SHOWN ARE TRUE AND CORRECT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL THIS 5TH DAY OF DECEMBER, 2016.

JOHN TUTEUR
REGISTRAR OF VOTERS

SEAL AFFIXED

Attachment 6

MEASURE D

Precinct	Registration	Ballots Cast	Turnout	YES	NO
332601 MB	804	656	81.59%	410	197
332602 MB	526	462	87.83%	295	122
332603 MB	666	605	90.84%	369	189
332604 MB	683	594	86.97%	405	158
332605 MB	450	372	82.67%	216	115
332606 MB	265	238	89.81%	173	44
Countywide - Total	3,394	2,927	86.24%	1,868	825

Attachment 7

LOCAL REVENUE BRANCH – CONTACT FORM

Please complete and return this form to our office any time there is a change of information to ensure our records are always up to date. Thank you!

City/County: St. Helena

Please check one: ☐ Local Tax ☑ Transactions and Use Tax ☐ Mobile Telephony Surcharge

All legal correspondence should be mailed to the following address:

Jurisdiction: City of St. Helena

Name: Cindy Black Position Title: City Clerk

Address: 1480 Main Street, St. Helena CA 94574

Phone: 707-968-2742 Email: cblack@cityofsthelena.org

Financial correspondence should be mailed to the following address:

Note: Confidential information may be sent only to positions authorized by resolution

Jurisdiction: City of St. Helena

Name: April Mitts Position Title: Finance Director

Address: 1480 Main Street, St. Helena CA 94574

Phone: 707-967-2792 Email: amitts@cityofsthelena.org

Paper warrants (if issued) and monthly/quarterly statements should be mailed to the following address:

Jurisdiction: City of St. Helena

Name: April Mitts Position Title: Finance Director

Address: 1480 Main Street, St. Helena CA 94574

Phone: 707-967-2792 Email: amitts@cityofsthelena.org

General Office Contact—for general information and reminders:

Jurisdiction: City of St. Helena

Address: 1480 Main Street

Phone: 707-967-2792 Email: amitts@cityofsthelena.org

Completed by:

Print Name: April Mitts

Signature: ____________________

Position Title: Finance Director Date: ____________

Attachment 8

Date: January 11, 2017

Board of Equalization
Kimberly Norono
Warrant Desk: MIC: 27
Sacramento, CA 95814

Subject: City of St. Helena (Tax Area Code - 28053)

Authorization to Review Confidential Sales and Use Tax and Transactions and Use Tax Information Section 7056 of the Revenue and Taxation Code.

Dear Ms. Norono:

Resolution No. 2017-____ authorizes the City Manager and Finance Director and other officers and employees of the City of St. Helena designated in writing by the City Manager or Finance Director to the State Board of Equalization with authority to examine sales and use tax records for the City of St. Helena.

Accordingly, the Finance Director and City Manager for the City of St. Helena is hereby authorized to receive and review sales or transactions and use tax records for the City of St. Helena from the Board of Equalization.

Sincerely,

April Mitts, Finance Director

Attachment 9

CITY OF ST. HELENA

RESOLUTION NO. 2017-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA AUTHORIZING THE EXAMINATION OF TRANSACTIONS (SALES) AND USE TAX RECORDS

RECITALS

A. Pursuant to Ordinance No. 2016-10 of the City of St. Helena, hereinafter called District, and Section 7270 of the Revenue and Taxation Code, the District entered into a contract with the State Board of Equalization to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

B. The District deems it desirable and necessary for authorized representatives of the District to examine confidential transactions and use tax records of the State Board of Equalization (hereafter referred to as Board) pertaining to transactions and use taxes collected by the Board for the District pursuant to that contract; and

C. Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the transactions and use tax records of the Board.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. That the City Manager and the Finance Director or other officers or employees of the District designated in writing by the City Manager or Finance Director to the State Board of Equalization (hereafter referred to as Board) is hereby appointed to represent the District with authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the District by the Board pursuant to the contract between the District and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the District's transactions and use taxes by the Board pursuant to the contract.

2. That Muniservices is hereby designated to examine the transactions and use tax records of the Board of Equalization pertaining to transactions and use taxes collected for the District by the Board. The person or entity designated by this section meets all of the following conditions:

a. Has an existing contract with the District to examine those transactions and use tax records;

b. Is required by the contract to disclose information contained in, or derived from those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information;

c. Is prohibited by that contract from performing consulting services for a retailer during the term of that contract;

d. Is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records after that contract has expired.

3. That the information obtained by examination of the Board records shall be used only for purposes related to the collection of District's transactions and use taxes by the Board pursuant to the contracts between the District and the Board.

4. That this Resolution supersedes all prior transactions and use resolutions of the City of St. Helena adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith: ___________

Vice Mayor White: ___________

Councilmember Dohring: ___________

Councilmember Koberstein: ___________

Councilmember Ellsworth: ___________

APPROVED: ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

Attachment 10

JURISDICTION CONTACT FORM

NOTIFICATIONS & APPEALS

CITY/COUNTY OF: St. Helena **Tax Area Code:** 28053 **Sales and Use Tax/ Transaction & Use Tax**

Pursuant to Revenue and Taxation Code § 7056, you may select only officers and employees authorized by Resolution or letter of designation to examine the Board's tax records for your Jurisdiction. If the officer or employee's title has not yet been formally authorized, please include a designation letter. See attached sample designation letter.

	Primary Contact	Secondary Contact
Title of Authorized Officer/Employee	Finance Director	City Manager
Mailing Address Line 1	1480 Main Street	1480 Main Street
Mailing Address Line 2		
City, State, Zip	St. Helena, CA 94574	St. Helena, CA 94574
Phone	707-967-2792	707-967-2792
Fax	707-963-7966	707-963-7966
Email	amitts@cityofsthelena.org	

It is recommended, if possible, that you use an Email address that coincides with the authorized position title. For example: citymanager@cityof___.gov.

It is recommended, if possible, that you use an Email address that coincides with the authorized position title. For example: citymanager@cityof___.gov.

BOARD USE ONLY

Pursuant to Section 7056(b), this form is ineffective unless signed by one of the following (boxes checked):

☐ City/County Administrator ☐ Administrative Officer ☐ City/County Controller ☐ ________________(Specify)

Print Name: April Mitts

Title: Finance Director

Signature: ______________________ **Date:**______________

Return this form by e-mail to: EWGroup@boe.ca.gov

QUESTIONS: CALL THE WARRANT DESK AT (916) 324-1307

Note: Titles held by more than one employee need to be made a unique identifier for function. For example: Accountant II (Revenue Desk)

Attachment 11

BOE-555-LJ (FRONT) REV. 2 (1-12)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

EFT AUTHORIZATION AGREEMENT FOR LOCAL JURISDICTIONS

- Please type or print clearly in ink.
- See reverse for complete instructions.

SELECT ACTION REQUESTED

- ■ New EFT Account
- ☐ Change EFT Bank Account – (see instructions)
- ☐ Cancel EFT

SELECT TAX PROGRAM

- ■ 1% Local Tax
- ☐ ¼% (County) Transportation Fund
- ☐ Add-on (Special District) Tax

SECTION I

NAME OF LOCAL JURISDICTION OR SPECIAL DISTRICT *(payee)*	TAX AREA CODE
City of St. Helena	28053

CONTACT PERSON *(name and title)*	EMAIL ADDRESS
April Mitts, Finance Director	amitts@cityofsthelena.org

MAILING ADDRESS	CITY, STATE, ZIP
1480 Main Street	St. Helena, CA 94574

CONTACT PHONE NUMBER	CONTACT FAX NUMBER
707-967-2792	707-963-7966

SECTION II

The State Controller's Office, on behalf of the State Board of Equalization (BOE), is hereby authorized to make direct deposit (EFT) of any amounts distributed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law less any mandatory withholding or deductions therefrom to the designated bank account identified below. If the designated EFT account is a checking account, **a voided check or copy must be attached to the completed authorization agreement.** If the account is a savings or other deposit-only account, **an account confirmation from the bank must be attached.** The voided check or confirmation will be used to verify the bank account and transit routing numbers.

BANK NAME
Westamerica Bank

BANK ACCOUNT NUMBER *(not to exceed 17 digits)*

TRANSIT ROUTING NUMBER

TYPE OF ACCOUNT
■ CHECKING ☐ SAVINGS

IMPORTANT

Payee agrees that in the event that the payee owes a debt determined either by court order, or otherwise by operation of law, and for which the BOE has been notified according to law, to make repayments by deductions from Local Sales and Use Tax transmittals, the payee will be removed from the EFT program until the debt is extinguished.

I affirm that deposits received from the BOE ***are not*** *subject to being transferred to a foreign financial institution.*

SIGNATURE	TITLE	DATE
	Finance Director	

Return this form to:
Board of Equalization
Local Revenue Allocation Unit
Warrant Desk
P.O. Box 942879, MIC:27
Sacramento, CA 94279-0027

FAX 916-324-8117

For EFT assistance call 916-324-1386

This information is confidential and not for public release.

Attachment 12

Board Use Only

Juris. I.D. # ________________.

Resolution verified: YES___ NO ___

Update________________________

By____________________________

REGISTRATION/ALLOCATION MEDIA REQUEST

Please complete Sections I, II, & III, and forward this form to the address at the bottom of this page.

IMPORTANT *Each jurisdiction must have a resolution on file with the Board of Equalization to examine allocation and/or registration data. A sample resolution is included in Publication 28 which is available on our Website www.boe.ca.gov/pdf/pub28.pdf or by calling the Board's Local Revenue Allocation Unit at (916) 324-3000.*

SECTION I: MEDIA RECIPIENT CONTACT INFORMATION

(If the name/position below is not authorized by resolution or letter of designation, this form Must be signed by a position authorized by resolution to designate other officials or employees) ☐ County ☑ City ☐ District (add-on)

Your name: April Mitts

Title: Finance Director

Address: 1480 Main Street

City, State, Zip: St. Helena, CA 94574

E-Mail Address amitts@cityofsthelena.org

Jurisdiction: City of St. Helena

Tax Area Code: 28053

Telephone: 707-967-2792

FAX: ____________________

SECTION II: REGISTRATION DATA REQUEST (List of name, address and BOE account number for each business)

A. Do you require a one-time registration listing (Start-up) showing all sales and use tax accounts in your jurisdiction.
Indicate yes or no: ☑ Yes ☐ No

SECTION III: ALLOCATION DATA REQUEST (List of local tax dollars distributed to your jurisdiction by BOE account number)

A. Do you wish to receive monthly allocation and registration media
Indicate yes or no: ☑ Yes ☐ No

B. If you require prior period local tax data*, indicate the periods below:
(MMYY) From: ____________ To: ____________

*AVAILABLE HISTORY IS LIMITED TO PREVIOUS 36 MONTHS.

Signed by individual (or designee) authorized by resolution to receive confidential Board of Equalization information:

April Mitts Finance Director

(Print Name) (Signature) (Title) (Date)

RETURN THIS FORM TO:
STATE BOARD OF EQUALIZATION
LOCAL REVENUE ALLOCATION UNIT
450 N STREET MIC 27
PO BOX 942879
SACRAMENTO CA 94279-0027
FAX to (916) 324-3001
For assistance in completing this form, contact Harmeen Grewal at 916 323-0808.

RegForm.doc (Board of Equalization/LRAU)
REV. 06/20/11

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **Consent**

Subject: **Consideration and Proposed Adoption of a Resolution Reaffirming the City's Requirements for the Land and Water Conservation Fund Grant to Maintain Lyman Park in Perpetuity for Outdoor Recreation Purposes**

CEQA Status: **The project has been found to qualify for a Class I Categorical Exclusion under §15301 and is covered by the General Rule Exemption under CEQA §15061(b)3 in that it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.**

Prepared By: **Tracey Perkosky, Grants and Finance Manager**

Approved By:

Steven Palmer, Director of Public Works, Acting City Manager

BACKGROUND

In November 2016, the City received a letter from the California Department of Parks and Recreation (Attachment 1), reminding previous grant recipients of various compliance requirements for Land and Water Conservation Fund (LWCF) grants. City staff was unaware of a previous LWCF grant and therefore, searched the state database for information on St. Helena's previous awards.

DISCUSSION

In the late 1980s, the City of Saint Helena received grant monies from the Land and Water Conservation Fund grant. The final grant reimbursement was made in 1988, in the amount of $34,161 for the tot lot, picnic area, landscaping and irrigation. As a requirement for the grant award, the City agreed to post signage and maintain the entire park as public outdoor recreational space in perpetuity.

After a thorough search, staff was able to locate the brass plaque under mulch and leaves near the entrance to the Police Department (Attachment 2). This or other approved signage must remain in the park in perpetuity. Unfortunately, no information such as a resolution could be found noting the important requirement to maintain the entire park as outdoor recreation space in perpetuity. Current grant awardees must file a deed restriction, however that requirement was not in place in 1988.

According to the letter, three basic principles serves as an outline of the requirements:

1. Land within the boundary map must be operated and maintained for public outdoor recreational use in perpetuity.
    a. Changes and/or additions to the park, which are driven by non-park purposes, and are contrary to providing for the park's recreation use, could render the LWCF-funded site out of compliance.
    b. Federal law ensures that "conversions from recreation use" will bear a cost; and investments in outdoor recreation will not be lost. "No property acquired or developed with assistance under this section shall, without the approval of the Secretary of the Interior (Secretary), be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he/she finds it to be in accord with the then existing comprehensive outdoor recreation plan and only upon such condition as is deemed necessary to endure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location."
2. Land with the boundary map must be "open, "accessible", "safe," "attractive," and "inviting" for public use.
3. An LWCF acknowledgement sign must be posted in the park in perpetuity.

For institutional knowledge and to avoid future non-compliance, staff recommends approving the attached resolution reaffirming the City's commitment to meet the requirements of the LWCF to maintain Lyman Park as an outdoor recreation space in perpetuity.

FISCAL IMPACT

There are no fiscal impacts to the City at this time.

RECOMMENDED ACTION

Staff recommends the City Council adopt the resolution.

ATTACHMENTS

1. Letter dated November 2, 2016 from the CA Department of Parks and Recreation
2. Photograph of required signage/plaque
3. Resolution

Attachment 1

State of California • Natural Resources Agency
Edmund G. Brown Jr., *Governor*
DEPARTMENT OF PARKS AND RECREATION
P.O. Box 942896 • Sacramento, CA 94296-0001
(916) 653-7423
Lisa Ann L. Mangat, *Director*

November 22, 2016

Dear Local Officials and Interested Parties:

This letter provides information about the Land and Water Conservation Fund (LWCF) Program and a reminder that LWCF-funded sites must remain open for public outdoor recreation in perpetuity.

Land and Water Conservation Fund Compliance

An important part of the Federal LWCF grant program is the requirement that all property acquired or developed with LWCF assistance be maintained perpetually in public outdoor recreation use. Section 6(f)(3) of the LWCF Act protects parklands that receive LWCF assistance. When LWCF grants are awarded, 6(f)(3) Boundary Maps provided by grantees and approved by the National Park Service document the specific area that must be operated and maintained.

<u>Three basic principles serve as an outline of the Section 6(f)(3) requirement:</u>

1. Land within the 6(f)(3) Boundary Map must be operated and maintained for public <u>outdoor</u> recreational use in perpetuity.

   - Changes and/or additions to the park, which are driven by non-park purposes, and are contrary to providing for the park's public recreation use, could render the LWCF-funded site out of compliance.

   - Federal law ensures that "conversions from recreation use" will bear a cost; investments in public outdoor recreation will not be lost. Section 6(f)(3) states that "No property acquired or developed with assistance under this section shall, without the approval of the Secretary of the Interior (Secretary), be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he/she finds it to be in accord with the then existing comprehensive outdoor recreation plan and only upon such condition as is deemed necessary to ensure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location."

2. Land within the 6(f)(3) Boundary Map must be "open," "accessible," "safe," "attractive," and "inviting" for public use.

3. An LWCF acknowledgment sign must be posted at the park in perpetuity. The required language for the LWCF sign and logo is found on the Office of Grants and Local Services (OGALS) website at <u>www.parks.ca.gov/grants_lwcf.</u>

11/30/16

Attachment 1

November 22, 2016
Page 2

To learn more about the LWCF Park Stewardship requirements, please refer to the LWCF Park Stewardship Guide at http://www.parks.ca.gov/?page_id=21360.

If a situation arises that could trigger a compliance issue, please contact your OGALS Project Officer for guidance. A list of OGALS Project Officers can be found on the OGALS website at https://www.parks.ca.gov/?page_id=21369.

Your Project Officer can provide you with a list of your agency's LWCF-funded sites, if needed. You can also find the locations of LWCF-funded sites by accessing the "Grant Allocations Tool" at http://www.parksforcalifornia.org/grants.

OGALS looks forward to its continued partnership with your agency to foster outdoor recreation opportunities in your community.

Sincerely,

Sedrick Mitchell
Deputy Director, External Affairs

Attachment 2

Required LWCF Signage

Location Adjacent to City Hall Marker Stone in Front of the Police Department

Attachment 3

CITY OF ST. HELENA

RESOLUTION NO. 2017-

Resolution Reaffirming the City of Saint Helena's Requirements for the Land and Water Conservation Fund (LWCF) Grant to Maintain Lyman Park in Perpetuity for Outdoor Recreation Space

RECITALS

A. The City of St. Helena received $34,161 from the Land and Water Conservation Fund (LWCF) grant in 1988 for improvements to Lyman Park.

B. The City is required to maintain proper signage acknowledging LWCF funds in perpetuity.

C. The City is also required to maintain the entire park, not solely the grant funded enhancements, in perpetuity as outdoor recreation space.

D. Any conversion from outdoor recreation space must be approved in advance by the U.S. Secretary of the Interior.

E. Lyman Park must remain "open", "accessible", "safe," "attractive," and "inviting" as defined in Section 6(f)(3) of the Land and Water Conservation Fund Act.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. Reaffirms that signage will be posted in Lyman Park acknowledging the LWCF and the entire park will remain for outdoor recreation space in perpetuity.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith:	___________
Vice Mayor White:	___________
Councilmember Dohring:	___________
Councilmember Ellsworth	___________
Councilmember Koberstein:	___________

APPROVED: ATTEST:

Alan Galbraith, Mayor

Cindy Black, City Clerk

Report to the City Council
Special Council Meeting of January 17, 2016

Agenda Section: **Consent**

Subject: **Consideration and Proposed Adoption of a Resolution Terminating a Phase 1 Water Emergency**

CEQA Determination: **Not a CEQA project**

Prepared By: **Jennifer Tuell, Water Conservation Coordinator**

Reviewed By: **Steven Palmer, PE, Director of Public Works/ City Engineer**

Approved By:

Steven Palmer, Director of Public Works, Acting City Manager

BACKGROUND

The Chapter 13.04-Article 2 of the St. Helena Municipal Code established the procedure for establishing water emergency phases. The Water Shortage Emergency is determined according to the analytical methodology created by the Safe Yield Committee as identified in its report dated March 17, 2011. This calculation requires evaluation of multiple data sources including: annual production, rainfall, water loss, water delivery/use and other factors. The result of this analysis is the annual water supply /usage balance which then dictates if a water emergency exists.

On January 28, 2014, the City declared a Phase I & II Water Emergency with Resolution Nos. 2014-3 and 2014-3A, and then terminated the Phase II water emergency on April 22, 2014 with Resolution No. 2014-22, leaving the City in a Phase I water emergency since April 22, 2014.

Since 2013 the State of California has faced an unpreceded drought. To fulfill the State Water Resources Control Boards Resolution No. 2015-0032: Emergency Regulation for Statewide Urban Water Conservation the City of St. Helena amended Chapter 13.04 of the municipal code on July 14, 2015. The State Resolution required the City to adopt a set of water conservation measures and the City remained in a Phase 1 water emergency in order to ensure compliance with State mandated drought regulations.

The State Water Board adopted a 'Stress Test' approach to water conservation regulations lifting some of the regulations from the 2015-0032 resolution and other regulations remained. This had a significant impact on Urban Water Suppliers, and did not have a significant impact on St. Helena because we are considered a Small Water Provider. The most significant change for St. Helena was ability to lift the two days per week watering regulation and the added requirement of notifying customers of leaks. Utility billing had already established a notification procedure for leaks in mid-2015, therefor the City was already meeting this new requirement.

Chapter 13.04 was amended on November 29, 2016 with the most recent changes going into effect on January 9, 2017 to coincide with the effective date of the new water and wastewater rates. Changes included mandating many water conservation measures all the time, regardless if the City was in a water emergency or not. This approach coincides with the "new normal" approach to water conservation promoted by the state.

DISCUSSION

Bell Canyon Reservoir

Even though the State is still facing a potential water shortage, the rainfall has been above average for 2016, and Bell Canyon Reservoir is currently at 100%. In January of 2014 when the Phase I & II water emergency were declared Bell Canyon was at 40.4%.

Napa Water Supply

The City contracts with the City of Napa for the purchase of 600 acre-feet (600 acre feet = 195.5 million gallons) of potable water annually. The current agreement requires the City of Napa to deliver 600 acre-feet of water. The table below shows how much water has been delivered from the City of Napa this fiscal year.

Date	Water in Acre-Feet
July 2016	56.17
August 2016	60.39
September 2016	52.28
October 2016	47.86
November 2016	50.88
Water used year to date	**267.58**

Rainfall

Rainfall can vary significantly from year to year. In 2013, St. Helena had a very dry year, however we have seen significantly higher levels of rainfall in both 2014 and 2016. The average annual precipitation is 41.3 inches for St. Helena.

Year	Total Rainfall Jan 1-Dec 31
2012	49.58
2013	7.94

2014	40.94
2015	18.03
2016	42.74

Water Consumption
In 2014, when the City declared a water emergency, water usage for November 2013 was 36.6% higher from November 2012 and 25% higher in December 2013 from December 2012. The State of California has required all water agencies to report the percent reduction as compared to 2013. Staff has been tracking monthly water production and reporting the results annually to the State. The state required water reporting beginning in June of 2015, comparing to production numbers in 2013. The average reduction for June – December for St. Helena was -21.32%.

Water Production in Acre Feet

	2013	2014	2015	2016	2013-2015	2013-2016
January	85.10	113.14	84.95	85.17	-0.17%	0.07%
February	79.34	75.93	91.47	85.04	15.29%	7.18%
March	100.36	88.77	121.60	93.67	21.17%	-6.67%
April	133.91	97.66	120.37	109.13	-10.11%	-18.51%
May	183.98	151.80	126.83	133.20*	-31.06%	-27.60%
June	176.67	154.27	143.25	149.71*	-18.91%	-15.26%
July	201.36	176.48	156.84	176.05*	-22.11%	-12.57%
August	208.16	172.79	167.23	185.72	-19.66%	-10.78%
September	222.93	171.00	169.32	186.56	-24.05%	-16.31%
October	200.33	160.18	161.09	143.39	-19.59%	-28.43%
November	136.46	99.79	108.67	99.17	-20.37%	-27.33%
December	117.80	93.31	87.92		-25.37%	
TOTALS	**1846.40**	**1555.11**	**1539.54**	**1446.80**	**-16.62%**	

*****The water treatment plant experienced equipment failure of one of the primary meters during May-July of 2016, these months were calculated using a secondary meter.

ANALYSIS

Municipal Code Section 13.04.230 states that the criteria for establishing a Phase 1 water emergency are:

1. The supply/usage balance, as calculated at the beginning of the fiscal year, is in deficit;
2. The volume of water to be delivered by the city of Napa in any fiscal year will not exceed four hundred (400) AF;
3. The volume of water anticipated to be available prior to the next November 1st, as determined by the director of public works, is not sufficient to meet projected

demand through November 1st without demand reduction measures being implemented; or

4. Conditions requiring the establishment of a Phase II water emergency, as determined by the director of public works, appear to be imminent.

Supply/Usage Balance

City Municipal Code Section 13.04.010 defines supply/usage balance as the difference between the safe annual yield and total current usage. "Total current usage" is average usage as determined by taking total metered potable water supply entering the water system's distribution system over the last five fiscal years, divided by five. The city shall calculate the supply/usage balance as soon after the end of each fiscal year as is practicable, as well as at any time that there is a material change in potable water supply. The balance is positive when the safe annual yield exceeds total current usage. The balance is negative, or in deficit, when the safe annual yield is less than total current usage.

The safe annual yield was calculated by the Safe Yield Committee as 1,950 acre-feet. As shown in the table below, the total current usage (five year average) is currently calculated as 1,701 acre-feet.

Fiscal Year	Usage (Acre-Feet)
FY11/12	1,779
FY12/13	1,889
FY13/14	1,769
FY14/15	1,562
FY15/16	1,507
Average	**1,701**

This means the supply/usage balance is positive 249 acre-feet and the City is operating with the Safe Yield of its' water supply sources.

Napa Water Supply

The City contracts with the City of Napa for the purchase of 600 acre-feet (600 acre feet = 195.5 million gallons) of potable water annually. The current agreement requires the City of Napa to deliver 600 acre-feet of water, and the City of St Helena staff has not been notified by Napa of their intent to violate this term of the agreement. Water is purchased on the fiscal year calendar (July 1 – June 30), and billed in million gallons.

Supply Predication for November

The Director of Public Works has applied the analytical methodology created by the Safe Yield Committee. This calculation requires evaluation of multiple data sources including: annual production, rainfall, water loss, water delivery/use and other factors. The result of this evaluation predicts that there will be sufficient water to meet demand between now and November 1, 2017 without significant demand reductions.

Based on a review of available data, coupled with the municipal code changes effective in January 2017, staff has determined that there will be sufficient water for the next year and the City should terminate the Phase 1 Water emergency. Production, rainfall, and consumption will continue to be monitored closely by staff, and Staff will continue to report data to the State as required by the updated drought regulations.

Residents are required to continue practicing water conservation measures established in the municipal code. The following water conservation prohibitions and limitations are required by all persons.

1. The application of potable water to any driveway or sidewalk is prohibited, unless a public health hazard exists.
2. Using a hose that dispenses potable water to wash a motor vehicle is prohibited, unless the hose is fitted with a shut-off nozzle.
3. Customers shall install new landscaping in existing or new development that is water efficient within the meaning of the state's water efficient landscape ordinance.
4. Using potable water to water outdoor landscapes in a manner that causes runoff to adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots or structures is prohibited.
5. Using potable water in a fountain or decorative water feature is prohibited, unless the water is part of a recirculating system.
6. Withdrawing water from fire hydrants, except for firefighting, firefighting training, and water system maintenance purposes, is prohibited.
7. Use of potable water for grading, dust control, street, pipeline or similar construction is prohibited.
8. The application of potable water to outdoor landscapes during and up to forty-eight (48) hours after measurable rainfall is prohibited.
9. No person shall use potable water to irrigate ornamental turf on public street medians.
10. Restaurants, hotels, cafes, cafeterias, bars or other public places where food or drink are served and/or purchased shall supply water to patrons only upon request.
11. Operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each bathroom using clear and easily understood language.
12. All projects for which the planning department requires approved landscape plans must adhere to the city's xeriscape standards or the State's Model Water Efficient Landscape Ordinance, which ever is stricter in order to obtain plan approval.
13. Any new water connection for new development must offset new demand by an amount of water equal to the new demand on the city water system using the methodology defined in Section 13.12.050. The

offset must be clearly demonstrated, to the satisfaction of the director of public works.

FISCAL IMPACT

There are no fiscal impacts to the City at this time. If the City elected to continue a Phase I water emergency, the drought surcharge for water rates would be implemented and monthly water bills would be increased accordingly.

RECOMMENDED ACTION

Staff recommends the City Council adopt the attached resolution terminating a Phase 1 Water Emergency.

ATTACHMENTS

1. Resolution

CITY OF ST. HELENA

RESOLUTION NO. 2017-

Resolution Terminating a Phase I Water Emergency

RECITALS

A. Resolution No. 2014-3 established a Phase I water emergency, Resolution No. 2014-3A established a Phase II water emergency, and Resolution No. 2014-22 terminated the Phase II water emergency; and

B. The available potable water supply is anticipated to be sufficient for the foreseeable future. Based on the data, the volume of water anticipated to be available prior to next November 1st from all potable water sources will likely be sufficient to meet the projected demands through November 1st, and beyond.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. After consideration and analyses of the City's water supply the Council of the City of St. Helena terminates the Phase I water emergency.
2. A drought surcharge will not be charged for any of the water used in January 2017.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith: __________

Vice Mayor White: __________

Councilmember Dohring: __________

Councilmember Ellsworth: __________

Councilmember Koberstein: __________

APPROVED: ATTEST:

____________________ ____________________

Alan Galbraith, Mayor Cindy Black, City Clerk

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **New Business**

Subject: **Consideration and proposed approval of a resolution appointing an applicant to the Tree Committee**

CEQA Determination: **Not a CEQA project**

Prepared By: Cindy Black

Cindy Black, City Clerk

Approved By: Steven Palmer

Steven Palmer, Director of Public Works, Acting City Manager

BACKGROUND

The Tree Committee currently has two vacant positions which are a regular and alternate position. The regular position expiring on June 30, 2017, was vacated by a member that resigned in October 2016. The alternate term position expiring on June 30, 2018, was left vacant due to not receiving sufficient applicants during the previous recruitment which concluded in June 2016.

The City Council directed staff to leave the recruitment open until filled.

DISCUSSION

The City Clerk's office received a Tree Committee application from Kim Lancashire for consideration of appointment.

FISCAL IMPACT

There is no fiscal impact.

RECOMMENDED ACTION

Per resolution 2013-26 Council Rules of Procedure appointments shall be made by the Mayor and subject to the City Council approval.

ATTACHMENTS

Attachment 1 Application
Attachment 2 Resolution

RECEIVED
NOV 23 2016
BUILDING DEPARTMENT
CITY OF ST HELENA

CITY HALL, 1480 MAIN STREET
ST. HELENA, CALIFORNIA 94574
(707) 968-2792
www.sthelenacity.com

APPLICATION FOR APPOINTMENT

Note: Your application will be copied for the City Council and made available to the press and public.

Committee/Commission to which you are applying:
Tree Committee ALSO SUSTAINABILITY COMMITTEE

Name: KIM LANCASHIRE

Home Address: 1091 MARIPOSA LANE; ST. HELENA

Mailing Address: - SAME -

Occupation: ESTATE DIRECTOR

Business Address: 1155 MEE LANE; ST. HELENA

Home Telephone: 707-799-0660 Business Telephone: N/A

E-mail: KIM@AOWINERY.COM

Please indicate if above numbers can be made available to the public upon request: YES

Are you a resident of St. Helena? YES If yes, how long have you lived in St. Helena? 6 YRS.

Current occupation (within last 12 months) ESTATE DIRECTOR @ ALPHA OMEGA

Business interests in last 12 months: PROPERTY MANAGEMENT

Previous Committee/Commission Experience:
THIS WOULD BE MY FIRST APPOINTMENT FOR COMMITTEE

Education/Experience: A resume may be attached containing this and any other information that would be helpful in evaluating your application.

20 YRS PROPERTY & LANDSCAPE MANAGEMENT FOR PRIVATE ESTATES ON EAST & WEST COAST; 6 YEARS FOR WINERY ESTATES NAPA VALLEY ST HELENA
MASTER GARDENER OF NAPA COUNTY - UC DAVIS CERTIFIED

Professional and/or community service activities:
MASTER GARDENER OF NAPA COUNTY; NAPA GREEN PROGRAM; 100 WOMEN WHO CARE FOUNDING MBR; NV FILM FESTIVAL; NV AUCTION

Local government related experience: THIS WOULD BE MY FIRST APPOINTMENT FOR LOCAL GOVERNMENT

Please explain your reasons for wishing to serve on this committee/commission and how you feel that you may contribute
I WOULD LIKE TO USE MY EXPERIENCE AND SKILLS TO SERVE THE COMMUNITY I LIVE IN, ESPECIALLY IN REGARDS TO THE LANDSCAPE AND PRESERVING NATURE WHEN IT MAKES SENSE.

Names, addresses, and phone numbers of three individuals familiar with your background:
DONNA HINDS 1352 MAGNOLIA AVE ST. HELENA 707-799-4844
MICHAEL S. FREELAND (SCOTT) msfreevg@gmail.com VICE CHAIR
CANDACE HAGG 1563 SPRING ST., ST. HELENA 707.287-1229

Appointments to this position may require you to file a Conflict of Interest Disclosure Statement, which is of public record.

[redacted]
Signature of Applicant

11/22/16
Date

If you have any questions regarding the appointment procedure, please telephone the City Clerk at (707) 968-2742.

Please return the completed application to:
City of St. Helena
City Clerk
1480 Main Street
St. Helena, CA, 94574

CITY OF ST. HELENA

RESOLUTION NO. 2017-

APPOINTING A MEMBER TO THE ST. HELENA TREE COMMITTEE

RECITALS

A. The Tree Committee currently has two vacant positions and Council desires to leave the recruitment open until filled.

B. The City received one Tree Committee application from community member Kim Lancashire.

C. Protocol calls for appointments to be made by the Mayor and approval by the City Council.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

Tree Committee

1. The Mayor hereby appoints Kim Lancashire to the regular term which expires June 30, 2017.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith: ____________

Vice Mayor White: ____________

Councilmember Ellsworth: ____________

Councilmember Dohring: ____________

Councilmember Koberstein: ____________

APPROVED:

ATTEST:

____

Alan Galbraith, Mayor

____

Cindy Black, City Clerk

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **New Business**

Subject: **2017 City Council assignments to various City and Napa County Committees, Boards and Commissions**

CEQA Determination: **Not a CEQA project**

Prepared By: Cindy Black

Cindy Black, City Clerk

Approved By:

Steven Palmer, Director of Public Works, Acting City Manager

BACKGROUND

BACKGROUND

The City Council has a created a number of committees, boards and Commissions and assigns Council Liaisons to the following:

a. Active Transportation/Sustainability Committee
b. Board of Library Trustees
c. Parks and Recreation Commission
d. Tree Committee

Councilmembers also sit on various City/County collaborative agency committees which include:

a. City/SHUSD/Chamber/NVC (Monrovia)
b. St. Helena Sewer District No. 1
c. Association of Bay Area Governments (ABAG) - Executive Board
d. Association of Bay Area Governments (ABAG) - General Assembly
e.Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
f. League of California Cities – North Bay Division
g. Napa County City Selection Committee

h. Napa County Flood Control and Water Conservation District
i. Napa County Gang & Youth Violence Commission
j. Napa County League of Governments (NCLOG)
k. Napa County Local Agency Formation Commission (LAFCO)
l. Napa County Transportation and Planning Agency (NVTA)
m. Napa County Watershed Information Center & Conservancy (WICC)
n. Upper Valley Waste Management Board

Some City/County collaborative agency committees specify in by-laws and or policy who sits on the board. If the position is not specified the City Council appoints or recommends the appointment.

DISCUSSION

It is appropriate for the City Council to annually review the intergovernmental City Council assignments.

FISCAL IMPACT

No fiscal impact.

RECOMMENDED ACTION

1. Affirm or recommend City Council Liaisons to each committee:
   a. Active Transportation/Sustainability Committee
   b. Board of Library Trustees
   c. Parks and Recreation Commission
   d. Tree Committee

2. Affirm or recommend appointment to various City/County collaborative agency committees:
   a. One Alternate - City/SHUSD/Chamber/NVC (Monrovia)
   b. One Primary/One Alternate - Association of Bay Area Governments (ABAG) General Assembly
   c. One Primary - Napa Valley Tourism Corporation/ St. Helena Tourism Improvement District (SHTID)
   d. One Alternate - Napa County City Selection Committee Alternate

3. Make recommendation to the Napa County Board of Supervisors to affirm or recommend new member:
   a. Napa County Flood Control and Water Conservation District
   b. Napa County Gang & Youth Violence Commission
   c. Napa County Local Agency Formation Commission (LAFCO)
   d. Napa Valley Transportation Authority (NVTA) Primary and Alternate
   e. Napa County Watershed Information Center & Conservancy (WICC) Primary and Alternate
   f. Upper Valley Waste Management Board

ATTACHMENTS
Attachment 1 – City Committees, Boards and Commissions
Attachment 2 – 2017 Intergovernmental City Council Assignments

Attachment 1

St. Helena Boards & Commissions Roster

Updated: 12/19/2016

Name	Address	Phone Number	Email Address	Appointment Date	Term Expires
Active Transportation/Sustainability Committee	**Meets 1st Wednesday @ 5:00 PM, City Hall Conference Room**			**Term of office is 2 years**	
Donna Hinds				9/8/2015	6/30/2018
Michael Chisek				7/14/2015	6/30/2017
Brian Cramer				7/14/2015	6/30/2017
(Kris) Kristine Coryell				7/1/2016	6/30/2018
Glenn Smith				9/8/2015	6/30/2018
Tom Vence (alternate)				7/14/2015	6/30/2018
Sara Chappellet (alternate)				7/14/2015	6/30/2017
City Council Liaison/Vacant					
Staff Liaison/Steve Palmer	St. Helena City Hall	968-2624	spalmer@cityofsthelena.org		
Board of Library Trustees	**Meets 2nd Wednesday @ 5:00 PM**			**Term of office is 2 years**	
Skip Lane				6/25/2013	6/30/2018
Bob Dye				11/1/2014	6/30/2018
Susan Swan				11/18/2008	6/30/2018
David Phinney				7/14/2015	6/30/2017
Emily Armstead				9/27/2016	6/30/2018
Lin Weber				10/14/2014	6/30/2017
Terry Wood				11/1/2014	6/30/2017
City Council Liaison/Mayor Galbraith					
Staff Liaison/Chris Kreiden	St. Helena Public Library	967-2805	chris@shpl.org		
Parks and Rec Commission	**Meets 3rd Monday @ 4:30 PM, City Hall Conference Room**			**Term of office is 2 years**	
Donna Hinds				7/1/2016	6/30/2018
Matthew Demchuk				7/14/2015	6/30/2017
Kim Phinney				9/9/2014	6/30/2018
Noelle Strouss				7/1/2016	6/30/2018
Tracy Smith				6/28/2011	6/30/2018
City Council Liaison/Vice Mayor White					
Staff Liaison/Haidi Arias	Carnegie/Teen Center	963-5706	haidia@cityofsthelena.org		
Tree Committee	**Meets 2nd Thursday @ 3:30 PM, City Hall Conference Room**			**Term of office is 2 years**	
Scott Freeland				7/14/2015	6/30/2017
Edie Kausch				7/14/2015	6/30/2017
Vacant					6/30/2017
Susan Smith-Allen				7/14/2015	6/30/2018
Matthew Strouss				7/1/2016	6/30/2018
(alternate)					6/30/2018
Joan Westgate (alternate)				7/14/2015	6/30/2017
City Council Liaison/Vacant					
Staff Liaison/City Arborist/Carlos Uribe	City Corporation Yard	967-2805	carlosu@cityofsthelena.org		

2017 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filiers
City/SHUSD/Chamber/NVC (Monrovia) • Meet to discuss interests in common • No Compensation	Meets: Qtrly	(707) 967-2701 Erica Madrigal	Mayor Galbraith Vacant Staff: City Manager Finance Director		Not Required
St. Helena Sewer District No. 1 • Meets only as needed • 11-08-1964 Resolution 1964-597 Establishing Sewer District No. 1 and 1964-598 Description			All		
Association of Bay Area Governments (ABAG) - Executive Board • Appointed by the City Selection Committee • To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services • Agency membership dues based on population • Compensation - $150.00 per Meeting	101 Eighth St. Oakland CA 94607 *Meets:* 7:00 p.m., 3rd Thursday of every other month	(510) 464-7900 Fred Castro	American Canyon Mayor Leon Garcia, Primary Member expiration of June 30, 2018	Yountville Mayor John Dunbar, Alternate Member expiration of June 30, 2017	Not Required
Association of Bay Area Governments (ABAG) - General Assembly • St. Helena City Council appoints member and alternate, no term limit • To enhance the quality of life in the San Francisco Bay Area by leading the region in advocacy, collaboration, and excellence in planning, research and member services • Agency membership dues based on population	101 Eighth St. Oakland CA 94607 *Meets:* Annually 7-Jul	(510) 464-7900	Dohring	Vice Mayor White	Not Required
Napa Valley Tourism Corporation (Umbrella for Napa County) **St. Helena Tourism Improvement District (SHTID)** • Elected official appointed by the St. Helena City Council • 7 members from St. Helena (4-members of lodging, 1-Chamber of Commerce, 1-Elected Official and 1-City Manager) Membership includes: Kevin Dimond, Harvest Inn Mark Hoffmeister, Wydown Hotel Jennifer Phillips, City Manager Chair - Marcelle Adderley, Inn at Southbridge - General Manager Pam Simpson, Chamber Rep - Executive Director Pirrette Therene, El Bonita Hotel - GM Sharon Crull, City Councilmember • No Compensation	*Meets:* Qtrly Southbridge	Catherine Heywood 707-260-0112	Vacant Staff: City Manager		Not Required

Attachment 2

2017 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filiers
League of California Cities – North Bay Division • To maintain a central office of information and research for matters pertaining to City government and to influence legislation that affects cities • Agency membership dues required * No Compensation	P.O. Box 458, Mill Valley, CA 94941 *Meets:* Quarterly	(415) 302-2032 Nancy Hall Bennett	All		Not Required
Napa County City Selection Committee • In counties where 2 or more cities are incorporated, this Committee appoints city representatives to certain boards, commissions and agencies as prescribed by law (Section 50270, CA Govt Code) • Representative must be Mayor (per above Gov't. Code) * No Compensation	1195 Third Street, Suite 310, Napa 94558 *Meets:* 1:00pm, 3rd Tuesday of the month, Quarterly	(707) 253-4580 Gladys Coil	Mayor Galbraith (Delegate)	Dohring	Not Required
Napa County Flood Control and Water Conservation District • Mission is the conservation and management of flood and storm waters to protect life and property; the maintenance of the County watershed using the highest level of environmentally sound practices; and to provide coordinated planning for water supply needs for the community. • Representative must be Mayor • Bylaws * No Compensation	1195 Third Street, Room 305, Napa 94558 *Meets:* 1:30 a.m., 1st and 3rd Tuesday of the Month *Flood Control is located at 804 1st Street, Napa	(707) 259-8600 Barbara Fultz (707) 253-4580 Gladys Coil	Mayor Galbraith	Vice-Mayor White	Required
Napa County Gang & Youth Violence Commission * Prevention, intervention & suppression of gang violence • City Council makes appointee recommendation to the Napa County Board of Supervisors * No Compensation	Location Changes *Meets:* 4:30 p.m., on 3rd Wednesdays, As needed/no less than quarterly	(707) 253-4211 Gary Lieberstein District Attorney	Dohring Staff: Police Chief		Not Requried
Napa County League of Governments (NCLOG) * No Compensation • Bylaws • Mayors of the City and County rotate the Chair position	Location rotates *Meets:* 6:00 p.m., 2nd Thursday of the month, Quarterly	(707) 253-4580 Gladys Coil	All		Not Requried
Napa County Local Agency Formation Commission (LAFCO) • City Selection Committee makes appointment • Four-Year Term Gov Code; Informal Policy Two-Year Rotation * $125 per meeting	1195 Third Street, Napa 94558 *Meets:* 4:00p.m., 1st Thursday of the month *LAFCO is located at 1030 Seminary, Napa	(707) 259-8645 Kathy Mabry	Vacant Term Expires 5/1/2017		Required Mail to: Kathy Mabry 1030 Seminary St, Suite B Napa CA 94558

Attachment 2

2017 St. HELENA INTERGOVERNMENTAL CITY COUNCIL ASSIGNMENTS

MAYOR/COUNCIL COMMITTEE ASSIGNMENTS:	Date/Time & Location	Contact	Primary	Alternate	700 Form Filiers
Napa Valley Transportation Authority (NVTA) • 2 Members and 2 alternates(1-Mayor with City Council appointing the other/2 City Councilmember Alternates • Bylaws	625 Burnell Street, Napa 94559 *Meets:* 1:30p.m., 3rd Wednesday of the month	Karrie Sanderlin (707) 259-8633 or Kate Miller	Mayor Galbraith Vice Mayor White Staff: City Manager Public Works Director	Dohring	Requried Mail to: Board Secretary 625 Burnell Street Napa CA 94559
Napa County Watershed Information Center & Conservancy (WICC) • City Council makes appointment recommendation to the Board of Supervisors * No Compensation • BOS Resolution 02-202	1125 Third Street, 2nd Floor Conference Room, Napa 94558 *Meets:* 4:00p.m., 4th Thursday of the month	(707) 259-5936 Jeff Sharp, Liaison Gladys or Nadine	Vice Mayor White	Dohring	Not Required
Upper Valley Waste Management Board • City Council makes appointment recommendation to the Board of Supervisors	Yountville Town Council Chambers *Meets:* 1:30p.m., 3rd Monday of the month	(707) 259-6716 Alice Ramirez, Board Clerk	Vacant	Dohring	Required send to

Report to the City Council
Special Council Meeting of January 17, 2017

Agenda Section: **New Business**

Subject:

1. Consider and proposed approval of request from Calistoga Affordable Housing for up to an additional $200,000 from the Affordable Housing Trust Fund for the Turley Flats affordable housing project (for a not to exceed total of $700,000 in a loan from the AHTF) and authorize drawdown of previously committed funds; and

2. Approve loan documents for the Turley Flats Affordable Housing Project including: (i) an Affordable Housing Loan Agreement that documents the disbursement and repayment conditions for the City loan, (ii) an Affordable Housing Regulatory Agreement that restricts occupancy in the Turley Flats units to low income households and restricts rents to affordable rents for a term of 55 years, (iii) a Promissory Note that memorializes the Developer's obligation to repay the City Loan; and (iv) a Deed of Trust that will be recorded against the Project property at 1105 Pope Street to secure repayment of the City loan; and

3. Acceptance of Emergency Vehicle Access Easement across the adjacent property at 1127 Pope Street.

4. Authorize the City Manager (or designated signee) to execute the loan documents on behalf of the City substantially in the form presented to the City Council.

CEQA Determination:

This item is exempt from CEQA pursuant to Guidelines Sections 15061(b)(1), 15061(b)(2), and specifically, the "General Rule" Section 15061(b)(3), where is can be seen with certainty that the proposed action will have no significant effect on the environment.

Prepared By: <u>**Noah Housh, Planning Director**</u>

Approved By:

Steven Palmer, Director of Public Works,
Acting City Manager

BACKGROUND

On October 23, 2012, the City Council adopted Resolution 2012-87 which provided Calistoga Affordable Housing (CAH) with a fee subsidy for the 8-units of affordable housing at 1105 Pope Street (Turley Flats Apartment) in the amount not to exceed $150,000. This Impact Fee "subsidy" will be provided through a supplemental loan to cover the project's Development Impact Fees from the Affordable Housing Trust Fund (AHTF), (Attachment B).

The approval was based upon the fact that the project is: a) 100% affordable housing project; b) a "city-center" complex proximate to commercial and public transportation so the Council waived (by way of subsidizing) the traffic mitigation fee; c) a livable community, so the Council the Council waived the public safety fee by way of subsidizing loan from the AHTF. The City Council also agreed to contribute the impact fees of approximately $33,000 on behalf of CAH to water impacts, sewer impacts and storm drain impacts through a loan from the AHTF.

On July 9, 2013, the City Council adopted Resolution 2013-49 subsidizing all application fees for Turley Flats, (estimated to be up to $8,500) by funding these fees with a loan from the AHTF (Attachment C).

On August 20, 2013, the Planning Commission approved the Turley Flats affordable housing project. This project is a three-story, eight unit project, consisting of ground level parking and 6-two bedroom and 2- three bedroom apartment units originally required to provide housing for moderate-, low- and/or very low- income residents.

On October 14, 2014, the City Council adopted Resolution 2014-101 approving a total loan allocation of $500,000 from the City's AHTF for the Turley Flats project. Use of these funds includes the authorized $158,500 in fee subsidies and contributions outlined in Resolutions 2012-87 and 2013-49. The remaining amount of $341,500 is a housing loan (all at a three-percent interest rate), that will be governed by the attached loan agreements. (Attachment D).

On October 25, 2016, the City Manager requested Council approval on a request from CAH to increase the amount the City has committed to the project from $500,000 to a new loan amount of $640,000 to address increases in construction cost projections. This loan funding source is also proposed to be the Affordable Housing Trust Fund with the interest rate at three-percent. The Council at this time expressed concern with the overall financing of the project, the timing of the award of the funds (from each funding source) and asked that the applicant provide additional information regarding their loan application to the County of Napa. Based on these concerns, the Council did not authorize the additional funding requested at this meeting.

It is worth noting that the $158,500 previously committed in 2012 and 2013 was characterized as a grant; however it is actually intended to be a part of a loan from the AHTF to CAH and currently included in the total amount committed for the project in 2014, currently totaling $500,000. The loan is payable on a residual receipts basis, as cash is available from the rent receipts of the project.

DISCUSSION

Loan Agreement

CAH has been working over the past two years on both the construction bids and financing for this project. The City has worked diligently with CAH to prepare the loan documents and has finalized the drafts of these documents for the Council to review and approve (all attached). According to CAH, they have secured a bank loan for $1.3 million to cover construction costs associated with the project. Over the two year time period CAH has been seeking funding for the project, construction cost estimates have increased significantly pushing CAH to seek additional sources of funding. In working to secure and finalize additional sources of financing for the project, CAH reached out to the County of Napa for an additional matching loan of $650,000 in funding for the project (the amount requested by CAH from the City).

After considering the application from CAH, the County contacted the City to discuss over all financing and construction costs for the Turley Flats project. The County indicated a willingness to consider providing additional loan financing for the project of approximately $640,000. However, in discussing the overall financial strength of the project the County identified concerns over the ability of the project to address unknown and unforeseen costs which could arise through the construction process. The County of Napa decision on the funding requested (expected in late January or early February) will partially be based on the City's decision regarding this additional funding, as they have identified that without the City's contribution the overall budget for the project could not be met.

After discussing the project with the County, City staff feels that the project may benefit from approval of a total additional amount not to exceed $200,000 (a $60,000 increase over the $140,000 requested by CAH) to provide additional contingency monies for unforeseen expenses that arise through the construction process. This would result in the total loan cost of $700,000 in Affordable Housing Trust Fund monies. This is both to address unforeseen expenses and to mitigate County concerns regarding the minimal contingency funding available to the project. All City funds would be directly tied to invoices and receipts of work performed or outstanding balances for materials or services required.

CAH also requests that a portion of the funding committed to by the City be made available immediately to cover the building permit review and issuance costs. The building permit application has been submitted and is under review by the City Building Division.

Regulatory Agreement
Also attached to this report is the regulatory agreement which commits all eight units in the Turley Flats project as affordable to low-income individuals and limits the amount of the rents that can be charged to project residents. If the Council approves the funding for the project, this document will be signed by the authorized representatives of each party and recorded with the County as the legal mechanism to ensure these units are reserved to low-income residents for a 55-year term.

Promissory Note
The Promissory Note laying out the terms of re-payment of the $700,000 loan and identifying the property deed of trust as collateral for this loan is also attached as information for the public and City Council. This puts the City into second position (behind the commercial lender) on recovering any collateral for the loan. As discussed above, this Note describes the terms of the loan repayment identifying that 25-percent of surplus cash is to be paid back to the City's AHTF on an annual payment schedule with the Note coming due in 30-years. This 25-percent payment is based on the assumption that the County of Napa will also commit a minimum of $600,000 toward the project, and provides the County with the same 25-percent of surplus cash to re-pay their loan. If the County does not commit the funds, the repayment amount is required to be 50-percent of the surplus cash available from project receipts.

It is assumed that these annual payments will not cover the total costs of either loan. Because of this, it is further assumed that the borrower will re-pay or renegotiate the terms of the loan at the conclusion of the 30-year term.

Deed of Trust
Similarly, the proposed Deed of Trust, providing the City with a security interest in the project and the property is attached for the public and Council to review.

The Affordable Housing Trust Fund balance is currently $1,312,813. However, $500,000 has been previously committed to this project and an additional $196,500 has been committed to Our Town St. Helena (OTSH) for the Brenkle Court Affordable Housing project. The estimated remaining amount in the Affordable Housing Impact Fund is $616,313. This request for an additional $200,000 would reduce the Affordable Housing Trust Fund balance to approximately $416,313.

Emergency Vehicle Easement
Through the review of the building permit, the Fire Department identified a concern over the ability to access the rear of the project site with fire suppression equipment in the event of a fire or other emergency. In response, the applicant has secured an emergency vehicle access easement across the adjacent property (to the west) located at 1127 Pope Street. In order for this easement to be accepted and recorded, the Mayor (or authorized representative) must sign the document, a copy of which is attached for review by the public and City Council.

Calderon Settlement
As part of the Calderon law suit settlement, the City has committed to approval and construction of a number of affordable housing units, according to a specified time line. In approving the OTSH Brenkle Court project, the City has met the first milestone which required approval of six affordable housing units by Dec. 31, 2016. The next milestone requires approval of a total of 12 affordable housing units by Dec. 31, 2018. Construction and occupancy of the Turley Flats project would likely satisfy the next milestone in the settlement agreement (the penalty for not meeting this milestone is a payment of $500,000 from the General Fund into the AHTF). While there has been interest expressed in other affordable housing development in St Helena, staff is not aware of any other projects being formally considered or with applications pending submittal.

FISCAL IMPACT
If approved, an additional $200,000 would be allotted from the Affordable Housing Trust Fund to CAH specifically to support the construction of the Turley Flats affordable Housing project, leaving an approximate balance of $416,313 in the Trust Fund for future affordable housing efforts.

While the funds are proposed to be in the form of a loan, the loan payments are to be based on the 25-percent residual receipts from rent payments (with 50-percent reserved for developer costs and the remaining 25-percent proposed to go toward repayment of the County loan). Given the narrow margins associated with the cost to manage the facility and the amount of rent received from each unit, staff does not anticipate significant debt service to occur during the life of the loan. Rather, the primary for of repayment will likely come at the conclusion of the loan term (proposed at 30-years). Staff feels this is an important element for the City Council to consider, given the commitments requested from the AHTF.

ISSUES

As a condition of the loan agreements (Sections 3.4(h) and 5.18), the City has required a performance bond be provided to ensure the project will ultimately be constructed. CAH has requested this requirement be eliminated from the documents due to the costs associated with these bonds (characterized by CAH as approximately $250,000 but not confirmed by City staff). A performance bond is essentially an insurance policy that the project will be completed, even if the developer is unable to complete the work.

While all aspects of the project are required to be insured, and staff has no reason to believe the project will not be completed if all funding sources agree to provide their funds as expected, staff is requesting Council direction on the request from CAH to remove the requirement for a performance bond to be purchased to ensure to project is ultimately constructed. While staff finds the risk of complete default on the project is low, a performance bond is the only mechanism for the City to guarantee the project will ultimately be constructed.

RECOMMENDED ACTION

It is recommended by the Planning and Community Improvement Department that the City Council:

1. Approve the request from Calistoga Affordable Housing for up to an additional $200,000 from the Affordable Housing Trust Fund for the Turley Flats affordable housing project (for a not to exceed total of $700,000 in a loan from the AHTF) and authorize drawdown of all previously committed funds; and

2. Review, provide direction as needed and approve loan documents for the Turley Flats Affordable Housing Project including: (i) an Affordable Housing Loan Agreement that documents the disbursement and repayment conditions for the City loan, (ii) an Affordable Housing Regulatory Agreement that restricts occupancy in the Turley Flats units to low income households and restricts rents to affordable rents for a term of 55 years, (iii) a Promissory Note that memorializes the Developer's obligation to repay the City Loan; and (iv) a Deed of Trust that will be recorded against the Project property at 1105 Pope Street to secure repayment of the City loan; and

3. Accept the Emergency Vehicle Access easement across the adjacent property at 1127 Pope Street.

4. Authorize the City Manager (or designated signee) to execute the loan documents on behalf of the City substantially in the form presented to the City Council.

ATTACHMENTS

Attachment A – Resolution-With Attachments A-D
Attachment B – Resolution No. 2012-87
Attachment C – Resolution No. 2013-49

Attachment D – October 14, 2014 staff report
Attachment E – Cover Letter from Calistoga Affordable Housing
Attachment F - Title Report
Attachment G – PC Resolution Approving Project
Attachment H – Loan Agreement
Attachment I - Project Budget and Supporting Financial Information

Attachment A

CITY OF ST. HELENA

RESOLUTION NO. 2017-

Resolution of the Council of the City of St Helena:

Authorizing an Additional $200,000 from the Affordable Housing Trust Fund in the Form of a Loan Not to Exceed $700,000 for the Turley Flats Affordable Housing Project;

Accepting the Turley Flats Regulatory Agreement Restricting All Units in the Building to Low-Income Individuals (Attachment A);

Approving the Promissory Note for the Loan to Calistoga Affordable Housing (Attachment B);

Accepting the Deed of Trust to the property at 1105 Pope Street (Attachment C);

Accepting an Emergency Vehicle Access Easement across portions of 1127 Pope Street to Provide Emergency Access to the Project Site (Attachment D); and

Authorizing Drawdown of Funds Committed for Permitting Costs, Fees and Project Construction

RECITALS

A. On October 9, 2012, Calistoga Affordable Housing (CAH), developer for Turley Flats Apartments, submitted a written request asking City Council for a fee adjustment; and

B. On October 23, 2012, the City Council adopted Resolution 2012-87 approving a fee subsidy up to $150,000 for an 8-unit 100% affordable housing project; and

C. On July 3, 2013, CAH, developer for Turley Flats (Turley Apartments), submitted a written request asking City Council for an additional fee subsidy to cover all application processing fees; and

D. On July 9, 2013, the City Council adopted Resolution 2013-49 approving the request to subsidize application processing fees up to $8,500; and

E. On August 13, 2014, CAH met with the Mayor and City Manager to discuss the Turley Flats project and funding options; and

F. On October 14, 2014, the City Council adopted Resolution 2014-101 approving a total contribution to CAH of $500,000 in the form of a loan from the Affordable Housing Trust Fund; and

G. The funds were allocated as follows: $341,500 in the form of a housing loan that will be governed by loan agreements and $158,500 in fee subsidies (also in the form of a loan from the AHTF and governed by the same agreements) as established in Resolutions 2012-87 and 2013-49; and

H. CAH has been working over the past two years on both construction bids and financing for this project and has submitted the building permit application for the project to the City; and

I. The City has worked diligently with CAH to prepare the housing loan documents attached hereto for City Council review and approval; and

J. On October 14, 2016, CAH representatives met with City staff to provide a project update and request an additional $140,000 in City funding for this project; and

K. The County of Napa has expressed interest in providing matching funds ($650,000 requested by CAH) however concerns were expressed regarding available contingency funding for the project; and

L. The additional funding requested will be provided as needed to assist with construction costs.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. Approves the request from Calistoga Affordable Housing for up to an additional $200,000 from the Affordable Housing Trust Fund for the Turley Flats affordable housing project (for a not to exceed total of $700,000 in the form of a loan from the AHTF at three-percent interest). This loan consists of the additional up to $200,000 as previously stated, $158,500 in fee contributions as outlined in Resolutions 2012-87 and 2013-49, and a $341,500 housing loan agreement as outlined in Resolution 2014-101, subject to a status report to the City Council within 60 days of the issuance of any funds.
2. Of the total $700,000 loan amount, $60,000 is intended to be kept in reserve (by the City) to serve as a contingency fund to cover unforeseen project expenses, should they arise.
3. Of the total $700,000 loan amount, $100,000 is to be retained by the City until all off-site public improvements have been constructed to serve as surety that the public infrastructure serving the project is adequately constructed.
4. Approves loan documents for the Turley Flats Affordable Housing Project including: (i) the Affordable Housing Loan Agreement, (ii) the Affordable Housing Regulatory Agreement, (iii) the Promissory Note, and (iv) the Deed of Trust,
5. Acceptance of the Emergency Vehicle Access Easement across a portion of 1127 Pope Street, in favor of 1105 Pope Street.

6. Authorize the City Manager (or designated signee) execute the loan documents on behalf of the City substantially in the form presented to the City Council.
7. Authorize the release of previously authorized funds in the amount of $158,500 from the Affordable Housing Trust Fund to the General Fund to cover fees directly associated with this project.
8. Authorize the release of all other funds committed to the project upon submittal of documentation regarding the need for and recipient of these funds (as stipulated in the attached loan agreement).
9. Release of funds is contingent upon Napa County approval of the pending $650,000 loan application (or other source of matching funding), issuance of the construction loan of $1.4 million from a traditional lender and fully capitalized project.

Approved at a Special Meeting of the St. Helena City Council on January 17, 2017, by the following vote:

Mayor Galbraith: ___________

Vice Mayor White: ___________

Councilmember Ellsworth: ___________

Councilmember Dohring: ___________

Councilmember Koberstein: ___________

APPROVED: ATTEST:

_________________________ _________________________

Alan Galbraith, Mayor Cindy Black, City Clerk

Resolution Attachment A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attention: City Manager

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF ST. HELENA

and

CALISTOGA AFFORDABLE HOUSING, INC.

(Turley Flats)

OAK #4847-3869-1616 v5

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 _______________, 2017 ("**Effective Date**") by and between the City of St. Helena, a municipal corporation ("**City**") and Calistoga Affordable Housing, Inc., a California nonprofit public benefit corporation ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties.**"

RECITALS

A. Owner is the owner of the real property located at 1105 Pope Street in the City of St. Helena, Napa County, California, known as Napa County Assessor's Parcel No. 009-090-003, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Owner intends to develop, own and operate an affordable housing development on the Property consisting of eight (8) apartments and related improvements (collectively, the "**Project**") in accordance with that certain Affordable Housing Loan Agreement (the "**Loan Agreement**") dated as of the date hereof and executed by and between Owner and City. Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the Loan Agreement.

C. The Loan Agreement provides that the residential units developed on the Property will be required to be available to Eligible Households at Affordable Rents (defined below) in accordance with this Agreement for a period of not less than fifty-five (55) years.

D. Subject to the terms and conditions set forth in the Loan Agreement, City has agreed to provide to Owner a loan using funds from the City's Affordable Housing Trust Fund in the amount of up to Seven Hundred Thousand Dollars ($700,000) (the "**Loan**") to provide partial financing for the Project. In connection with the Loan, Owner shall execute and deliver to City a Secured Promissory Note dated as of the date hereof (the "**Note**") and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof (the "**Deed of Trust**") shall be executed by Owner for the benefit of City and recorded in the Official Records of Napa County ("**Official Records**") substantially concurrently herewith.

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

F. 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 dwelling 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 Owner and Owner'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.

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

"Adjusted for Family Size Appropriate for the Unit" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources.

"Affordable Rent" means the following amounts, less a utility allowance for tenant-paid utilities in an amount established by the City of Napa Housing Authority or otherwise approved by City, and other fees and charges required to be paid by all tenants of the Project on a non-optional basis (e.g., mandatory parking fees and other mandatory service charges): a monthly rent that does not exceed one-twelfth of thirty percent (30%) of sixty percent (60%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit.

"Area Median Income" or "AMI" means the median income for Napa 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 St. Helena or the Planning and Community Improvement Director of the City of St. Helena.

"City Documents" means the Loan Agreement, the Note, the Deed of Trust, and this Agreement.

"Claims" is defined in Section 2.6.

"Deed of Trust" is defined in Recital D.

"Eligible Household" means a household for which household Gross Income upon initial occupancy does not exceed eighty percent (80%) of AMI.

"Gross Income" shall have the meaning set forth in Section 6914 of Title 25 of the California Code of Regulations as such Section may be revised from time to time.

"Indemnitees" is defined in Section 2.6.

"Loan Agreement" is defined in Recital B.

"Marketing and Management Plan" is defined in Section 6.5.

"Note" is defined in Recital D.

"Regulations" means Title 25 of the California Code of Regulations.

2. Use and Affordability Restrictions. Owner 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 Loan Agreement and the requirements set forth herein. Owner 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 Owner 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 date of City's issuance of a final certificate of occupancy or equivalent for the Project all of the residential units in the Project shall be rented to Eligible Households at Affordable Rents, or if vacant shall be available for occupancy by Eligiblé Households at Affordable Rents.

Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies 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; Over-Income Tenants. Rents payable by tenants of the Project shall be limited to Affordable Rents. Nothing in this Agreement is intended to preclude the Owner from participating in the Section 8 voucher program or other rent subsidy program pursuant to which the rent charged for a unit may be set at a rate that is higher than Affordable Rent, provided that the portion of the rent payable by the tenant is limited to Affordable Rent.

If upon recertification of tenant incomes, Owner determines that a tenant has a household Gross Income that exceeds the qualifying income for Eligible Households, the tenant shall be permitted to continue to occupy the unit until the expiration of the term of the tenant's lease. Upon expiration of the tenant's lease and following six (6) months' written notice, such tenant shall be required to vacate the unit, and Owner shall rent the unit to an Eligible Household at an Affordable Rent.

In the event of inconsistency between the provisions of this Section 2.2 and rules applicable to the Project in connection with low-income housing tax credits, tax-exempt bonds, or other sources of public financing provided for the Project, the rules applicable pursuant to such financing source shall prevail.

2.3 Intentionally omitted.

2.4 No Condominium Conversion. Owner shall not convert the Project to condominium or cooperative ownership 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. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project or for tenant rent subsidies, in accordance with the City's Amended Local Preference Policy approved on October 28, 2014 by Resolution 2014, Owner shall give first priority in the rental of the residential units in the Project to Eligible Households that include at least one member who was displaced from their affordable housing located within the City because of substandard and/or unsafe living conditions resulting in Code enforcement proceedings by the City. Owner shall give second priority to Eligible Households that include at least one member who lives or works within the St. Helena Unified School District geographic boundaries. 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. Owner shall comply with state and federal fair housing laws in the marketing and rental of the units in the Project. Owner 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. Owner 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 Owner or any person claiming under or through Owner 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. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Owner, 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:

"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 pertaining to 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. Owner shall ensure that all such 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 Owner.

Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising in connection with the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

3. Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of a 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 City may reasonably require:

(i) The identity of each household member; and

(ii) The total household Gross Income;

Owner 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. Following completion of Project construction, by not later than April 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with Owner'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 household Gross Income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1. Upon request of City, Owner shall allow City's Authorized Representative to inspect and copy all records documenting the source of household income.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City 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, Owner 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 Owner'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

Prior to any draw from Project replacement reserves, Owner shall provide the information described in paragraph (iii) above to City together with a description of the specific capital replacements or repairs proposed to be undertaken and a budget for such expenditures, and Owner shall obtain City's written consent prior to withdrawing funds from Project reserves except in the event that emergency repairs are required. City shall review such proposal within fifteen (15) business days, and City shall not unreasonably withhold consent to withdrawals for capital repairs and replacements. Within sixty (60) days following the end of each fiscal year during the term of this Agreement, Owner shall provide to City a copy of the annual financial statements for the Project certified by Owner as accurate and complete, and if one has been prepared for the Project, audited financial statements prepared by an independent certified public accountant. 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 Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner 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 Owner of any records it deems insufficient. Owner 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, Owner 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 Owner 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 Owner 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.

3.5 Annual Monitoring Fee. Owner agrees to pay to City an annual fee in the amount of Five Hundred Sixty Dollars ($560.00) (i.e., Seventy Dollars ($70.00) per unit), increasing annually by three percent (3%) to offset City's costs to monitor compliance with this Agreement. The fee shall be payable on October 1 of each year during the term of this Agreement, commencing is the year following City's issuance of a final certificate of occupancy or equivalent for the Project.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect through the fifty-fifth (55^{th}) anniversary of the City's issuance of a final certificate of occupancy or equivalent for the Project, unless the term is 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 (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or Note, or (iii) any reconveyance of the Deed of Trust.

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. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, 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, ground 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, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby.

Owner 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 Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner 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 management or maintenance 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 Owner for the Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves CRYRAG Inc., a California corporation doing business as Crown Realty Property Management, 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 Owner that Owner has failed to operate the Project in accordance with this Agreement, City may, subject to any applicable cure period, require Owner 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, Owner 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, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, meeting rooms, 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. Owner 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. Owner 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 St. Helena business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner 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 Owner 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 constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner 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. Not later than ninety (90) days following commencement of construction of the Project, Owner 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 Owner plans to market the Project to prospective Eligible Households in accordance with fair housing laws and this Agreement, including without limitation Sections 2.5 and 2.6, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner 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 Owner proposes to enter into with Project tenants. Owner 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 Owner 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 submission of the

Management and Marketing Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Owner 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, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner'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 Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner'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, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for 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 Napa County. Owner hereby represents, warrants and covenants that with the exception of easements of record, absent the written consent of City, 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. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to subordinate such interest to this Agreement consistent with the intent of and in accordance with this Section 7, and to provide such evidence thereof as City may reasonably request. Notwithstanding the foregoing, the City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan (as defined in the Loan Agreement) as it may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner 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 (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest in Owner of more than forty-nine percent (49%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

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 development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with Owner; (vi) a Transfer to a limited partnership in which a tax-exempt affiliate of Owner is the managing general partner ("**Approved Partnership**"); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner's, or the Approved Partnership's, as applicable, agreement of limited partnership (the "**Partnership Agreement**"); (viii) the removal of the general partner by the investor limited partner for cause in accordance with the terms of the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City; or (ix) the transfer of the general partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

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), (iii), (iv), (v) and (vii) of Section 8.2, and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (viii) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (viii) 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 Owner under this Agreement.

(ii) The Owner 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 Owner under this Agreement and the other City Loan Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Owner's obligations pursuant to the Conditions of Approval and all other conditions, and 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 Owner, 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 Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner 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. Owner 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 Owner of an invoice detailing such costs.

8.6 Encumbrances. Owner agrees to use best efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof for the benefit of a lender other than City (**"Third-Party Lender"**) shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose City's Deed of Trust and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) 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. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the 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 mortgages or 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) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner'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 Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

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

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

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), 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 Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner'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) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii). For violations of obligations with respect to rents for dwelling 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;

(iv). 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.

10. Indemnity. Owner 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 Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner'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 Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

11. Miscellaneous.

11.1 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 Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attention: City Manager

Owner: Calistoga Affordable Housing, Inc.
1332 Lincoln Avenue
Calistoga, CA 94515
Attention: Executive Director

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 Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner 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, Owner 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 Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

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 St. Helena 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 Napa 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 Loan Agreement and the Deed of Trust 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. Exhibits A and 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.

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 ST. HELENA, a municipal corporation

By: ______________________________

Print Name:___________________________

Title:________________________________

Attest:

By:____________________________
City Clerk

Approved as to form:

By:____________________________
City Attorney

OWNER:

CALISTOGA AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By:______________________________

Print Name:________________________

Title:_____________________________

SIGNATURES MUST BE NOTARIZED.

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

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _______________, 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)

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

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _______________, 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)

Exhibit A

PROPERTY

The real property situated in the City of St. Helena, County of Napa, State of California, described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, distant thereon 126 feet and 7 inches Northeasterly from the point of intersection thereof with the centerline of the main tract of the Southern Pacific Railroad Company; running thence Northeasterly, along said line of Pope Street, 50 feet to the Southwestern line of the lot of land heretofore conveyed to Emma R. Davis Mooney by Deed recorded February 25, 1889, in Book 45 of Deeds at page 73, said Napa County Records; thence Southeasterly along the Southwestern line of lot conveyed to Mooney, 150 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a southwesterly direction, 50 feet, more or less, to the intersection thereof with a line drawn Southeasterly through the point of commencement and parallel with the Southwestern line of said lot conveyed to Mooney above referred to; thence Northwesterly, along last mentioned line, 180 feet more or less, to the point of commencement.

APN: 009-090-003

Exhibit B

INSURANCE REQUIREMENTS

Prior to initiating work on the Project and continuing through throughout the term of this Agreement, Owner shall obtain and maintain the following policies of insurance:

(a) a commercial general liability policy in the amount of Two Million Dollars ($2,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, 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) a comprehensive automobile liability coverage in the amount of Two Million Dollars ($2,000,000), combined single limit including coverage for owned and non-owned vehicles and shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor with whom Owner has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Owner shall furnish or cause to be furnished to City evidence satisfactory to City that Owner and any contractor that has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars ($1,000,000) per accident.

(d) Upon commencement of construction and continuing until issuance of a Certificate of Completion, Owner and all contractors working on behalf of Owner 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) Upon completion of Project construction, Owner 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.

(e) 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 as its interests may appear.

(f) Prior to commencement of construction, Owner 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, Owner 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, Owner 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 Owner's expense, and Owner shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Owner shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Owner shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. 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 Owner shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. 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, Owner shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

Resolution Attachment B

SECURED PROMISSORY NOTE
(Turley Flats)

$700,000

St. Helena, California
__________, 2017

FOR VALUE RECEIVED, Calistoga Affordable Housing, Inc., a California nonprofit public benefit corporation ("**Borrower**"), promises to pay to the City of St. Helena, a municipal corporation (the "**City**"), in lawful money of the United States of America, the principal sum of Seven Hundred Thousand Dollars ($700,000) or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the principal balance of this Note outstanding from time to time at the rate of three percent (3.0%) simple interest per annum. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

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

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the Loan Agreement, and the other City Documents, including without limitation, that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof, executed by and between City and Borrower and recorded in the Official Records of Napa County (the "**Regulatory Agreement**"). The rent restrictions and other requirements set forth in the Regulatory Agreement shall remain effective for the full term of the Regulatory Agreement and shall survive the repayment of this Note. The Loan Agreement, this Note, the Regulatory Agreement, and the Deed of Trust are collectively referred to herein as the "**City Documents**."

1. <u>PAYMENTS</u>.

1.1 <u>PAYMENT DATES; MATURITY DATE</u>. Subject to <u>Section 1.2</u> below, annual payments on this Note shall be payable on a residual receipts basis with twenty-five percent (25%) of all Surplus Cash (defined below) payable to City toward principal and accrued interest. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date which is the thirtieth (30^{th}) anniversary of the date of this Note (the "**Maturity Date**").

1.2 ANNUAL PAYMENTS FROM SURPLUS CASH. Subject to the provisions of this Section, by no later than April 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall pay to City twenty-five percent (25%) of Surplus Cash generated by the Project during the previous calendar year to reduce the indebtedness owed under this Note. If the County of Napa ("**County**") provides a loan or grant in an amount equal to at least Six Hundred Thousand Dollars ($600,000) to assist in financing development of the Project, City and County shall share fifty percent (50%) of Surplus Cash, with each such entity annually receiving twenty-five percent (25%) of Surplus Cash. Notwithstanding any contrary provision hereof, if County does not provide such financing, or at such time that the Borrower's obligation to repay such County financing is either satisfied or forgiven, then the percentage of Surplus Cash annually payable to City shall increase to fifty percent (50%).

No later than February 1 of each year following the issuance of a final certificate of occupancy or equivalent for the Project, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request, including without limitation, annual financial statements for the Project certified by Owner as accurate and complete, and if one has been prepared, an independent audit prepared for the Project by a certified public accountant. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within sixty (60) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item. If Borrower and City cannot agree on the amount of Surplus Cash, an independent auditor mutually selected by Borrower and City shall resolve any disputed items. The cost of the auditor shall be shared equally by Borrower and City.

No later than November 1 of each year following issuance of the final certificate of occupancy or equivalent for the Project, Borrower shall provide to City a projected 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 30 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 for discretionary items that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

1.2.1 "**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.

1.2.2 **"Gross Revenue"** shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received 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 Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Project shall be included within Annual Operating Expenses in the year of the expenditure); 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 Borrower 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 Borrower other than for costs associated with the Project. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

1.2.3 **"Annual Operating Expenses"** shall mean for each calendar year during 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 and which are secured by deeds of trust senior in priority to the Deed of Trust (**"Approved Senior Loans"**); reasonable property management fees and reimbursements not to exceed fees and reimbursements which are standard in the industry 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; 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 more than $500 per unit per year or such greater amount as reasonably required by the holder of an Approved Senior Loan or as required by a physical needs assessment prepared by a third-party selected or approved by City and prepared at Borrower's expense; cash deposits into operating reserves in an amount reasonably approved by the City or required by the holder of an Approved Senior Loan, but only if the accumulated operating reserve does not exceed four (4) months' projected Project operating expenses; and other ordinary and reasonable operating expenses approved by City.

1.2.4 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 1.2.3); contributions to Project operating or replacement reserves, except as provided in Section 1.2.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; capital expenditures unless approved in advance in writing by City; distributions to partners; any amount paid to Borrower, any principal of Borrower, or any entity controlled by the persons or entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 1.2.3 above, even if paid to Borrower, an affiliate of Borrower, or a partner of Borrower: fees paid to a property management agent, resident services agent, or social services agent; and subject to Section 1.2.5, repayment of cash advances by Borrower or its principals to cover Project operating expense deficits or emergency cash needs of the Project. Payments to Borrower, its principals or affiliates in excess of the limitations set forth in Section 1.2.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

1.2.5 ADJUSTMENT TO OPERATING EXPENSES. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include: (a) the repayment of operating deficit loans provided by Borrower's principals provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equal to the lesser of (i) interest accrued at the actual interest rate charged for the loan, and (ii) interest accrued at a rate equal to the Applicable Federal Rate.

1.3 Intentionally omitted.

1.4 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 8.1 of the Regulatory Agreement) absent City consent, of all or any part of the Project or the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Regulatory Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without City's prior written consent, which consent may be granted or denied in City's sole discretion.

1.5 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Regulatory Agreement shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

1.6 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 1480 Main Street, St. Helena, CA 94574 or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

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

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

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

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

(D) The occurrence of a Transfer in violation of the Loan Agreement or the Regulatory Agreement.

(E) A default arises under any debt instrument secured by a mortgage or deed of trust on the Project or the Property and remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(F) Borrower fails to maintain insurance on the Property and the Project as required pursuant to the City Documents and Borrower fails to cure such default within five (5) days.

(G) Subject to Borrower's right to contest the following charges pursuant to the City Documents, if Borrower fails to pay taxes or assessments due on the Property or the Project or fails to pay any other charge that may result in a lien on the Property or the Project, and Borrower fails 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.

(H) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Loan Agreement or any other City Document, including without limitation, the Regulatory Agreement, and remains uncured beyond the expiration of the applicable cure period.

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

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

3. MISCELLANEOUS.

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

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

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the Loan Agreement.

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

Resolution Attachment B

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

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

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

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

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

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

BORROWER:

CALISTOGA AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By:____________________________

Print Name:______________________

Title:__________________________

Resolution Attachment C

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attn: City Manager

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

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

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of ___________, 2017, by Calistoga Affordable Housing, Inc., a California nonprofit public benefit corporation ("**Trustor**") to First American Title Company as trustee ("**Trustee**"), for the benefit of the City of St. Helena, a municipal corporation ("**Beneficiary**").

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). The Land is located in the City of St. Helena, Napa County, California. Trustor intends to develop, own and operate an affordable multifamily residential development on the Land (the "**Project**").

B. Beneficiary and Trustor have entered into an Affordable Housing Loan Agreement dated as of the date hereof (the "**Loan Agreement**") pursuant to which Beneficiary will provide a loan to Trustor in the amount of up to Seven Hundred Thousand Dollars ($700,000) (the "**Loan**") for the purpose of partially financing development of the Project. Trustor has issued to Beneficiary a Secured Promissory Note dated as of the date hereof (the "**Note**") to evidence Trustor's obligation to repay the Loan.

C. Trustor and Beneficiary have also executed an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the "**Regulatory Agreement**"), dated as of the date hereof, and which will be recorded in the Official Records of Napa County substantially concurrently herewith. Among other provisions, the Regulatory Agreement requires the residential units in the Project to be rented to Eligible Households at Affordable Rents (as defined in the Regulatory Agreement).

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

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

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

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

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

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

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

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

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

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

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

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

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

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust,

Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. Trustor intends this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "**UCC**"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

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

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the estate encumbered by this Deed of Trust irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall not be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in any financing statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government.

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

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

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee simple interest in the Land and the Improvements, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the Loan Documents, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents; (iv) this Deed of Trust creates a valid lien on Trustor's entire interest in the Property subject only to encumbrances of record and senior liens permitted pursuant to the Loan Documents or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"); (v) except with respect to Permitted Encumbrances, Trustor owns the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (vi) there is no financing statement affecting the Property or any part thereof on file in any public office other than as disclosed in writing to Beneficiary; and (vii) the correct address of Trustor's chief executive office is specified in Section 10.2.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and except as disclosed to Beneficiary in writing, no condition on the Land violates any health, safety, fire, environmental, sewage, building, or other federal, state or local law, ordinance or regulation; (ii) except as disclosed to Beneficiary in writing, no contracts, licenses, leases or commitments regarding the maintenance or use of the Property or allowing any third party rights to use the Property are in force; (iii) except as disclosed to Beneficiary in writing, there are no threatened or pending actions, suits, or administrative proceedings against or affecting the Property or any portion thereof or the interest of Trustor in the Property; (iv) there are no threatened or pending condemnation, eminent domain, or similar proceedings affecting the Property or any portion thereof; (v) Trustor has not received any notice from any insurer of defects of the Property which have not been corrected; (vi) there are no natural or artificial conditions upon the Land or any part thereof that could result in a material and adverse change in the condition of the Land; (vii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete; and (viii) Trustor or Trustor's agents have disclosed to Beneficiary all material facts concerning the Property.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's current actual knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of the Property.

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

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

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property, any part thereof, or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the Loan Documents or if any other Transfer (as defined in the Loan Documents) occurs in violation of the

Loan Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

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

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

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

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

7.10.1 Trustor shall at all times during the term hereof, maintain insurance coverage in the amounts and in accordance with the requirements specified in the Loan Documents, and shall otherwise comply with all requirements pertaining to insurance specified in Article X of the Loan Agreement, the Regulatory Agreement, or this Deed of Trust.

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

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

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

7.11 Hazardous Materials. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof to the current actual knowledge of Trustor: (i) the Land is free and has always been free of Hazardous Materials (as defined below) and is not and has never been in violation of any Environmental Law (as defined below); (ii) there are no buried or partially buried storage tanks located on the Land; (iii) Trustor has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Land are or have ever been in violation of any Environmental Law or informing Trustor that the Land is subject to investigation or inquiry regarding Hazardous Materials on the Land or the potential violation of any Environmental Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Land; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Land, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Land has never been used as a dump or landfill; and (vii) Trustor has disclosed to Beneficiary all information, records, and studies in Trustor's possession or reasonably available to Trustor relating to the Land concerning Hazardous Materials.

Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;

b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and

c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any Loan Document; (ii) any extensions of time for performance required by any Loan Document; (iii) any provision in any of the Loan Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the

Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any Loan Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any Loan Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the Loan Documents or applicable law. The obligations of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq.*]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq.*], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq.*], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq.*], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq.*], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq.*], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq.*], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq.*], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section

25249.5, *et seq.*], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq.*], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

"**Environmental Law**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

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

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

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

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

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

7.13 Indemnification. To the fullest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any Loan Document, (b) any representation by Trustor in any Loan Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any Loan Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

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

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

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

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

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

7.19 Intentionally omitted.

8. Default and Remedies.

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

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

b. Trustor fails to perform any monetary obligation that arises under this Deed of Trust or any other Loan Document (other than an obligation enumerated in this Section 8,1), and does not cure that failure within fifteen (15) days following written notice from Beneficiary or Trustee;

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

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

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

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

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy**

Law"), Trustor or any general partner thereof (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

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

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

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within fifteen (15) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within thirty (30) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within thirty (30) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within thirty (30) days and thereafter prosecutes such cure to completion with due diligence and in good faith and in no event later than sixty (60) days following receipt of notice of default.

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

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

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

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

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

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

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

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

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

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

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

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

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

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

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

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

10. Miscellaneous Provisions.

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

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

TRUSTOR:	Calistoga Affordable Housing, Inc. 1332 Lincoln Avenue Calistoga, CA 94515 Attention: Executive Director
BENEFICIARY:	City of St. Helena 1480 Main Street St. Helena, CA 94574 Attention: City Manager
With a copy to:	Burke Williams & Sorensen, LLP 1901 Harrison Street, Suite 900 Oakland, CA 94612 Attn: Susan E. Bloch, Esq.

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

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

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

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in the jurisdiction where the Land is located (the "Property Jurisdiction"). The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Loan Documents. Trustor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

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

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

TRUSTOR:

CALISTOGA AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By:______________________________

Print Name:_______________________

Title:_____________________________

SIGNATURES MUST BE NOTARIZED.

Resolution Attachment C

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

STATE OF CALIFORNIA)
)
COUNTY OF NAPA)

On _______________, 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)

Resolution Attachment C

Exhibit A

LAND

The real property situated in the City of St. Helena, County of Napa, State of California, described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, distant thereon 126 feet and 7 inches Northeasterly from the point of intersection thereof with the centerline of the main tract of the Southern Pacific Railroad Company; running thence Northeasterly, along said line of Pope Street, 50 feet to the Southwestern line of the lot of land heretofore conveyed to Emma R. Davis Mooney by Deed recorded February 25, 1889, in Book 45 of Deeds at page 73, said Napa County Records; thence Southeasterly along the Southwestern line of lot conveyed to Mooney, 150 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a southwesterly direction, 50 feet, more or less, to the intersection thereof with a line drawn Southeasterly through the point of commencement and parallel with the Southwestern line of said lot conveyed to Mooney above referred to; thence Northwesterly, along last mentioned line, 180 feet more or less, to the point of commencement.

APN: 009-090-003

Resolution Attachment D - EVA Easement

RECORDING REQUESTED AND
WHEN RECORDED MAIL TO:

Kelly J. Berryman
P.O. Box 513
Calistoga, CA 94515

APN: 009-090-002 and 009-090-003 Space above this line for purpose of recording

EMERGENCY VEHICLE ACCESS EASEMENT DEED AND AGREEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, BECKSTOFFER VINEYARDS, a California corporation ("Grantor"), as successor in interest via merger filed with the Secretary of State on December 31, 1991 as File No. A413310 to BECKSTOFFER RANCHES, INC., a California corporation hereby grants, transfers and conveys to Calistoga Affordable Housing, Inc., a California non-profit corporation ("CAH") and the City of St. Helena, a municipal corporation, and its related emergency service providers ("City") (CAH and City are collectively referred to as "Grantees"), a permanent non-exclusive easement ("Easement") over a portion of Grantor's property known as 1127 Pope Street, St. Helena, California as more specifically described in Exhibit A, which portion is described and depicted in Exhibit B (the "Easement Area") for the express and limited purpose of providing emergency response vehicle access and required maintenance to the real property owned by CAH described in Exhibit C, attached hereto. This Easement is limited to emergency vehicle access and repair to the Easement Area only, and for no other purpose. The Easement Area is subject to existing building encroachments for use on the current paved driveway.

Grantees may, at Grantees' sole cost and expense, place and maintain along the northeastern edge of the Easement Area a red curb and signage reading "Fire Lane -- No Parking." The size, shape, color, design and placement of signs shall be subject to Grantor's prior written approval. City shall have the right, from time to time, to trim, cut down, and clear away any and all trees and brush now or hereafter on the Easement Area that interfere with the Emergency Vehicle Access or that (in the opinion of City) may be a hazard to emergency vehicle access by reason of the danger of falling thereon.

Nothing contained herein shall, or shall be deemed to, constitute a gift or dedication of any portion of the Easement Area to the general public for the benefit of the general public or for any public purpose whatsoever, it being the intention that the provisions set forth herein shall be strictly limited to and for the purposes expressed herein. Grantor shall be permitted, from time to time, to take whatever reasonable action it may deem necessary to prevent any portion of the Easement Area encumbered by this Easement from being dedicated or taken for public use or benefit.

Grantees shall indemnify, defend, protect and hold harmless Grantor, its successors and assigns, for, from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever resulting from the exercise of the rights granted herein and/or the use of the Easement Area.

This Easement, and the covenants and agreements herein contained, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and their respective interests. As to the City this easement is in gross. The Easement herein granted shall be governed by, construed and enforced in accordance with the laws of the State of California. This Easement shall be recorded in Napa County, California.

/ / / SIGNATURES ON FOLLOWING PAGE / / /

Resolution Attachment D - EVA Easement

IN WITNESS WHEREOF, Grantor and Grantees have executed this Easement Agreement as of the date set forth below.

GRANTOR:

BECKSTOFFER VINEYARDS
A California corporation

By: W. Andrew Beckstoffer
W. Andrew Beckstoffer , President

Date: 11/16/16

GRANTEES:

CALISTOGA AFFORDABLE HOUSING, INC.
A California corporation

By: ____________________
Larry G. Kromann, President

Date: ____________________

CITY OF ST. HELENA
A municipal corporation

By: ____________________
, City Manager

Date: ____________________

Attest: ____________________
Cindy Black, City Clerk

Date: ____________________

Resolution Attachment D - EVA Easement

NOTARIAL ACKNOWLEDGMENT

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

State of California)
) ss.
County of Napa)

On Nov. 16, 2016, ~~2015~~, before me, VICKIE L. GOMEZ, a Notary Public, personally appeared W. ANDREW BECKSTOFFER, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument; and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Vickie L. Gomez
(SEAL)

VICKIE L. GOMEZ
Commission # 2134348
Notary Public - California
Napa County
My Comm. Expires Dec 17, 2019

NOTARIAL ACKNOWLEDGMENT

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

State of California)
) ss.
County of Napa)

On____________________, 2015, before me, _______________________________, a Notary Public, personally appeared ________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument; and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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)

NOTARIAL ACKNOWLEDGMENT

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

State of California)
) ss.
County of Napa)

On____________________, 2015, before me, ________________________________, a Notary Public, personally appeared_________________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument; and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature ______________________
(SEAL)

EXHIBIT A

DESCRIPTION OF LANDS OF GRANTOR

Real Property located in the City of St. Helena, County of Napa, State of California described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, at the point of intersection thereof with the Northeasterly line of the Right of Way of the Southern Pacific Railroad Company and running thence Northeasterly along said Southeastern line of Pope Street, 91 feet and 7 inches to the Southwestern line of the lands heretofore conveyed to Henry Heinrich Huttmann and wife, by deed of record in Book 136 of Deeds, at page 163, said Napa County Records; thence Southeasterly along the Southwesterly line of said lands conveyed to Huttmann, 180 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a general Southwesterly direction and following all the meanderings of the centerline thereof, 150 feet, more or less, to the Northeasterly line of the Right of Way firstly hereinbefore referred to; and thence Northwesterly along said last mentioned line, 200 feet, more or less, to the point of commencement.

APN: 009-090-002

EXHIBIT B
DESCRIPTION AND DEPICTION OF EASEMENT AREA

Real Property located in the City of St. Helena, County of Napa, State of California described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, at the point of intersection thereof with the Northeasterly line of the Right of Way of the Southern Pacific Railroad Company and running thence Northeasterly along said Southeastern line of Pope Street, 91 feet and 7 inches to the Southwestern line of the lands heretofore conveyed to Henry Heinrich Huttmann and wife, by deed of record in Book 136 of Deeds, at page 163, said Napa County Records, such point being the TRUE POINT OF BEGINNING; continuing Southeasterly along the Southwestern line of said lands conveyed to Huttmann 180 feet more or less, to the middle of Sulphur Springs Creek; thence continuing up the middle of said creek, in a general Southwesterly direction and following all the meanderings of the centerline thereof, 15 feet, more or less; thence continuing in a Northwesterly direction, parallel with the Southwestern line of said lands conveyed to Huttmann, to the Southeastern line of Pope Street; and thence continuing in a Northeasterly direction along the Southeastern line of Pope Street 15 feet, more or less, to the TRUE POINT OF BEGINNING.

EXHIBIT C

DESCRIPTION OF LANDS OF GRANTEE

The land referred to in this report is situated in the City of St. Helena, County of Napa, State of California, and is described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, distant thereon 126 feet and 7 inches Northeasterly from the point of intersection thereof with the centerline of the main tract of the Southern Pacific Railroad Company; running thence Northeasterly, along said line of Pope Street, 50 feet to the Southwestern line of the lot of land heretofore conveyed to Emma R. Davis Mooney by Deed recorded February 25, 1889, in Book 45 of Deeds at page 73, said Napa County Records; thence Southeasterly along the Southwestern line of lot conveyed to Mooney, 150 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a southwesterly direction, 50 feet, more or less, to the intersection thereof with a line drawn Southeasterly through the point of commencement and parallel with the Southwestern line of said lot conveyed to Mooney above referred to; thence Northwesterly, along last mentioned line, 180 feet more or less, to the point of commencement.

APN: 009-090-003

Attachment B

CITY OF ST. HELENA

RESOLUTION No. 2012-87

APPROVING CALISTOGA AFFORDABLE HOUSING (CAH) REQUEST FOR IMPACT FEE WAIVER FOR 8-UNITS OF AFFORDABLE HOUSING AT 1105 POPE STREET (TURLEY APARTMENTS)

RECITALS

A. On October 9, 2012 Calistoga Affordable Housing (CAH), developer for Turley Apartments, submitted a written request asking City Council for fee adjustment; and

B. Pursuant to St. Helena Municipal Code 3.32.120 Fee Adjustment, the City Council may grant request for fee adjustment to a developer who applies in written form, and the letter states the factual basis for the claim; and

C. Pursuant to Implementing Action HE 4.C of the certified 2009 Housing Element, the City of St. Helena may reduce, defer, or waive fees for affordable housing developments.

D. CAH has made a request in written form and has stated the factual basis for the claim, including that they propose to develop an 8-unit 100% affordable housing project; and

E. Based on examination of the letter, staff supports the factual basis for the claim and recommends that the City Council grant the request for fee waiver.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. While Turley Apartments will be subject to City project approval, the Council hereby approves CAH fee waiver request of up to $150,000 for an 8-unit 100% affordable housing project. In approving this waiver, the Council specifically resolves as follows: a) because this will be an 100% affordable housing project, the Council waives the projected housing impact fee; b) because the project will be a "city-center" complex proximate to commercial and public transportation, the Council waives the traffic mitigation fee; c) because the Council views the provision of affordable housing as

more livable community and the council therefore waives the public safety fees; and e) the city council agrees to contribute the impact fees of approximately $33,000 on behalf of CAH to water impact, sewer impact and storm drain impact.

Approved at a regular meeting of the St. Helena City Council on October 23, 2012 by the following vote:

AYES: Councilmembers White, Crull, Sanchez, Nevero, Mayor Britton
NOES: None
ABSENT: None

CITY OF ST. HELENA
Incorporated March 24, 1876
Reincorporated May 14, 1889
STATE OF CALIFORNIA

APPROVED:

Delford Britton
Mayor

ATTEST:

Delia Guijósa
City Clerk

Attachment C

CITY OF ST. HELENA

RESOLUTION No. 2013-49

APPROVING REQUEST FROM CALISTOGA AFFORDABLE HOUSING (CAH) FOR WAIVER OF ALL APPLICATION PROCESSING FEES FOR TURLEY FLATS, AN 8-UNIT 100% AFFORDABLE HOUSING AT 1105 POPE STREET

RECITALS

A. On July 3, 2013 Calistoga Affordable Housing (CAH), developer for Turley Flats, an 8-unit 100% affordable housing project, submitted a written request asking City Council for a waiver of application processing fees; and

B. Whereas, pursuant to St. Helena Municipal Code 17.08.190(D.)(1.) requires all development projects to file an amount estimated to cover processing costs "unless payment of fees have been waived by action of the Council: and

C. Whereas, pursuant to Implementing Action HE 4.C of the certified 2009 Housing Element, the City of St. Helena may reduce, defer, or waive fees for affordable housing developments; and

D. Whereas, CAH has made a request in written form and proposes to develop an 8-unit 100% affordable housing project; and

E. Whereas, staff supports the factual basis for the claim and recommends that the City Council grant the request for fee waiver; and

F. Whereas, the City of St. Helena and the City Council support opportunities to develop small, in-fill housing development projects in character with the neighborhood and community; and

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. While the Turley Flats application will be subject to City discretionary project approval, the Council hereby approves CAH request for a waiver of all application processing fees for an 8-unit 100% affordable housing project.

Approved at a regular meeting of the St. Helena City Council on July 9, 2013 by the following vote:

AYES: Councilmembers White, Sculatti, Pitts, Vice Mayor Crull
NOES: None
ABSENT: Mayor Nevero

CITY OF ST. HELENA
Incorporated March 24, 1876
Re-incorporated May 14, 1889
STATE OF CALIFORNIA

APPROVED:	**ATTEST:**
Sharon Crull	**Delia Guijósa**
Vice Mayor	**City Clerk**

July 3, 2013

To The City of St. Helena

Calistoga Affordable Housing requests that the City Council waive all application processing fees associated with the applications for entitlement of the Turley Flats project at 1105 Pope Street, St. Helena.

Calistoga Affordable Housing

[signature]

Larry G. Kromann, President

Attachment D

STAFF REPORT

DATE: October 14, 2014

TO: Mayor and City Council

Item No: ________

FROM: Jennifer Phillips, City Manager

RE: Consideration of resolution approving the allocation of $500,00 from the Affordable Housing Impact Fund for 8-units of affordable housing at 1105 Pope Street (Turley Apartments) and direct the City Manager to negotiate a funding agreement.

BACKGROUND

Calistoga Affordable Housing (CAH) was deeded property located at 1105 Pope Street for the sole purpose of building an affordable housing complex. CAH proposes to demolish the existing dilapidated single family use and construct Turley Flats, an eight unit apartment building for low income residents. As part of that effort, CAH will relocate the existing residents and they will be eligible to participate in the lottery used to select the eight new tenants. Turley Flats is proposed to be a 3-story complex with parking and storage on the ground floor and residential units on the top two floors. The complex is proposed for an area of offices and residential uses, and is designed to blend into its existing surroundings. Turley Flats is also deemed consistent with the City's General Plan Housing Element's goal of facilitating the development of a range of housing to meet the needs of all incomes.

On October 9, 2012, CAH made a formal request to the City of St. Helena to waive between $180,000 and $200,000 of development impact fees. The rationale for this request was to enhance CAH's ability to secure outside funding by minimizing the amount needed to meet its funding liability. In response to the October 9, 2014 request, the City Council adopted Resolution No. 2012-87, approving the fee waiver request for up to $150,000 for Turley Flats. The action was taken in light of the General Plan Housing Element's Implementing Action HE4.C: *Reduce, defer or waive fees for affordable housing developments. The City will establish a set of criterial for project eligibility to have fees reduced, deferred or waived. The City will explore higher incentives for affordable housing developments with units affordable to extremely low- and very low-income households.*

The Council's action included the following items totaling a maximum amount of $150,000:

- Waive Housing Impact Fee: because the project is 100% affordable
- Waive Traffic Impact Fee: because the project is located in an area of the City proximate to pedestrian and transit facilities
- Waive Civic Improvement Impact Fee: because the project is a desirable civic improvement
- Waive Public Safety Fee: because of the provision of safe, healthy and secure affordable housing that contributes to a more livable community

CITY OF ST. HELENA

RESOLUTION NO. 2014-~~80~~ 101

APPROVING AN ALLOCATION OF $478,000 FROM THE AFFORDABLE HOUSING IMPACT FUND FOR 8-UNITS OF AFFORDABLE HOUSING AT 1105 POPE STREET (TURLEY APARTMENTS)

RECITALS

A. Calistoga Affordable Housing (CAH) was deeded property located at 1105 Pope Street for the sole purpose of building an affordable housing complex.
B. On July 9, 2013, the City Council adopted Resolution No. 2013-49 waiving all application fees for Turley Flats. Estimated City fees associated with the project are $175,000 reducing the overall project cost to nearly $2 million.
C. CAH should increase their funding efforts with the goal of raising the $345,000.
D. CAH has confirmed they have secured a construction loan of $1.3 million through First Community Bank.
E. To stay within the spirit of the $478,417 housing grant originally requested by CAH, the City will contribute $500,000 to the Turley Flats projects.
F. The funds would be allocated as follows: $341,500 in housing grant and $158,500 in fee waivers. Based on this contribution, the project funding gap totals $143,294.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Approve CAH's request for $500,000 in funding participation for the Turley Apartments. Use of these funds would include the authorized $158,500 in fee waivers and contributions as outlined in Resolutions 2012-87 and 2013-49. Source of funds is the Affordable Housing Trust Fund.
2. Authorize the City Manager to negotiate a funding agreement with CAH and return to the City Council for final approval.

Approved at a Regular Meeting of the St. Helena City Council on October 14, 2014 by the following vote:

Ayes:	Councilmembers Pitts, White, Sculatti, Crull and Mayor Nevero
Noes:	None
Absent:	None
Abstain:	None

APPROVED:

Ann Nevero, Mayor

CITY OF ST. HELENA
Incorporated March 24, 1876
Reincorporated May 14, 1889
STATE OF CALIFORNIA

ATTEST:

Cindy Black

Cindy Black, City Clerk

1

Attachment E

CALISTOGA AFFORDABLE HOUSING
A Non-Profit Tax Exempt Corporation
1332 Lincoln Avenue
Calistoga, CA 94515

Cover Letter

Ms. Jennifer Phillips, City Manager
Noah Housh, Director
Planning and Community Improvement
City of St. Helena
1480 Main St.
St. Helena, CA 94574

RE: Turley project financing

Dear Jennifer and Noah,

The following insert is the Cover Letter that was attached to the Napa County Housing Grant requested by CAH for the Turley project.

CAH is providing a copy of the Matching Grant Application as an informational item regarding the most current update on the Turley project as well as to officially request that the City increase its subsidy of the project from $500,000 to $640,000. The County grant opportunity was presented to CAH as a matching grant to complete the project. The county is interested in the project and is willing to participate financially if its funds can encourage other donors/funders to fund the large gap of the project.

CAH is diligently working with all of its partners to immediately proceed with the State and City Building Permits, obtain final City Council approval on the City/CAH agreement, and finalize the details of the construction loan.

Please make CAH aware of any further information or items that may be required for this additional loan/grant request.

....

Cover Letter to Napa County

The Turley project was begun as a community project by vintner Larry Turley when he purchased the Pope St. parcel after becoming aware of the eviction of seven families from the property. Mr. Turley's donation of the property inspired CAH to make this project not only an affordable housing project but also provide a pilot example of a totally community based project without usage of

Federal/State funding that has proven to greatly increase the overall costs of the project with expensive overhead costs such as "prevailing wages."

After three years of working through the rigorous pre-development process leading to a building permit, CAH finds itself with a large financial gap of over $1 million. This shocking revelation comes within weeks of submitting the plans to the State (modular factory units) and City (non-factory construction).

To overcome this new obstacle, CAH must continue to seek community support as the timeframe for State/Federal funding is quite lengthy. CAH's application to the Napa County's Housing matching grant application not only fits within its original financing plan, it provides needed leverage to encourage other institutions/individuals to maximize their contributions. The following is CAH's plan ot quickly obtain the large gap funding and keep our keep the project on track to begin construction before the end of 2016:

- Obtain a county matching grant of $650,000 with the following entities providing matching funds/ or reduced costs:
    - City of St. Helena—$640,000 grant/loans (City has already stated they would provide grant/loan of $500,000. County grant provisions would increase that grant/loan to $640,000.

    - First Community Bank--$100,000 increase of construction loan to be converted to long term mortgage. CAH's has requested bank to reduce interest rate and increase the 30 yr. amortized loan to 35 yrs. for a $1.4 million loan.(original approved loan of $1,3 million.

    - CAH has contacted several community individuals such as Mr. Larry Turley regarding additional funding as part of the matching program. The response has been that local donors who have demonstrated they are committed to providing work force housing believe they have already provided over $500,000 in land donation, and pre-development funding and believe the City and County should now make their contribution. CAH's interpretation of their comments is that they believe they started the Turley project with their money and it is now time for the other community entities to provide their matching funds. Their comments were provided after CAH provided them with over 50 pages of project documentation of the project's activities and progress (or lack of progress). They also expressed their frustration with the current time consuming construction approval process. To date no funds have been offered.

    - CAH has been able to reduce over $300,000 in the overall construction bid costs by personally meeting with each bidder and reviewing their bid numbers regarding clarity of scope of work as well as accuracy of the numbers. CAH has also met with the engineers and architects to discuss cost reducing options. Options that have already been included in the final bid numbers include replacing plastered sections with fax look alike Hardiboard, constructing the roof on site instead on at factory. Other options still being worked on include revised Storm water management and drainage that could reduce costs by $75,000-$100,000. If additional cost reduction can be achieved before/during the Building Permit process, CAH will reduce the gap funding request for the County and City grants accordingly.

Project timeline

- Building Permit
  - State (factory cores) already in process
  - City (all non-factory items) October 27
- CAH/City of Calistoga agreement final presentation to City Council sometime in November
- Napa County Grant—acceptance of grant is needed before final presentation to City Council for agreement approval.
- Site work will begin as soon as City Permit is issued. Construction crew has penciled in preliminary beginning dates in Nov. subject to weather.
- Bank Construction loan—waiting for final approval of revised loan figures and signing. Is needed before final City Council agreement approval.

Basically, the County and City grant opportunity is THE salvation plan for this project. And in view of the recent interest throughout the county in the affordable housing question, the success of the Turley project can be a beginning demonstration of a county wide collaborative effort that will make a difference for the hundreds of working families in need of adequate, safe, and affordable housing.

Larry Kromann, Ed.D.
President

Attachment F

First American Title
Company of Napa

FIRST AMERICAN TITLE COMPANY OF NAPA

FIRST LOOK CHECKLIST

Will any of the following situation potentially affect your transaction:

- ☐ Will the principals be using a **POWER OF ATTORNEY**?
- ☐ Are any of the parties in title **INCAPACITATED OR DECEASED**?
- ☐ Has a **CHANGE IN MARITAL STATUS** occurred for any of the principals?
- ☐ Will the property be transferred to a **NEW TRUST, PARTNERSHIP OR CORPORATION?**
- ☐ Do the sellers of the property **RESIDE OUTSIDE OF CALIFORNIA OR THE UNITED STATES?**
- ☐ Have any of the principals **RECENTLY FILED BANKRUPTCY**?
- ☐ Are the principals involved in an **EXCHANGE WITH THIS PROPERTY**?

If you answered YES to any of these questions, please contact your escrow officer right away, so we can assure a smooth closing.

Remember, all parties signing documents must have a valid photo I.D. or driver's license for a notarial acknowledgment.

Thank you for helping First American Title Company of Napa serve you better.

1700 Second Street, Napa, CA 94559 (707) 254-4500
2390 California Boulevard, Napa, CA 94559 (707) 259-4980
1361 Main Street, St. Helena, CA 94574 (707) 963-7151

Attachment F

First American Title Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

PRELIMINARY REPORT

First American Title Insurance Company

First American Title Company of Napa

1361 Main Street, P.O. Box 178, St. Helena, CA 94574
Tel: (707) 963-7151 - Fax: (707) 963-1302

Property Address:
1105 Pope Street
St. Helena, CA 94574
Assessor's Parcel Number:
009-090-003
Buyer/Borrower:
Calistoga Affordable Housing

Direct Escrow Inquires to Escrow Officer:
Kate Hansen
Email: khansen@firstamnapa.com

Direct Title Inquiries to:
Lani Burguin
Email: MGlotzer@firstamnapa.com
Reference Number:

In response to the application for a policy of title insurance referenced herein, First American Title Insurance Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations or Conditions of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Attachment One. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Attachment One. Copies of the policy forms should be read. They are available from the office which issued this report.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The policy(s) of title insurance to be issued hereunder will be policy(s) of First American Title Insurance Company.

Please read the exceptions shown or referred to herein and the exceptions and exclusions set forth in Attachment One of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.

Dated as of November 3, 2016 at 7:30 A.M.

By: SMaaron
Authorized Signatory

Attachment F

First American Title
Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

The form of policy or policies of title insurance contemplated by this report is:

ALTA Loan Policy (6/17/06) (Extended Coverage)

A specific request should be made if another form or additional coverage is desired.

TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

CALISTOGA AFFORDABLE HOUSING,
A CALIFORNIA NON-PROFIT BENEFIT CORPORATION

THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A FEE

THE LAND REFERRED TO IN THIS REPORT IS DESCRIBED AS FOLLOWS:

See Exhibit A attached hereto and made a part hereof.

Attachment F

First American Title
Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

EXHIBIT A

LEGAL DESCRIPTION

The land referred to in this report is situated in the City of St. Helena, County of Napa, State of California, and is described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, distant thereon 126 feet and 7 inches Northeasterly from the point of intersection thereof with the centerline of the main tract of the Southern Pacific Railroad Company; running thence Northeasterly, along said line of Pope Street, 50 feet to the Southwestern line of the lot of land heretofore conveyed to Emma R. Davis Mooney by Deed recorded February 25, 1889, in Book 45 of Deeds at page 73, said Napa County Records; thence Southeasterly along the Southwestern line of lot conveyed to Mooney, 150 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a southwesterly direction, 50 feet, more or less, to the intersection thereof with a line drawn Southeasterly through the point of commencement and parallel with the Southwestern line of said lot conveyed to Mooney above referred to; thence Northwesterly, along last mentioned line, 180 feet more or less, to the point of commencement.

APN: 009-090-003

Attachment F

First American Title
Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

AT THE DATE HEREOF, EXCEPTIONS TO COVERAGE IN ADDITION TO THE PRINTED EXCEPTIONS AND EXCLUSIONS IN SAID POLICY FORM WOULD BE AS FOLLOWS:

1. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.

2. Any easement for water course over that portion of said land lying within Sulphur Springs Creek, together with any rights, interests and easements in favor of the public which exist, or are claimed to exist, over any portion of said land covered by water.

3. The terms and provisions contained in the document entitled "Declaration of Substandard Building and Possible Demolition Proceedings" recorded September 2, 1993 as Series Number 1993-0027946 of Official Records.

4. A deed of trust to secure an original indebtedness of $100,000.00 recorded November 10, 2014 as Series Number 2014-0023422 of Official Records.

Dated	:	October 28, 2014
Trustor	:	Calistoga Affordable Housing, Inc., a California Non-Profit Benefit Corporation
Trustee	:	First American Title Company
Beneficiary	:	First Community Bank
Loan No.	:	0001 802035 04

5. Rights of parties in possession.

6. Prior to the issuance of any policy of title insurance, the Company will require:

   With respect to CALISTOGA AFFORDABLE HOUSING, a California Non-Profit Benefit corporation:

   a. A certificate of good standing of recent date issued by the Secretary of State of the corporation's state of domicile.
   b. A certified copy of a resolution of the Board of Directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
   c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

-END OF EXCEPTIONS-

Attachment F

First American Title
Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

Information Notes:

a. The following taxes are shown for proration purposes only:

General and special taxes and assessments for the fiscal year 2016-2017.

First Installment	:	$27.58 PAID
Second Installment	:	$27.58 PAID
Tax Rate Area	:	3002
A. P. No.	:	009-090-003

b. The Assessor's Parcel Number(s), if any, contained in the legal description herein, are for quick identification purposes only, and are not a part of the actual legal descriptions.

c. Any statement regarding the acreage of the herein described land contained within the legal description in this report is derived from the public record and is for recorded deed purposes only. The Policy of Title Insurance contemplated by this report provides no insurance with respect to acreage and no acreage statement will appear within the legal description of such policy.

d. The County Recorder may charge an additional $20.00 recording fee, if not provided with a "Preliminary Change of Ownership Report" Form, for each Deed to be recorded. The purchaser is responsible for completing and signing this form.

e. Before an escrow can close, or funds placed in a Savings Account, the Seller must furnish a Taxpayer Identification Number to us so that we can file an IRS Form 1099S or its equivalent, with the Internal Revenue Service. This procedure is required by Section 6045 of the Internal Revenue Code.

f. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company of the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

Lenders Supplemental Report:

g. This report contemplates the issuance of a Lender's Policy of Title Insurance. We have no knowledge of any fact that would preclude the issuance of CLTA Form 100 Endorsement and a CLTA Form 116 Endorsement in conjunction with said policy.

h. Said CLTA Form 116 Endorsement will indicate that there is located on the land a Commercial Building, commonly known as: 1105 Pope Street St. Helena, CA 94574

i. According to the public records, there has been no conveyance of the land within a period of two years prior to the date of this report, except as follows:

NONE

esn
exn
11/08/2016
Becky Vargas/bv

Attachment F

First American Title Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

WARNING:

The map attached, if any, may or may not be a survey of the land depicted hereon. First American disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

CLICK HERE FOR MAP

Included are the documents that you (or someone on your behalf) requested. As required by Section 12956.1(b) of the Government Code, please take note of the following:

If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restriction under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

If this cover page is a copy which has been sent by facsimile, e-mail or other form of electronic transmission, please note that in the original of this page the above notice is printed in 18-point boldface type.

Restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such restrictions violate 42 U.S.C. §3604(c).

Attachment F

First American Title
Company of Napa

ORDER NO: **00099889-KHE**
UPDATED REPORT #: 2

PRIVACY POLICY

We are Committed to Safeguarding Customer Information
In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability
This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record of from another person on entity. First American has also adopted guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Type of Information
Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information
We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested for us, or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security
We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Attachment F
Escrow No.: **00099889-002-KHE**

ATTACHMENT ONE (Revised 06-03-11)

CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY – 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
   Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (02-03-10)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
   a. building;
   b. zoning;
   c. land use;
   d. improvements on the Land;
   e. land division; and
   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

Attachment F

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
4. Risks:
   a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
   b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
   c. that result in no loss to You; or
   d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.

   This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$10,000.00
Covered Risk 18:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 19:	1.00% of Policy Amount Shown in Schedule A or $5,000.00 (whichever is less)	$25,000.00
Covered Risk 21:	1.00% of Policy Amount Shown in Schedule A or $2,500.00 (whichever is less)	$5000.00

AMERICAN LAND TITLE ASSOCIATION
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

* land use
* improvements on the land
* land division
* environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

* a notice of exercising the right appears in the public records
* on the Policy Date
* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking

3. Title Risks:

* that are created, allowed, or agreed to by you
* that are known to you, but not to us, on the Policy Date – unless they appeared in the public records
* that result in no loss to you
* that first affect your title after the Policy Date – this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.
5. Lack of a right:

* to any land outside the area specifically described and referred to in Item 3 of Schedule A

Attachment F

OR
* in streets, alleys, or waterways that touch your land
This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

2006 ALTA OWNER'S POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;

Attachment F

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
      (i) the occupancy, use, or enjoyment of the Land;
      (ii) the character, dimensions, or location of any improvement erected on the Land;
      (iii) the subdivision of land; or
      (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c),13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.

Attachment F

6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

Attachment G

RECEIVED

AUG 2 9 2013

CITY OF ST.HELENA

CITY OF ST. HELENA, STATE OF CALIFORNIA DESIGN REVIEW, USE PERMIT AND DEMOLITION PERMIT NO. 2013-26 GRANTED TO 1105 POPE STREET

PROPERTY OWNER: Calistoga Affordable Housing   APN: 009-090-003

Recitals

1. Applicant Calistoga Affordable Housing submitted applications for Design Review, Use Permit and Demolition Permit approval to remove an existing, dilapidated 3,100 sq. ft. single-family residence and replace it with a new 3-story 6,780 sq. ft. multi-family affordable housing project (the "Project"). Pursuant to Municipal Code sections 17.08.030 and 17.40.030, the Planning Director determined that the proposed Project is similar to the other conditionally permitted uses in the MR Zoning District. The Project proposes six (6) 2-bedroom units and two (2) 3-bedroom units. The project site is a 9,525 sq. ft. parcel located at 1105 Pope Street. In addition, the Applicant has requested a density bonus and certain additional development concessions and incentives in accordance with State Density Bonus Law (Government Code section 65915) as implemented by Chapter 17.144 of the Municipal Code.
2. The Planning Commission of the City of St. Helena, State of California, held duly noticed public hearings on July 16, 2013, and August 20, 2013. Evidence, both written and oral, including staff reports and supporting documentation, was presented at said hearings.

Resolution

The Planning Commission of the City of St. Helena, State of California, hereby confirms the determination of similar use, approves the Design Review, Use Permit and Demolition Permit applications, and grants the requested density bonus and development concessions and incentives on the following basis:

A. The Planning Commission hereby finds that this Project is exempt from the requirements of CEQA pursuant to Section 15301 of the CEQA Guidelines (14 Cal. Code Regs. § 15000 *et. seq.*), Class 1 which exempts demolition of one single family residence and accessory structures. The new construction is exempt pursuant to Section 15332 of the CEQA Guidelines, Class 32 which exempts infill development. Moreover, the proposed Project replaces the existing single-family use on the site that had previously been converted to four units with a more compatible, better designed use that integrates more seamlessly with nearby development. Public comments raised some concerns regarding potential project impacts associated with increased traffic, water and sewer usage, and on-street parking demand. Staff has reviewed these comments and studied the Project, and based on its review, the Planning Commission finds that these concerns are unfounded. As conditioned, the Project will provide sufficient on-site parking to ensure that the Project will not have a significant adverse impact on the adjacent neighborhood. Traffic generation associated with the Project is consistent with existing and anticipated uses in the neighborhood, and the existing infrastructure is adequate to accommodate the additional traffic associated with the Project. Finally, the water use report submitted by the applicant demonstrates that Project's water use will not exceed pre-project use due to the fact that the previous use of the parcel as

Attachment G

an illegal 4-unit residence. The proposed replacement structure will be built with water efficient fixtures and appliances resulting in no net increase over baseline use, and the City has sufficient water supplies to meet the Project's expected water usage demands. Further, General Plan Policy HE1.D gives the Project, which includes 8 affordable housing units priority access to water and sewer resources over other new projects should the capacity of the local water or sewer systems become inadequate to meet the full demand for new connections. Thus, there is no substantial evidence to suggest that the Project will have significant adverse impacts on the environment, and the Planning Commission finds that reliance on the Class 32 categorical exemption for infill development is appropriate under CEQA. Additionally, the Planning Commission finds, based on the foregoing evidence, that approval of the Project is also exempt from the requirements of CEQA because it can be seen with certainty that construction of the Project has no potential to cause significant effects on the environment and, therefore, the Project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

B. Pursuant to Section 17.164.050.E of the Municipal Code, the Planning Commission makes the following findings to support a motion to approve a Demolition Permit:

1. *That, based on the public record and testimony presented at a public hearing, the building is determined not to be a significant architectural or historical building.*

2. *That the demolition does not eliminate elements that are required to maintain the essential character of the neighborhood.*

C. Pursuant to Sections 17.080.030 and 17.40.030 of the Municipal Code, the Planning Commission makes the following findings to support the determination that the Project is similar to the uses permitted with a use permit in the Medium Density Residential (MR) District:

1. The Project site is zoned Medium Density Residential (MR). The permitted uses in the MR Zoning District are governed by Chapter 17.40 of the Municipal Code. Pursuant to Municipal Code Section 17.40.010, residential densities in the MR zoning district "shall not be less than 5.1 dwelling units per acre nor more than sixteen (16) dwelling units per acre." The MR district regulations list uses that may be approved by a use permit. The list includes "new attached duplex or triplex units . . . , compatible with the design and architecture of the neighborhood and consistent with the density and floor area ratio of the district," and "residential condominium and townhouse dwelling projects subject to the provisions of Chapter 17.112, provided that the density and development standards of the MR district shall be observed." Section 17.40.030(L) further provides that "[o]ther similar uses found consistent with the General Plan and MR district pursuant to Chapter 17.08."

2. The proposed Project is an 8-unit residential complex similar in character to a residential condominium and townhouse dwelling project. The architectural design and physical layout of the Project is consistent with the layout and design one would anticipate for a residential condominium or townhouse project of comparable size. The project design has been skillfully crafted to preserve the development character of the immediate area, while allowing a mix of housing types that make for a more sustainable neighborhood and community. Moreover, for the reasons more fully discussed below, the proposed Project is consistent with both the General Plan and the MR District and advances several important General Plan policies.

Attachment G

3. *The mix of uses in the immediate area make the proposed Project compatible with surrounding uses and consistent with the policies in the General Plan articulated in the August 20, 2013 staff report for the Project. The Project proposes a density that exceeds the maximum normally permitted under the MR District regulations. However, 100 percent of the Project will be affordable housing, and the applicant has requested and is entitled to a density bonus and certain additional concessions and incentives more particularly described in Section D below. Under State Density Bonus Law, the City must exclude such density bonuses when determining whether a particular project is consistent with applicable density regulations. Further, the density bonus here actually provides an additional buffer between the heavier business and professional uses at 1127 Pope Street and the existing duplex and multiplex uses to the east of the Project site. Specifically, the higher density proposed by the Project serves as a transition from the multi-story office structure to the west (1127 Pope Street) and provides both a visual and physical buffer between the office use and the commercial uses farther to the west and the duplex at 1103 Pope Street and the fourplex at 1046 Pope Street to the east of the Project. Continuing further to the east down Pope Street, the lots are actually zoned for high-density residential and are developed with comparable multi-family housing. The proposed Project introduces higher density development in an area where it is appropriate adjacent to commercial uses along Main Street, as encouraged by General Plan Policy HE2.1. The higher density housing introduced by the Project is located near the center of town close to recreation and necessary services (such as dining, shopping, and transit), as required by Land Use Policy 2.6.16, and helps the City accommodate its share of the regional housing needs for affordable housing while providing the future residents of the project with easy access to recreation, transit, and other services.*

4. *Based on the foregoing, the Planning Commission confirms the determination of the Planning Director that the proposed Project is similar to the other conditionally permitted uses in the MR Zoning District pursuant to Municipal Code Section 17.40.030.*

D. The Planning Commission makes the following Use Permit findings, Section 17.168.050, to support the motion to approve the Use Permit:

1. *That the proposed use would not be in conflict with the City's General Plan.*
2. *That the proposed use would not be injurious to public health, safety, or welfare.*
3. *That the proposed use would be compatible with surrounding land uses and would not conflict with the purpose established for the district within which it would be located.*
4. *That allowing the proposed use would not conflict with the City's goal of maintaining the economic viability of a local serving economy.*
5. *That granting the use permit would not set a precedent for the approval of similar uses whose incremental effect would be detrimental to the City or would be in conflict with the General Plan.*
6. *That the proposed use would not make excessive demands on the provision of public services including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.*
7. *That the proposed use would not generate odors, fumes, dust, light, glare, radiation or refuse that would be injurious to surrounding uses or to the community.*
8. *That the proposed use would not generate levels of noise that adversely affect the health, safety, or welfare of neighboring properties or uses.*

Attachment G

9. *That the proposed use would not generate traffic noise in excess of the "normally acceptable" range identified in the General Plan.*
10. *That the proposed use would provide adequate ingress and egress to and from the proposed location.*
11. *That, as demonstrated on a detailed plan submitted by the applicant, adequate off-street parking to accommodate the long term parking needs of employees and business owners and customers is available.*
12. *That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.*

In making the foregoing findings regarding the use permit, the Planning Commission specifically relied on the following facts and findings:

The General Plan designates the subject property as Medium Density Residential. This district provides for single-family detached homes, duplexes and triplexes, residential condominium or townhouse dwelling projects, accessory dwelling units, limited agricultural uses and compatible uses. The Project proposes an 8-unit residential development with a density of 36 units per acre which exceeds the maximum density generally permitted under the Medium Density Residential designation. However, goals, policies and implementing actions outlined in the Land Use and Housing Elements of the General Plan allow for an increase in project density through density bonuses to facilitate the development of affordable housing. More importantly, State Density Bonus Law (Government Code section 65915), as implemented by Municipal Code Chapter 17.144, expressly provides for both mandatory and discretionary density bonuses that permit the Project's density to exceed the otherwise allowable maximum density.

Additionally, Chapter 17.144 of the St Helena Municipal Code outlines specific concessions or incentives available to housing projects affordable to lower income, very low income, and moderate income households. In order to obtain the maximum mandatory density bonus, a developer need only propose that 20 percent of a project be affordable to low-income households ***or*** 11 percent be affordable to very-low income households. Here, the applicant has proposed that 100 percent of the Project be affordable, with 60 percent reserved for low and very-low income households and 40 percent be reserved for moderate income households. Thus, the Project qualifies for the maximum mandatory density bonus of 35 percent. In addition, as discussed hereinafter, the Project has requested an additional discretionary bonus which the Planning Commission finds is both warranted and consistent with the applicable provisions of the General Plan and Municipal Code.

The August 20, 2013 staff report on the Project identified and discussed 14 separate land use and housing element policies that the Project advances. The mix of uses in the immediate area make the proposed Project compatible with surrounding uses and consistent with these policies for the reasons discussed more fully in the staff report. Specifically, the higher density proposed by the Project serves as a transition from the multi-story office structure to the west and provides both a visual and physical buffer between the commercial uses to the west and the multiplex uses to the east. Continuing down Pope Street, the lots further to the east are actually zoned for high-density residential and are developed with comparable multi-family housing. The Project introduces higher density development in an area where it is appropriate—adjacent to commercial uses along Main Street, as encouraged by General Plan

Attachment G

Policy HE2.1. The higher density housing introduced by the Project is located near the center of town close to recreation and services, as required by Land Use Policy 2.6.16. and helps the City accommodate its share of the regional housing needs for affordable housing while providing the future residents of the project with easy access to recreation, transit, and other services. In addition, the project design has been skillfully crafted to preserve the development character of the immediate area, while a mix of housing types that make for a more sustainable neighborhood and community.

A member of the public raised concerns that the proposed Project does not conform to Medium Density designation because of the numerous "variances" from the Municipal Code and the higher proposed density. The question is not whether the square footage of the proposed development matches the specific density envisioned for various uses, but whether the Project is compatible with, and does not frustrate, the General Plan's goals and policies. The courts have stated "[b]alance does not require equivalence, but rather a weighing of pros and cons to achieve an acceptable mix." (*Friends of Lagoon Valley v. City of Vacaville*, (2007) 154 Cal.App.4th 807, 822.) The "variances" the commenter referred to are the development concessions the applicant is entitled to apply for under State Density Bonus Law, as implemented by Municipal Code Chapter 17.144. As discussed in depth, below, Government Code Section 65915 requires the City to accommodate bonus units by waiving or modifying zoning standards. These concessions do not constitute "variances" in the normal sense, and, therefore, it is not necessary for the City to make variance findings to approve a modification or waiver under Government Code section 65915(e). These concessions are expressly intended to encourage developers to construct affordable housing.

Under State Density Bonus Law, the City must exclude such density bonuses when determining whether a particular project is consistent with applicable density regulations of the General Plan. Moreover, the density bonus here actually provides an additional buffer between the heavier business and professional uses along Main Street and the more residential uses along Pope Street. For the foregoing reasons, the Planning Commission finds that the Project is compatible with and would not frustrate the policies of the General Plan. Nor would the Project be injurious to public health, safety, or welfare. The Project introduces badly needed affordable housing in a design that is compatible with and blends well with existing development in the project area.

Government Code section 65915 entitles owners of residential projects that include specified levels of affordable housing to apply for and receive certain density bonuses. In addition, Section 65915 requires the City to grant such applicants a certain number of additional concessions or incentives that contribute significantly to the economic feasibility of lower income housing. Chapter 17.144 of the Municipal Code outlines specific concessions or incentives available to housing projects affordable to lower income, very low income, moderate income, senior households, and for condominium and planned development projects.

Chapter 17.144 provides the following pertinent definitions:

__Concession or incentive__: means and includes, but is not limited to, a modification of zoning code requirements such as reductions in lot size, frontage requirements, setbacks, yards, parking, or open space or fencing requirements; height increases; a modification of architectural design requirements.

Attachment G

Density bonus: means a density increase of at least twenty percent (20%) unless a lesser percentage is elected by the developer, over the otherwise maximum allowable residential density for the site under the applicable zoning district and land use element of the general plan. The amount of the density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 17.144.030. For each one percent increase above ten percent (10%) in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of thirty-five percent (35%). For each one percent increase above five percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of thirty-six percent (36%). All density calculations resulting in fractional units shall be rounded up to the next whole number.

In accordance with State Density Bonus Law and Chapter 17.144, the City must grant a density bonus when a developer applies to reserve at least ten percent (10%) of its development for low income households, or five percent (5%) for very low income households. (*See* Gov. Code § 65915(b)(1)(A)-(B) and SHMC § 17.144.030(A).) Further, if an applicant proposes a qualifying project, it must be granted any additional requested concessions *unless* the City makes certain limited findings. To deny a particular concession or incentive required by the applicant, the City must adopt findings (supported by substantial evidence in the record) that the particular concession or incentive is not needed to achieve affordability or would threaten public health and safety or a historic structure, or would otherwise be contrary to state or federal law. (*See* Gov. Code § 65915(d)(1).) In addition, Government Code section 65589.5 further limits the City's ability to deny affordable housing projects certain very narrow findings which are very difficult to support.

The purpose of the density bonus law is to encourage and provide incentives to developers to include low- and moderate-income housing units in their developments. Pursuant to Government Code section 65915 and Section 17.144.030(A) of the Municipal Code, an applicant may request a density bonus and other concessions or incentives for a residential or residential mixed-use project of five or more units that satisfy one or more of the following criteria:

- *At least ten percent (10%) of total units are designated for lower income households;*
- *At least five percent of the total units are designated for very low income households;*
- *For a condominium project or planned development project only, at least ten percent (10%) of total units are designated for moderate income households.*

The density bonus provided under the statute increases with the percentage and type of low-income housing units to be built, with the bonus ranging from a low of 5 percent to a maximum of 35 percent. In order to obtain the maximum mandatory density bonus, a developer need only propose that that 20 percent of a project be affordable to low-income households, 11 percent be affordable to very-low income households, ***or*** 40 percent affordable to moderate-income households.

Here, the applicant has proposed that 100 percent of the Project be affordable—with 40 percent reserved for moderate-income households and 60 percent reserved for low and very-low income households. The amount reserved for each income level is sufficient, by itself, to qualify for the

Attachment G

maximum density bonus. Thus, the City must grant the applicant at least a mandatory density bonus of 35 percent.

Under the MR designation the Project would normally be limited to a density of no more than 16 units per acre. For the project site, this would translate to 3.5 market rate units. The Project proposes 8 units, requiring a bonus of an additional 4 units. Granting the applicant the maximum mandatory density bonus of 35 percent would permit a density of 21.6 units per acre. This would permit development of 4.72 units on the project site (which gets rounded up to 5 pursuant to State Density Bonus Law).

In addition to the mandatory density bonus described above, State Density Bonus Law also provides discretionary density bonuses. Government Code section 65915(n) provides:

"If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section."

Chapter 17.144 permits the City to grant the additional discretionary density bonuses contemplated by State Law. Specifically, Chapter 17.144 defines "concession" as "a modification of zoning code requirements." As previously discussed, the purpose of the density bonus law is to encourage the development of affordable housing units. Accordingly, when an applicant seeks a density bonus for a housing development that includes the required percentage of affordable housing, the mandatory provisions of Government Code section 65915 require that the City not only grant the density bonus, but provide additional incentives or concessions where needed based on the percentage of low-income housing units. Here, the applicant is proposing a project that will be 100 percent affordable, including 60 percent (or 5 units) that will be reserved exclusively for low and very-low income households. To make the project economically feasible, the applicant is requesting an additional three (3) bonuses bonus units based on its commitment to restrict the rents within the affordability index for lower income households for sixty percent (60%) of the units. For the reasons discussed more fully below in the analysis of the requested concessions and other substantial evidence in the record, the requested discretionary bonus is necessary to make the Project economically feasible. The additional bonus units are required because to project lacks any market-rate housing or commercial component to offset the costs of constructing, operating, and maintaining 8 affordable units on a long-term basis.

In addition to density bonuses, the Planning Commission makes the following findings with respect to the requested concessions:

Concession 1 - *Increase in Maximum Floor Area (FAR)*: The maximum floor area for the 9,525 sq. ft. parcel is 3,000 sq. ft. The Project proposes a floor area of 6,780 sq. ft. The Project will allow for development of affordable residential units less than one block from Main Street and St Helena's downtown core. Government Code section 65915(e) and Municipal Code section 17.144060 allow an applicant to request waivers or modifications of development standards in order to construct a project proposed under State Density Bonus Law. Further, the law requires the City to waive development standards if these standards would preclude construction of density bonus units in a particular proposed project. Substantial evidence in the record demonstrates that the total of 4 density bonus units is required to make the project, which proposes that all eight (8) units would be restricted to below market rate rents, economically feasible. The density bonus units cannot be accommodated within the otherwise maximum allowable residential building envelope of the MR Zoning District, which allows a maximum FAR of only 3,000 square feet for the project site, and therefore the MR Zoning District FAR standards must be modified to allow a greater FAR for the project. The standard mechanism for effecting such a modification to the applicable development standards is to apply for a variance. However, it is not necessary for the City to make variance findings to approve a modification or waiver under Government Code section 65915(e), because Section 65915 requires the City to accommodate bonus units by waiving or modifying zoning standards.

Concession 2 - *Increase in Maximum Allowable Height*: The maximum height allowable in the MR district is 30'. The project proposes a height of 36'. The proposed structure, while above the allowed maximum height, is not inconsistent with other existing commercial and residential building heights in the immediate project vicinity. For the reasons discussed under Concession 1, the additional height is necessary to make the proposed project affordable and to accommodate the 8 affordable units.

Concession 3 - *Setbacks/Yards*: The Project proposes the following reduced setbacks:

- Front: 11' (20' required)
- West side: 10' (15' required)
- East side: 5' (15' required)

The Project is adjacent to a commercial/office building to the west and single-family, multi-family and commercial uses to the east. All adjacent/nearby uses are legal non-conforming in regards to setback requirements. The project went through a series of drafts the version presented provides the best combination of separation between adjacent parcels, areas for open space/landscaping, a reasonable building height and livable floor plans. For the reasons discussed under Concessions 1 and 2, above, the reduced set backs are necessary to make the proposed project affordable and to accommodate the 8 affordable units and amenities they provide lower income households.

Concession 4 - *Parking Reduction*: The Project requires two (2) on-site parking spaces per unit or a total of 16 on-site parking spaces. The project provides a total of 8 covered on-site parking spaces. The applicant is requesting that the parking requirement be reduced to one (1) on-site parking space per unit. The applicant states that the central location of the project and proximity to downtown should mitigate the need for additional parking. The project site is located less than a block from the heart of downtown and has easy walking access to grocery shopping, dining, transit, recreation, and other necessary amenities. More importantly, Government Code section 65915(p) expressly requires the City to grant parking concessions if requested by the applicant. While a suggestion was made that additional on-site parking be provided in tandem spaces to ensure that the project provides sufficient off-street parking for its future residents and minimizes any potential impact to on-street parking, the Planning Commission finds that such a design is undesirable because it would eliminate the children's play area planned for the project site to the detriment of the future residents of the Project. Moreover, the Planning Commission finds that the central location of the project and proximity to essential services downtown will reduce

Attachment G

potential residents' reliance on vehicles, and thereby mitigate any potential impact to on-street parking. Further, the Planning Commission is requiring the applicant to include a restriction in the rental agreement for all 8 units that prohibits residents from having more than one vehicle per unit. The Planning Commission finds that the requested parking concession is necessary to make the project economically feasible. As conditioned by this Resoluiton, the Planning Commission finds that the Project will provide sufficient on-site parking to ensure that the Project will not have a significant adverse impact on the adjacent neighborhood.

Concession 5 - *Three Additional Bonus Units*: The project requests an additional density bonus of 3 units in order to make the project economically feasible. As already noted, the project applicant is proposing a project that will be 100 percent affordable, including 60 percent (or 5 units) that will be reserved exclusively for low and very-low income households. To make the project economically feasible, the applicant is requesting an additional three (3) bonuses bonus units based on its commitment to restrict the rents within the affordability index for lower income households for sixty percent (60%) of the units. Chapter 17.144 permits the City to grant the additional discretionary density bonuses as a "concession," which is defined as "a modification of zoning code requirements." The additional bonus units are required because to project lacks any market-rate housing or commercial component to offset the costs of constructing, operating, and maintaining 8 affordable units on a long-term basis. Substantial evidence in the record demonstrates that the total of 4 density bonus units is required to make the project, which proposes that all eight (8) units would be restricted to below market rate rents, economically feasible. Anything less than the 8 units proposed would have the effect of precluding construction of the affordable development.

The entire aim of Section 65915 is to provide incentives to developers to construct housing for seniors and low-income families. It would undermine this policy to interpret the mandatory bonus provisions as imposing an absolute cap, since such a rule would prevent developers from negotiating to obtain a higher density bonus in exchange for including even more low -income or senior housing than is provided for in Section 65915. Thus, the Planning Commission finds that the Municipal Code and State Density Bonus Law provide the authority for the City to grant discretional density bonus concession in addition to the mandatory density bonus discussed above. In making this determination, the Planning Commission is cognizant of the decisions in *Wollmer v. City of Berkeley*, (2009)179 Cal.App.4th 933, and *Friends of Lagoon Valley v. City of Vacaville*, (2007) 154 Cal.App.4th 807, both of which upheld the grant of discretionary density bonuses in addition to mandatory maximum density bonuses, and finds that the Planning Commission's decision embodied by this Resolution is consistent with both the City's Municipal Code requirements governing density bonuses and development in the MR District as well as the decisions in *Wollmer* and *Friends of Lagoon Valley*.

E. The Planning Commission determines the project is in compliance with the following Design Review criteria of Municipal Code Section 17.164.030.

1. *To promote those qualities in the environment which bring value to the community.*
2. *To foster the attractiveness/functional utility of the community as a place to live & work.*
3. *To preserve the character & quality of our heritage by maintaining the integrity of those areas which have a discernible character or are of special historic significance.*
4. *To protect certain public investments in the area.*

Attachment G

5. *To encourage where appropriate, a mix of uses within permissible use zones.*
6. *To raise the level of community expectations for the quality of its environment.*

The following design criteria were considered by the Planning Commission in review of this application:

1. *Consistency and compatibility with applicable elements of the general plan;*
2. *Compatibility of design with the immediate environment of the site;*
3. *Relationship of the design to the site;*
4. *Determination that the design is compatible in areas considered by the board as having a unified design or historical character;*
5. *Whether the design promotes harmonious transition in scale and character in areas between different designated land use;*
6. *Compatibility with future construction both on and off the site;*
7. *Whether the architectural design of structures and their materials and colors are appropriate to the function of the project;*
8. *Whether the planning and siting of the various functions and buildings on the site create an internal sense of order and provide a desirable environment for occupants, visitors and the general community;*
9. *Whether the amount and arrangement of open space and landscaping are appropriate to the design and the function of the structures;*
10. *Whether sufficient ancillary functions are provided to support the main functions of the project and whether they are compatible with the project's design concept;*
11. *Whether access to the property and circulation systems are safe and convenient for pedestrians, cyclists and vehicles;*
12. *Whether natural features are appropriately preserved and integrated with the project;*
13. *Whether the materials, textures, colors and details of construction are an appropriate expression of its design concept and function and whether they are compatible with the adjacent and neighboring structure and functions;*
14. *In areas considered by the board as having a unified design character or historical character, whether the design is compatible with such character;*
15. *Whether the landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment and whether the landscape concept depicts an appropriate unity with the various buildings on the site;*
16. *Whether plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety which is suitable to the climate of St. Helena;*
17. *Whether sustainability and climate protection are promoted through the use of green building practices such as appropriate site/architectural design, use of green building materials, energy efficient systems and water efficient landscape materials.*

F. The Planning Commission approves the Design Review, Use Permit and Demolition Permit for the above-described project with the following conditions of approval. The project shall be in conformance with all city ordinances, rules, regulations and policies in effect at the time of issuance of a building permit. The conditions noted below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

Attachment G

1. The permits shall be vested within one (1) year from the date of final action. A building permit for the use allowed under this approval shall have been obtained within one (1) year from the effective date of this action or the approval shall expire, provided however that the approval may be extended for up to two (2) one-year periods pursuant to the Municipal Code, Section 17.08.130, Extension of Permits and Approvals. Any request for an extension of this approval shall be justified in writing and received by the Planning Department at least thirty (30) days prior to expiration.
2. These approvals are valid for this use only. New permits must be applied for upon any change in use. These permits will expire if the use is discontinued pursuant to Municipal Code Section 17.08.120, Term of Permits and Approvals.
3. The approvals shall not become effective until fourteen (14) calendar days after approval. providing that the action is not appealed by the City Council or any other interested party within that 14-day period.
4. All required fees, including planning fees, development impact fees, residential in-lieu housing fees, building fees, toilet retrofit fees, and St. Helena Unified School District fees shall be paid prior to issuance of a building permit. Fees shall be those in effect at the time of the issuance of the building permit.
5. The applicant shall defend and indemnify and hold the City, its agents, officers, and employees harmless of any claim, action or proceedings to attack, set aside, void or annul an approval so long as the City promptly notifies the applicant of any such claim, action, or proceedings and the City cooperates fully in the defense of the action or proceedings.
6. Provided they are in general compliance with this approval, minor modifications may be approved by the Planning Director.
7. Pursuant to Municipal Code Section 17.08.110, this permit shall run with the land and shall be binding upon all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to their benefit and benefit of the City of St. Helena.
8. The primary purpose of this review is for compliance with the General Plan and Zoning Ordinance. The property owners or their designee shall be responsible for meeting with the Building Official/Fire Inspector to review compliance with Building and Fire Codes, including fire protection systems and any applicable accessibility standards of Title 24.
9. Construction shall be in compliance with plans submitted and reviewed by the Planning Commission on August 20, 2013, except as modified herein. The Planning Director may also authorize minor modifications to the plans.
10. Subject to the Affordable Housing conditions set forth below, the permits authorize a density bonus enabling the project to increase the allowable density from 3.2 to 8 units for this specific parcel. This density bonus is consistent with the provisions outlined in section 17.144.030(A) of the St Helena Municipal Code.
11. Subject to the Affordable Housing conditions set forth below, the permits authorize concessions to the maximum building area, building height, setbacks and parking requirements in recognition

Attachment G

that the project will be 100% affordable with at least 60% of the units affordable at the low and very-low affordability ranges. These concessions are consistent with the provisions outlined in section 17.144.050(B) of the St Helena Municipal Code.

12. Exterior lighting shall be directed or shielded to prevent glare onto the public roadway or adjacent properties.

13. Property owners within the district shall recognize that there exists a right to farm properties within the district and in the vicinity of the district. There is a good faith expectation that no complaints will occur regarding legal, normal agricultural activities on properties in the district or in the vicinity of the district. Such activities may include day or night disbursement of chemicals, and creation of dust, noise, or fumes.

14. Prior to issuance of a Building (Demolition) Permit the applicant shall contact the Bay Area Air Quality Management District to determine if a job number (J#) is required for demolition. A copy of the notification with the J# shall be submitted to the Building Department.

15. To reduce disturbance of residents in the project vicinity, construction activities which generate noise that can be heard at the property line of any parcel of real property within the City limits shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Saturday. Delivery of materials/equipment and cleaning and servicing of machines/equipment shall be limited to 7:00 a.m. to 6:00 p.m. Exceptions to these time restrictions may be granted by the Public Works Director for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise that may be unreasonably offensive to neighbors as to constitute a nuisance. The City Engineer must be notified and give approval in advance of such work. No construction activities shall occur on Sundays or federal or local holidays that generate noise that can be heard at the property line of any parcel of real property within the City limits.

16. To reduce any potential impacts to on-street parking, the applicant (or any successor in interest) shall include a restriction, satisfactory in form to the City Attorney, in the rental agreements for all 8 units limiting the number of vehicles per unit to one. This requirement shall also be set forth in the regulatory agreement required by Affordable Housing Condition No. 5, below, which shall be recorded against the property in accordance with the terms and conditions of the Density Bonus Agreement.

Affordable Housing Conditions

1. Affordable Units. Pursuant to Government Code Section 65915 and SHMC Section 17.144.030, and as a condition prerequisite to finding the Project consistent with the General Plan, not less than one hundred percent (100%) of all dwellings developed as part of the Project shall be made affordable to persons and families of low and moderate income ("Affordable Units"). (The terms "very low income," "lower income" and "moderate income" are hereinafter collectively referred to as "Target Households"). In exchange for the foregoing commitment, the Project is hereby granted a thirty-five percent (35%) density bonus, permitting the development of eight dwelling units on the property. In compliance with this condition, the Project shall be developed as follows:

Attachment G

a. A total of eight Affordable Units, six units each with a minimum of two bedrooms and two units each with a minimum of three bedrooms, shall be developed in conjunction with the Project.

b. Not less than sixty percent (60%) or five dwelling units shall be reserved for occupancy by, and affordable to, persons and families of very low and low income.

2. Duration of Affordability. Except to the extent a longer period of time may be required by other provisions of law, all Affordable Units required shall remain affordable, and occupied by, the Target Households for the longest feasible time, but for not less than the 30 years as required by Government Code Section 65915(C)(1) and SHMC Section 17.144.040(B).

3. Operative Terms. The determination of income, computation of affordable housing costs, definition of Target Households and all other operative terms bearing on the provision of the Affordable Units shall be governed by the provisions of the Government Code Section 65915(c)(1) and SHMC Section 17.144.040(D).

4. Density Bonus Agreement. Prior to the issuance of building permits for the Project, the Applicant shall enter into a Density Bonus Agreement with the City in accordance with the provisions of Section 17.144.040(B) to ensure the continued affordability of the Affordable Units. The form and content of the Density Bonus Agreement shall be determined by the City and, among things, address: (i) the size, type and location of Affordable Units to be constructed on-site; (ii) affirmative marketing procedures and the City's right of first refusal to occupy Affordable Units with Target Households of its choosing; (iii) price and resale restrictions, with the City's right to recapture a share of equity for sales that occur prior to expiration of the affordability period; (iv) income verification, tenant screening, eligibility re-certification and inspection procedures, with the Developer's obligation to pay an annual monitoring fee for the term of required affordability; and (v) tenant relocation requirements, rights of continued occupancy and tenant occupancy standards. The Affordable Housing Agreement in general, the Affordable Units in particular, shall conform to be governed by SHMC Chapter 17.144.

5. Covenants Running with the Land. Prior to the issuance of occupancy permits for the Affordable Units, a regulatory agreement shall be executed and recorded against the property in accordance with the terms and conditions of the Density Bonus Agreement. Said regulatory agreement shall be superior to all other liens on the property, shall constitute covenants and restrictions implementing the affordability covenants set forth in this Agreement, and shall run with the land.

6. Incentives and Concessions. In addition to the density bonus described above, the Applicant has been granted the following development concessions and incentives to contribute to the economic feasibility of the Affordable Units:

   a. An increase in the maximum floor area from 3,000 square feet to 6,780 square feet;
   b. An increase in the maximum allowable height in the MR district from thirty feet (30') to thirty-six feet (36');
   c. Reductions in the required setbacks as follows - minimum front setback to be eleven feet (11'), minimum west side setback to be ten feet (10'), and minimum east setback to be five feet (5'); and
   d. A reduction in the required on-site parking spaces from 16 on-site spaces to 8 on-site spaces.

Attachment G

Public Works Conditions:

1. Approval of this project shall be subject to the requirements of, and all improvements shall be designed and constructed in accordance with, the most current version at the time of improvement plan submittal, Caltrans Standards and Specifications, the City of Municipal Code, the St. Helena Water and Sewer Standards, the St. Helena Street. Storm Drain and Sidewalk Standards, and all current federal, state and county codes governing such improvements.

2. For any improvements outside the existing building envelope, a grading and drainage plan shall be submitted for review and approval by the City Engineer prior to the issuance of a building permit. If the project entails more than 50 cubic yards of soil disturbance. 10,000 square feet of disturbance area, a cut or fill of 3 feet or more, installation of a pool or alteration of any drainage pattern, a grading permit shall be required. The grading and drainage plan shall detail the floodway and flood zone limits.

3. The existing 6' retaining wall along the Sulphur Creek top of bank shall be analyzed by a licensed professional for safety, stability and scour prior to issuance of a building or grading permit.

4. No added drainage from new hardscape or roof improvements shall be allowed to leave the site; improvement plans and calculations shall show how increased drainage from the 2-year and 10-year events will be designed to evapotranspire/infiltrate/harvest and biotreat stormwater onsite and at the property lines. Pre-developed 2-year events shall be treated prior to release and those flows, along with 100-year event overflows shall be directed away from Sulphur Creek in to an existing storm drain or gutter through City standard undersidewalk drains or piped directly to the storm drain. where applicable. Any existing pipes draining to the creek shall be removed/abandoned; if abandoned. shall be plugged per City standards.

5. The property falls within a FEMA flood zone and shall be subject to all applicable federal, state and local regulations and ordinances for flood zone and floodway development.

6. Where a City water service exists, the applicant shall install an approved backflow device behind the existing water meter prior to Certificate of Occupancy. Any new and modified existing water laterals, meters and backflow prevention devices shall be required and constructed in accordance with the current requirements of the City of St. Helena's Water Standards and the California Department of Health Standards. Existing meter boxes located within a driveway shall be retrofitted with a traffic-rated box or a new lateral shall be installed out of the driveway. New laterals shall be located perpendicular to the water main and outside any driveway/drive aisle.

7. Where fire sprinklers are required, applicant shall install an appropriately-sized water service with appropriate backflow and meter devices prior to Certificate of Occupancy. Fire system

Attachment G

calculations shall be submitted with the Grading and Drainage Plan to verify fire service lateral and meter sizing.

8. The applicant shall incorporate water conservation practices into the proposed project per the Water Neutrality Analysis prepared by Albion Surveys, dated March 21, 2013, including installing 1.28 gal toilets, 1.5 gpm faucets, low flow showers, 6.3 gal per cycle dishwasher and 15 gallon per load clothes washer. Any and all non-conforming appliances and plumbing fixtures shall be removed from the premises. No landscape irrigation is proposed; 105 gpd of drip irrigation could be added to the project at a later date if all installed fixtures maintain the flow rates specified in the report. The water analysis shall be replicated on the building plans prior to building permit approval.

9. The applicant shall conform to the City of St. Helena Water and Sewer Standards Section 6-2.10 which includes assessing the adequacy of the lateral, replacing if necessary and installing any required cleanouts.

10. The applicant shall repair all public improvements that are damaged by the construction process in accordance with the City Water/Sewer/Street/Storm Drain/Sidewalk Standards prior to Certificate of Occupancy.

11. All frontages shall be required to install curb, gutter and sidewalk where there is none. Any missing or broken curb, gutter and/or sidewalk along the project frontage shall be installed and/or replaced per City specifications prior to Certificate of Occupancy, extent to be determined by the Public Works Department.

12. Existing streets being cut by new utility services will require edge grinding and an A.C. overlay per City standards, extent to be determined by the Public Works Department.

13. All driveway approaches shall be per current City and ADA standards. Where none exists, or where deteriorating or non-standard driveway approaches exist, they shall be installed or replaced at the direction of the Public Works Department prior to Certificate of Occupancy. The driveway approach for the access drive to the property shall be replaced in order to conform to current ADA standards.

14. Any existing driveway approach not directly connected to a driveway shall be replaced with sidewalk/curb/gutter, as applicable and as directed by the Public Works Department, prior to Certificate of Occupancy.

15. An encroachment permit shall be required for any work performed in the public right of way.

I HEREBY CERTIFY that the foregoing Design Review, Use Permit and Demolition Permit were duly and regularly approved by the Planning Commission of the City of St. Helena at a regular meeting of said Planning Commission held on August 20, 2013 by the following roll call vote:

AYES: Commissioner Kistner, Parker, Monette and Chairperson Heil
NOES:

Attachment G

ABSENT: Commissioner Russell
ABSTAIN:

Greg Desmond, Interim Planning Director

Larry Kromann, Calistoga Affordable Housing

2013 26 1105 Pope Street
Use Permit, Design Review & Demolition Permit
Resolution
August 20, 2013

Attachment H

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

THE CITY OF ST. HELENA

and

CALISTOGA AFFORDABLE HOUSING, INC.

(Turley Flats)

___________________, 2017

OAK #4829-7354-8832 v5

Attachment H

THIS AFFORDABLE HOUSING LOAN AGREEMENT (this "**Agreement"**) is entered into effective as of _______________, 2017 ("**Effective Date**") by and between the City of St. Helena, a municipal corporation ("**City**") and California Affordable Housing, Inc., a California nonprofit public benefit corporation ("**Developer**"). The City and the Developer are collectively referred to herein as the "Parties."

RECITALS

A. Developer owns the real property located at 1105 Pope Street in the City of St. Helena, California, known as Napa County Assessor's Parcel No. 009-090-003 and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Developer intends to demolish the existing improvements on the Property and develop, own and operate an affordable housing development on the Property consisting of eight (8) apartments and related improvements (the "**Project**").

C. Upon satisfaction of the conditions precedent set forth in this Agreement and subject to the terms and conditions set forth herein, the City has agreed to provide a loan to Developer to assist in financing the Project.

D. Concurrently with the execution of this Agreement, among other documents, Developer will execute, and deliver to City, and as applicable, cause to be recorded in the Official Records: a secured promissory note to evidence Developer's obligation to repay the loan City will provide for the Project, a deed of trust that will provide City with a security interest in the Project and the Property, and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will require Project rents to be affordable to low-income households for a term of not less than fifty-five (55) years.

E. A material inducement to City to enter into this Agreement is the agreement by Developer to develop the Project within the time periods specified herein and in accordance with the provisions hereof, and the City would be unwilling to enter into this Agreement in the absence of an enforceable commitment by Developer to take such actions and complete such work in accordance with such provisions and within such time periods.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS

1.1 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 5.15.

“**Approved Partnership**” is defined in Section 8.3.

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

“Certificate of Completion” is defined in Section 5.12.

“City’s Authorized Representative” means the City Manager of the City of St. Helena or the Planning and Community Improvement Director of the City of St. Helena.

“City” means the City of St. Helena, a municipal corporation.

“City Council” means the City Council of the City of St. Helena.

“**City Documents**” means collectively, this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement.

“City’s Permitted Exceptions” is defined in Section 3.4.

“**Claims**” is defined in Section 5.14.

“**Closing Date**” or “**Close of Escrow**” shall be the date that escrow closes for the Loan..

“**Conditions of Approval**” is defined in Section 5.4.

“**Construction Plans**” is defined in Section 5.6.

“**Deed of Trust”** is defined in Section 3.4.

“Eligible Households” is defined in the Regulatory Agreement.

“**Environmental Laws**” is defined in Section 7.6.2.

“Escrow Agent” is defined in Section 3.1.

“Financing Plan is defined in Section 2.4.

“Force Majeure” is defined in Section 12.2.

“**Hazardous Material**” is defined in Section 7.6.1.

“**Improvements**” is defined in Section 2.3.

“**Indemnitees**” is defined in Section 5.14.

"**Lender's Title Policy**" is defined in Section 3.4.

"**Loan**" is defined in Section 4.1.

"**Loan Proceeds**" is defined in Section 4.1.

"**Note**" is defined in Section 3.4.

"**Official Records**" means the Official Records of Napa County.

"**Partnership Agreement**" is defined in Section 8.3.

"**Project**" is defined in Recital B.

"**Property**" is defined in Recital A.

"**Regulatory Agreement**" is defined in Section 3.4.

"**Title Company**" is defined in Section 3.1.

"**Transfer**" is defined in Section 8.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A Legal Description of the Property
B Form of Promissory Note
C Form of Deed of Trust
D Form of Regulatory Agreement
E Financing Plan
F Form of Certificate of Completion

ARTICLE II

REPRESENTATIONS; PROJECT SCOPE; FINANCING PLAN

2.1 Developer's Representations. Developer represents and warrants to City as follows, and Developer covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Developer shall immediately give written notice of such fact or condition to City. Developer acknowledges that City shall rely upon Developer's representations made herein notwithstanding any investigation made by or on behalf of City.

(a) Organization. Developer is a nonprofit public benefit corporation, duly organized and in good standing under the laws of the State of California and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer pursuant to, or in connection with, this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer, pursuant to or in connection with to this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered by Developer, or to be executed and delivered by Developer, pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered by Developer or will be executed and delivered by Developer pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments executed and delivered by Developer, or to be executed or delivered by Developer, pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Developer is not in default under or in violation of any law or regulation or under any order of any court, board, commission or agency whatsoever, and to the current actual knowledge of Developer's principals, there are no claims, actions, suits or proceedings pending or threatened against or affecting Developer or the Property, at law or in equity, before or by any court, board, commission or agency. Developer is not the subject of any bankruptcy or insolvency proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made..

2.2 Intentionally omitted

2.3 Project Scope. The Project will include the demolition of the existing improvements and the construction of a multi-family residential development consisting of:

eight (8) apartments and related improvements; all of the foregoing are collectively hereinafter referred to as the "**Improvements**."

2.4 Financing Plan. Developer shall submit to City for City's review and approval, Developer's plan for construction and permanent financing the Project (the **"Financing Plan**"). The Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of the Project, including without limitation acquisition costs and hard and soft construction costs, and shall be accompanied by evidence that all such funds have been firmly committed by Developer, equity investors or lending institutions, subject only to commercially reasonable conditions. The Financing Plan shall include development and operating pro formas which set out in detail Developer's plan for financing the costs of acquisition, construction and operation of the Project. Developer's submittal and City's approval of the Financing Plan are conditions to City's obligation to fund the Loan.

2.5 Review and Modifications. City staff shall promptly review the proposed Financing Plan, and acting through the City's Authorized Representative, the City shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section. If the City does not approve the Financing Plan, the City shall set forth its objections in writing and notify Developer of the reasons for its disapproval. If the City does not approve or provide written objections to Developer within such fifteen (15) business day period, the Financing Plan shall be deemed rejected. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and the City shall grant Developer a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan, subject to the outside time limit for completion set forth in Section 5.1 below. When approved, the Financing Plan will be attached to this Agreement as Exhibit E. Proposed modifications to the Financing Plan shall be submitted to the City for review and approval. City staff shall promptly review such proposed modifications, and acting through City's Authorized Representative, the City shall approve such modifications in writing within fifteen (15) business days following receipt provided that the modifications conform to the requirements of this Agreement. If the City does not approve proposed modifications, the City shall set forth its objections in writing and notify Developer of the reasons for its disapproval. Developer shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval. If the City does not approve or provide written objections to Developer within such fifteen (15) business day period, the proposed modifications shall be deemed rejected.

ARTICLE III

ESCROW AND CLOSING

3.1 Escrow. City and Developer shall open escrow at the office of First American Title Company located in St. Helena, California, or such other title company as the Parties may agree upon ("**Title Company**" or "**Escrow Agent**") in order to consummate the closing of escrow for the transactions contemplated hereby.

3.2 Costs of Closing and Escrow. Developer shall pay all title insurance premiums for policies Developer elects to purchase in connection with the acquisition of the Property and the financing of the Project. Developer shall pay, or cause to be paid, all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the Property and the financing of the Project. Developer shall pay for the cost of any lender's policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby. City and Developer shall provide Escrow Agent with a copy of this Agreement, which together with such supplemental instructions as City or Developer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by City and Developer, shall serve as escrow instructions for the Closing.

3.3 Closing. The Closing Date shall be a date that is mutually acceptable to the Parties. Prior to the Close of Escrow, Developer shall deposit into escrow the City Documents to which Developer is a party, executed and acknowledged as applicable, and Developer's share of closing costs. Provided that all conditions precedent to Close of Escrow have been satisfied or waived, City shall deposit into escrow executed copies of the City Documents to which City is a party, and shall deposit the Loan Proceeds into escrow. On the Closing Date the Escrow Agent shall cause the Deed of Trust and the Regulatory Agreement to be recorded in the Official Records.

3.4 City's Conditions to Closing. City's obligation to fund the Loan and disburse the Loan Proceeds is conditioned upon the satisfaction of all of all of the requirements set forth in each subsection of this Section 3.4 unless any such condition is waived in writing by City acting in the discretion of City's Authorized Representative.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Developer contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Developer shall have delivered to City each of the following: (a) a certified resolution indicating that Developer's governing board has authorized the transactions contemplated by this Agreement and that the persons executing the City Documents on behalf of Developer have been duly authorized to do so; (b) certified copies of Developer's bylaws and articles of incorporation certified by the Secretary of State/an officer of Developer, as applicable; (c) verification of Developer's tax-exempt status; and (d) a certificate of good standing, certified by the Secretary of State, indicating that Developer is properly organized and authorized to do business in the State of California.

(d) Intentionally omitted.

(e) Execution, Delivery and Recordation of Documents. Developer shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation a promissory note substantially in the form attached hereto as Exhibit B (the **"Note"**), a deed of trust substantially in the form attached hereto as Exhibit C (the **"Deed of Trust"**), and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D (the "**Regulatory Agreement**"). Concurrently with the Closing, the Deed of Trust and the Regulatory Agreement shall be recorded in the Official Records.

(f) Mechanics' Liens. Developer's delivery to City of evidence reasonably satisfactory to City that there are no mechanics' liens or stop notices related to the Property or the Project, and Developer's provision to City of full waivers or releases of lien clams if required by City.

(g) Lender's Title Policy. The Title Company shall, upon payment of the premium therefor, be committed to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**Lender's Title Policy"**) in the amount of the Loan, insuring that the lien of the Deed of Trust and the Regulatory Agreement are subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may reasonably approve in writing (collectively, "**City's Permitted Exceptions**"), showing title to the Property vested in Developer, and containing such endorsements as City may reasonably require, with the cost of such Lender's Title Policy to be paid by Developer.

(h) Insurance; Payment and Performance Bonds. Developer shall have provided evidence satisfactory to City that Developer has obtained insurance coverage meeting the requirements set forth in Article XI, and shall have provided to City copies of payment bonds and performance bonds pursuant to Section 5.18.

(i) Financing Plan. City shall have approved the Financing Plan, including without limitation, the construction and operating budgets for the Project.

(j) Evidence of Availability of Funds. Prior to the Closing Date, Developer shall submit to the City copies of all loan documents for the financing sources identified in the approved Financing Plan, together with evidence reasonably satisfactory to City that (i) all conditions to the release and expenditure of the initial draw of funds from each source described in the approved Financing Plan as a source of construction financing for the Project have been met and that such funds will be available, and (ii) all construction financing (including draws subsequent to the initial draw of funds) will be available upon the satisfaction of the conditions set forth in the construction loan documents. Developer shall have provided to City copies of document related to development and financing of the Project as City may reasonably request, including without limitation, copies of loan documents.

(k) Permits and Approvals; Cooperation. Developer shall have obtained all entitlements, permits, licenses and approvals required for the construction and operation of the Project, including without limitation, building permits and use permits or shall provide evidence satisfactory to City that receipt of such permits and approvals is subject only to such conditions as City may reasonably approve.

(l) Payment of Fees. Developer shall have paid when due all customary and reasonable fees and charges in connection with the processing of all applicable City permits and approvals. Notwithstanding the foregoing, Loan Proceeds in an amount up to One Hundred Fifty-Eight Thousand, Five Hundred Dollars ($158,500) may be used to pay City fees for the Project.

(m) Construction Plans, Budget and Schedule. City shall have approved the construction budget and schedule for the Project, the Construction Plans and specifications for the Project, and the construction contract. Developer shall have delivered an executed copy of the approved construction contract to City.

(n) Settlement Statement. City shall have received a settlement statement showing closing costs, and all other amounts paid through escrow.

(o) Requisition. Developer shall have submitted to City a written requisition for disbursement of funds specifying the amount and use of the requested funds, accompanied by copies of third-party invoices, evidence of Developer's payment for services rendered in connection with the work, and such other documentation as City may reasonably require.

3.5 Developer's Conditions to Closing. Developer's obligation to proceed with the Closing is subject to the satisfaction or Developer's waiver of the following conditions:

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Execution of Documents. City shall have executed and acknowledged the Memorandum, the Regulatory Agreement, the Notice, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow; and

(c) Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Developer ("**Owner's Title Policy**") showing title to the Property vested in Developer, subject only to Developer's Permitted Exceptions and containing such endorsements as Developer may reasonably require, with the cost of such Owner's Title Policy to be paid by Developer.

ARTICLE IV

CITY FINANCIAL ASSISTANCE

4.1 Loan and Note. In order to increase the affordability of the Project, City agrees to provide a construction/permanent loan (the "**Loan**") to Developer in the principal amount of up to Seven Hundred Thousand Dollars ($700,000), upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note which shall be dated as of the Closing Date and executed by Developer substantially in the form attached hereto as Exhibit B. Provided that Developer has complied with all conditions precedent to disbursement of the Loan set forth in Sections 3.4, the proceeds of the Loan ("**Loan Proceeds**") shall be disbursed pursuant to approved draw requests as described in Section 3.4 (o) or, if applicable, a settlement statement provided by the Escrow Agent and approved in writing by City. The Parties agree that City shall disburse the Loan Proceeds only for the purpose of funding Project development costs.

4.2 Interest Rate; Payment Dates; Cost Savings; Maturity Date. The principal balance of the Note outstanding from time to time will bear interest at a rate equal to three percent (3%) simple annual interest commencing upon the date of disbursement. Annual payments shall be due and payable on a residual receipts basis in accordance with the formula set forth in the Note commencing upon City's issuance of a final certificate of occupancy or equivalent for the Project. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the City Documents shall be payable in full on the date which is the thirtieth (30^{th}) anniversary of the date of the Note (the **"Maturity Date")** .

Notwithstanding the foregoing, the City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Developer Default.

4.3 Security. As security for repayment of the Note, Developer shall execute the Deed of Trust in favor of City as beneficiary pursuant to which City shall be provided a lien against the Property and the Improvements. The Deed of Trust shall be dated as of the Closing Date, shall be substantially in the form attached hereto as Exhibit C , and shall be recorded in the Official Records on the Closing Date. The Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing.

4.4 Prepayment; Acceleration.

(a) Prepayment. Developer shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Developer's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer absent the prior written consent of City of all or any part of or interest in the Property or the Project except as otherwise permitted pursuant to this Agreement.

(c) Default. The City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Developer Default.

4.5 Intentionally omitted.

4.6 Intentionally omitted.

4.7 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

(i) the failure of any of Developer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects;

(ii) the termination of this Agreement by mutual agreement of the Parties;

(iii) the occurrence of an Event of Developer Default under any City Document which remains uncured beyond any applicable cure period, or the existence of any condition, event or act which upon the giving of notice or the passage of time or both would constitute an Event of Developer Default under any City Document.

ARTICLE V

DEVELOPMENT OF THE PROPERTY

5.1 Development Schedule. Subject to Force Majeure, Developer shall commence construction of the Project by not later than July 1, 2017, and shall diligently prosecute to completion the construction of the Improvements to enable City to issue a final certificate of occupancy within eighteen (18) months following commencement of construction, with construction targeted to be completed by not later than December 31, 2018. Developer shall use diligent and commercially reasonable efforts to perform Developer's obligations under this Agreement within the times periods set forth herein, and if no such time is provided, within a reasonable time, designed to permit issuance of a final certificate of occupancy by the date specified in this Section 5.1. Subject to Force Majeure and the City's issuance of permits and approvals, Developer's failure to commence or complete construction of the Project in accordance with the time periods specified in this Section 5.1 shall be an Event of Developer Default hereunder.

5.2 Cost of Acquisition and Construction. Except as expressly set forth herein, Developer shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the acquisition of the Property, including without limitation appraisal fees, title reports and any environmental assessments Developer elects to undertake. Except as expressly set forth herein, all costs of designing, developing and constructing the Project and compliance with the Conditions of Approval, including without limitation all off-site and on-site improvements required by City in connection therewith, shall be borne solely by Developer and shall not be an obligation of the City.

5.3 Project Approvals. Developer acknowledges that execution of this Agreement by City does not constitute City approval for the purpose of the issuance of building permits, does not limit in any manner the discretion of City in such approval process, and does not relieve Developer from the obligation to apply for and obtain from City and all other agencies with jurisdiction over the Property, all necessary approvals, entitlements, and permits for the construction of the Project and 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 development of the Property (if any) and the approval of the Project in compliance with CEQA and if applicable, NEPA), nor does it limit in any manner the discretion of the City or any other agency in the approval process. Developer shall pay when due all customary and reasonable fees and charges in connection with the processing of all applicable permits and approvals. Developer shall not commence construction work on the Project prior to issuance of building permits required for such work. City staff shall work cooperatively with Developer to assist in coordinating the expeditious processing and consideration of all permits, entitlements and approvals necessary for the development and operation of the Project as contemplated by this Agreement.

5.4 Design Review; Conditions of Approval. Developer shall submit a Project site plan and design documents, including elevations and schematic drawings to City for review and approval. Developer shall develop the Project in accordance with the terms and conditions of this Agreement and in compliance with the approved site plan and design documents and the terms and conditions of all approvals, entitlements and permits that the City or any other governmental body or agency with jurisdiction over the Project or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Project, including without limitation, all mitigation measures imposed in connection with environmental review of the Project and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the "**Conditions of Approval**").

5.5 Fees. Developer 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 Project, 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 Project.

5.6 Construction Plans. Developer shall submit to City's Building Department detailed construction plans for the Project (the "**Construction Plans**"). As used herein "**Construction Plans**" means all construction documents upon which Developer and Developer's contractors shall rely in developing the Property and constructing the Project (including the landscaping, parking, and common areas) and shall include, without limitation, the site development plan, final architectural drawings, landscaping, exterior lighting and signage plans and specifications, materials specifications, final elevations, and building plans and specifications. The Construction Plans shall be based upon the scope of development set forth herein and upon the approvals issued by the City for the Project, and shall not materially deviate therefrom without the express written consent of City.

5.7 Construction Pursuant to Plans. Developer shall develop each component of the Project in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to the Project. Developer 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 construction work on the Project shall be performed by licensed contractors, engineers or architects, as applicable.

5.8 Change in Construction Plans. If Developer desires to make any material change in the approved Construction Plans, Developer 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 Construction 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 a proposed change is approved by City within thirty (30) days, it shall be deemed rejected. If rejected, the previously approved Construction Plans shall continue to remain in full force and effect. Any change in the Construction 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 Construction Plans. Nothing in this Section is intended to or shall be deemed to modify the City's standard plan review procedures.

5.9 Rights of Access. For the purpose of ensuring that the construction of the Project is completed in compliance with this Agreement, Developer shall permit representatives 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).

5.10 City Disclaimer. Developer acknowledges that the City is under no obligation, and the City neither undertakes nor assumes any responsibility or duty to Developer or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Project. Developer 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 construction and operation of the Project. Any review or inspection undertaken by the City is solely for the purpose of determining whether Developer is properly discharging its obligations under this Agreement, and shall not be relied upon by Developer or any third party as a warranty or representation by the City as to the quality of the design or construction of the Project or otherwise.

5.11 Defects in Plans. The City shall not be responsible to Developer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. To the greatest extent allowed by law, Developer 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 Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion.

Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees, and are subject to the additional terms set forth in Section 11.2 below.

5.12 Certificate of Completion for Project. Promptly after completion of construction of the Project, City's issuance of a final Certificate of Occupancy or equivalent for the Project, and the written request of Developer, the City will provide a certificate substantially in the form attached hereto as Exhibit F ("**Certificate of Completion**") provided that at the time such certificate is requested all applicable work has been completed. The Certificate of Completion shall be conclusive evidence that Developer has satisfied its obligations regarding the construction of the Project and development of the Property. At Developer's option the Certificate of Completion shall be recorded in the Official Records. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a deed of trust or mortgage securing money loaned to finance the Project or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Developer has satisfied any obligation that survives the expiration of this Agreement.

5.13 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 construction work on the Property, and Developer shall direct its contractors and subcontractors to refrain from discrimination on such basis.

5.14 Prevailing Wage Requirements. If required by applicable federal and state law, Developer and its contractors, subcontractors and agents shall comply with California Labor Code Section 1720 *et seq*. and the regulations adopted pursuant thereto (all of the foregoing, "**Prevailing Wage Laws**"), and shall be responsible for carrying out the requirements of such provisions. If applicable, Developer shall submit to City a plan for monitoring payment of prevailing wages and at Developer's expense shall implement such plan and comply with all applicable reporting and recordkeeping requirements.

To the greatest extent allowed by law, Developer shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (all of the foregoing, 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**") which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in connection with the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. The provisions of this Section 5.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project. Developer'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 and are subject to the additional terms set forth in Section 11.2 below.

5.15 Compliance with Laws. Developer shall carry out and shall cause its contractors and subcontractors to carry out the construction of the Project in conformity with all applicable federal, state and local laws, rules, ordinances and regulations (**"Applicable Laws")** including without limitation, all 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*.. To the greatest extent allowed by law, Developer 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 Developer's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer'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. Developer's defense and indemnification obligations set forth in this Section 5.15 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Project and shall be subject to the additional terms set forth in Section 11.2 below.

5.16 Liens and Stop Notices. Until the later of the date of reconveyance of the Deed of Trust or the expiration of the term of the Regulatory Agreement, Developer 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 Developer. If a claim of a lien or stop notice is given or recorded affecting the Project or the Property or any part thereof, Developer 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.

5.17 Right of City to Satisfy Liens on the Property. If Developer fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.16 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Developer's expense and without further notice to Developer and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Developer shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Developer 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 Developer. Developer shall file a valid notice of cessation or notice of completion upon cessation of construction work 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.

5.18 Performance and Payment Bonds. Prior to commencement of construction work on the Project, Developer 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 construction of the Project. The bonds shall name the City as co-obligee.

5.19 Insurance Requirements. Developer shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Article XI.

ARTICLE VI

USE OF THE PROPERTY

6.1 Affordable Housing. Developer covenants and agrees for itself, its successors and assigns that the Property and the Improvements will be subject to recorded covenants that will restrict use of the Property to development of an affordable multi-family housing project, and that for a term of not less than fifty-five (55) years commencing upon the issuance of a final certificate of occupancy for the Project all of the residential units in the Project shall be available at Affordable Rents to households whose income is no greater than eighty (80%) of Area Median Income, in accordance with the terms hereof and the Regulatory Agreement.

6.2 Preference for Displaced and Local Residents. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project or for tenant rent subsidies, in accordance with the City's Amended Local Preference Policy approved on October 28, 2014 by Resolution 2014, Owner shall give first priority in the rental of the residential units in the Project to Eligible Households (as defined in the Regulatory Agreement) that include at least one member who was displaced from their affordable housing located within the City because of substandard and/or unsafe living conditions resulting in Code enforcement proceedings by the City. Owner shall give second priority to Eligible Households that include at least one member who lives or works within the St. Helena Unified School District geographic boundaries. In the event there are fewer Eligible Household applicants that meet the criteria specified in this Section than there are available units, units shall be made available to members of the general public who are Eligible Households.

6.3 Relocation. Persons residing on the Property as of the Effective Date of this Agreement shall not be displaced before suitable replacement housing is available. Owner shall ensure that all such 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 Owner. Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising in connection with the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Developer's indemnification obligations under this Section 6.3 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 11.2 below. The provisions of this Section 6.3 shall survive the expiration or earlier termination of this Agreement.

6.4 Maintenance. Developer shall at its own expense, maintain the Property and the Improvements, including the landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all Applicable Laws. Without limiting the foregoing, Developer agrees to maintain the Property and the Improvements (including without limitation, 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. Developer shall prevent and/or rectify any physical deterioration of the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair.

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

6.6 Obligation to Refrain from Discrimination. Developer 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 the Improvements, or part thereof, nor shall Developer or any person claiming under or through Developer 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 Improvements, or part thereof.

Developer shall include such provision in all deeds, leases, contracts and other instruments executed by Developer, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property or the Improvements 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 pertaining to 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."

ARTICLE VII

ENVIRONMENTAL MATTERS

7.1 Developer's Post-Closing Obligations. Developer hereby covenants and agrees that:

(1) Developer shall not knowingly 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 with the exception of limited amounts of cleaning supplies and other materials customarily used in construction, 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) Developer 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, Developer 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 Developer, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Developer 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) Developer'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) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Developer shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. 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 Claims and to have its reasonable attorneys' fees in connection therewith paid by Developer.

7.2 Environmental Indemnity. To the greatest extent allowed by law, Developer 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, or the transportation of any such Hazardous Material to or from, the Property, or (ii) the failure of Developer, Developer'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, unless caused by the City's active or passive negligence. 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.

The provisions of this Section 7.2 shall be in addition to any and all other obligations and liabilities that Developer may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. Developer's indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion, any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust. Developer's indemnification obligations pursuant to this Section shall not extend to Claims arising solely from the gross negligence or willful misconduct of the Indemnitees, and are subject to the additional terms set forth in Section 11.2 below.

7.3 Disclosure. Developer represents and warrants that except as disclosed to City in writing, as of the date hereof to the current actual knowledge of Developer's principals: (i) the Property is free and has always been free of Hazardous Materials and is not and has never been in violation of any Hazardous Materials Law; (ii) there are no buried or partially buried storage tanks located on the Property; (iii) Developer has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have ever been in violation of any Hazardous Materials Law or informing Developer that the Property is subject to investigation or inquiry regarding Hazardous Materials on the Property or the potential violation of any Hazardous Materials Law; (iv) there is no monitoring program required by the Environmental Protection Agency or any other governmental agency concerning the Property; (v) no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under or at the Property, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or any other means; (vi) the Property has never been used as a dump or landfill; and (vii) Developer has disclosed to City all information, records, and studies in Developer's possession or reasonably available to Developer relating to the Property concerning Hazardous Materials.

Developer hereby acknowledges and agrees that (i) this Section is intended as the City's written request for information (and the Developer's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5(d)(2), and (ii) each representation and warranty in this Agreement or any of the other City Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the City and the Developer to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

7.4 City's Rights. In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the City's or the Trustee's rights and remedies under the Deed of Trust, the City may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Developer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the City's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Developer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Developer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) reasonable attorneys' fees, incurred by the City in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Note, until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the City upon its demand made at any time following the conclusion of such action.

7.5 No Limitation. Developer hereby acknowledges and agrees that Developer'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 Developer or from its own investigations.

7.6 Definitions.

7.6.1 "**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 methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

7.6.2 "**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*.).

Attachment H

ARTICLE VIII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

8.1 Identity of Developer; Changes Only Pursuant to this Agreement. Developer and its principals have represented that they possess the necessary expertise, skill and ability to carry out the development of the Project pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Developer and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Developer. No voluntary or involuntary successor, assignee or transferee of Developer shall acquire any rights or powers under this Agreement, except as expressly provided herein.

8.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory Agreement, Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, the Improvements, or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than forty-nine percent (49%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis.

8.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project in accordance with the approved Financing Plan as it may be updated with City approval, and subject to the requirements of Article IX, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) a Transfer to a tax-exempt entity under the direct control of or under common control with Developer; (vi) a Transfer to a limited partnership in which a tax-exempt affiliate of Developer is the managing general partner ("**Approved Partnership**"); (vii) the admission of limited partners and any transfer of limited partnership interests in accordance with the Approved Partnership's agreement of limited partnership (the "**Partnership Agreement**"); (viii) the removal of the general partner of an Approved Partnership by the investor limited partner for a default under the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City; or (ix) the transfer of the general partner's interest to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, or to a limited liability company whose sole member is a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended, provided such replacement general partner is reasonably satisfactory to City..

8.4 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 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), and (vii) of Section 8.3, and solely with respect to removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (viii) of Section 8.3, provided that the provisions of this Section 8.4 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (viii) of Section 8.3):

(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 Developer under this Agreement.

(ii) The Developer 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 Developer under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Developer arising prior to the effective date of the Transfer (unless Developer expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Developer's obligations pursuant to the Conditions of Approval and all other conditions, and 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.

(v) If applicable, the final form of the Partnership Agreement and any subsequent amendments that affect the City's economic interests under this Agreement or the City Documents shall be subject to City's review and approval.

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 Developer, the proposed Transfer shall be deemed approved.

8.5 Effect of Transfer without City Consent.

8.5.1 In the absence of specific written agreement by the City, no Transfer by Developer shall be deemed to relieve the Developer or any other party from any obligation under this Agreement.

8.5.2 It shall be an Event of Developer Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Developer assigns or Transfers this Agreement, the Improvements, or the Property in violation of Article VIII.

8.6 Recovery of City Costs. Within ten (10) days following City's delivery to Developer of an invoice detailing such costs, Developer 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 of this Agreement, the Property, or the Project, or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

ARTICLE IX

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

9.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans for the purpose of financing the acquisition of the Property, the design and construction of the Improvements, and other expenditures reasonably necessary for development of the Property pursuant to this Agreement. Developer shall not enter into any conveyance for such financing that is not contemplated in the Financing Plan as it may be updated with City approval, without the prior written approval of the City's Authorized Representative or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

9.2 Subordination. The City agrees that City will not withhold consent to reasonable requests for subordination of the Deed of Trust and Regulatory Agreement to deeds of trust provided for the benefit of lenders providing financing for the Project that are identified in the approved Financing Plan as it may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights and the rights set forth in Section 9.6 below.

9.3 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to complete construction of the Improvements or to guarantee such completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

9.4 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property or the Improvements, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Developer extended by an additional sixty (60) days. In the event that possession of the Property or the Improvements (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property or Improvements, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction of the Project (beyond the extent necessary to conserve or protect the same) without first having expressly assumed in writing Developer's obligations to City under this Agreement. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project and the Improvements and submit evidence reasonably satisfactory to City that it has the development capability on staff or retainer and the financial capacity necessary to perform such obligations. Any such holder properly completing the Project pursuant to this Section shall assume all rights and obligations of Developer under this Agreement.

9.5 Failure of Holder to Complete Improvements. In any case where, six (6) months after default by Developer in completion of construction of the Improvements, the holder of record of any mortgage or deed of trust has not exercised its option to complete construction of the Project, or having first exercised such option, has not proceeded diligently with such work, City shall be afforded those rights against such holder that it would otherwise have against Developer under this Agreement.

9.6 City Right to Cure Defaults. In the event of a breach or default by Developer under a mortgage or deed of trust secured by the Property or the Improvements, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Developer. In such event, Developer shall be liable for, and City shall be entitled to reimbursement from Developer for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

9.7 Holder to be Notified. Developer agrees to use best efforts to ensure that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged and accepted in writing by the holder prior to its creating any security right or interest in the Property or the Improvements.

9.8 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Project lenders or investors provided such modifications do not alter City's substantive rights and obligations under this Agreement.

9.9 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE X

DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Developer Default. The following events shall constitute an event of default on the part of Developer hereunder ("**Event of Developer Default**"):

(a) Developer fails to commence or complete construction of the Project within the time period set forth in Section 5.1, or subject to Force Majeure, abandons or suspends construction of the Project prior to completion for a period of thirty (30) days or more;

(b) Developer fails to pay when due the principal and interest payable under the Note, and such failure continues for ten (10) days after City notifies Developer thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VIII;

(d) Developer fails to maintain insurance as required pursuant to this Agreement, and Developer fails to cure such default within five (5) days;

(e) Developer 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 Developer fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

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

(g) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement or Developer's request for the Loan proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

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

(i) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Developer to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within sixty (60) days;

(j) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (h) or (i) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(l) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(m) Developer defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 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 City shall have given written notice of the default to Developer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Developer Default shall not arise hereunder if Developer 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.

10.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of sixty (60) days after written notice thereof from Developer to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

10.3 City's Right to Terminate Agreement. If an Event of Developer Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Developer and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Developer under this Agreement, shall expire and terminate.

10.4 City's Remedies and Rights Upon an Event of Developer Default. Upon the occurrence of an Event of Developer Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Developer, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Property pursuant to the Deed of Trust;

(d) Terminate this Agreement pursuant to Section 10.3; and

(e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

10.5 Developer's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Developer may 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 to obtain any other remedy consistent with the purpose of this Agreement, and may pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and Developer's rights thereunder.

10.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding any contrary provision of this Agreement, a Party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

10.8 Rights of Mortgagees. Any rights of the City under this Article X shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments.

10.9 Construction Plans. If this Agreement is terminated by mutual agreement of the Parties or by City as a result of an Event of Developer Default, the Developer, at no cost to the City, shall deliver to the City copies of all construction plans and studies in the Developer's possession or in the possession of the Developer' s consultants related to development of the Project on the Property, including without limitation, the Construction Plans, subject only to the rights of senior lenders identified in the Financing Plan as it may be updated with City approval. If the City utilizes the Construction Plans or studies, the City shall indemnify the Developer for any claims arising from such use.

ARTICLE XI

INDEMNITY AND INSURANCE.

11.1 Indemnity. To the greatest extent allowed by law, Developer shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with the development, construction, improvement, operation, ownership or maintenance of the Project or the Property, or any part thereof by Developer or Developer's contractors, subcontractors, agents, employees or any other party acting for or on behalf of Developer, or otherwise arising out of or in connection with Developer's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the development, operation or management of the Project. Developer's indemnification obligations under this Section 11.1 shall not extend to Claims resulting solely from the gross negligence or willful misconduct of Indemnitees and are subject to the additional terms set forth in Section 11.2 below. The provisions of this Section 11.1 shall survive the expiration or earlier termination of this Agreement.

11.2 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 11.2 shall apply to all provisions of this Agreement that pertain to Developer's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 5.11, 5.14, 5.15, 6.3, 7.2, 11.1, and 12.1. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Developer 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 Developer, of any of the insurance policies described in this Agreement.

(b) Developer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Developer, or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representation and warranty made by Developer under this Agreement or by Developer or any other party under any City Document, (v) the release of Developer or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the Loan; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the Loan.

(c) The obligations of Developer to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11.3 Liability, Workers Compensation, and Property Insurance.

(a) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a commercial general liability policy in the amount of Two Million Dollars ($2,000,000) each occurrence, Two Million Dollars ($2,000,000) annual aggregate, together with Three Million Dollars ($3,000,000) excess liability 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; provided however, the coverage requirements for subcontractors shall be One Million Dollars ($1,000,000). Such policy or policies shall be written on an occurrence basis and shall name the Indemnitees as additional insureds.

(b) Developer (and until issuance of the final certificate of occupancy or equivalent for the Project all contractors working on behalf of Developer on the Project) shall maintain a comprehensive automobile liability coverage in the amount of Two Million Dollars ($2,000,000), combined single limit including coverage for owned and non-owned vehicles. Automobile liability policies shall name the Indemnitees as additional insureds.

(c) Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof) shall furnish or cause to be furnished to City evidence satisfactory to City that Developer (and if the Property has been transferred to an Approved Partnership, the general partners thereof), and any contractor with whom Developer (or an Approved Partnership) has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars ($1,000,000) per accident.

(d) Upon commencement of construction work and continuing until issuance of the final certificate of occupancy or equivalent for the Project, Developer and all contractors working on behalf of Developer 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. The builder's all-risk insurance and/or property insurance policies shall provide insurance covering all risks of loss to the modular Project components, including without limitation, risks associated with off-site fabrication and transportation of such components to the Property.

(e) Developer 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 as its interests may appear.

(g) Prior to commencement of construction work, Developer 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, Developer 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, Developer shall, within five (5) 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 Developer's expense, and Developer shall promptly reimburse City for such expense upon receipt of billing from City.

(i) Coverage provided by Developer shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Developer shall furnish the required certificates and endorsements to City prior to the commencement of construction of the Project, and shall provide City with certified copies of the required insurance policies upon request of City.

(j) Deductibles/Retentions. 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 Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(k) Adjustments. 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 inflation and the litigation climate in California. Within thirty (30) days following City's delivery of written notice of any such adjustments, Developer shall provide City with amended or new insurance certificates and endorsements evidencing compliance with such adjustments.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 No Brokers. Each Party warrants and represents to the other that no person or entity can properly claim a right to a real estate commission, brokerage fee, finder's fee, or other compensation with respect to the transactions contemplated by this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the close of escrow and the expiration or earlier termination of this Agreement.

12.2 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Project or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by unrelated third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure**"). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days from the commencement of the cause.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Developer and City (acting in the discretion of the City's Authorized Representative unless he or she determines in his or her discretion to refer such matter to the

City Council). City and Developer acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the Project shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document 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: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attention: City Manager

With a copy to:
Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th floor
Oakland, CA 94612
Attention: Susan E. Bloch, Esq.

Developer: Calistoga Affordable Housing, Inc.
1332 Lincoln Avenue
Calistoga, CA 94515
Attention: Executive Director

12.4 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.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VIII, 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.

12.7 Survival. All representations made by Developer hereunder and Developer's obligations pursuant to Sections 5.11, 5.14, 5.15, 6.3, 7.2, 11.1 and 12.1 shall survive the expiration or termination of this Agreement.

12.8 Headings; Interpretation; Statutory References. 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. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of St. Helena 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.

12.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City's Authorized Representative determines in his or her discretion that such action or approval requires referral to City Council for consideration.

12.10 Entire Agreement. This Agreement, including Exhibits A through F attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between this Agreement and the other City Documents, the more restrictive requirements shall control, as determined by the City's Authorized Representative.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.13 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.14 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 Developer and City is and shall remain solely that of a debtor and a creditor, and 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 Developer (except as expressly provided in this Agreement) or to any third party with respect to the Project or the Loan. Developer and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Developer and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Developer shall not have any authority to act as an agent of City or to bind City to any obligation.

12.15 Time 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 the State of California.

12.16 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 Napa County, California or in the Federal District Court for the Northern District of California.

12.17 Inspection of Books and Records. Upon request, Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Developer necessary to determine Developer's compliance with the terms of this Agreement.

12.18 Political Activity. None of the funds, materials, property or services contributed by City to Developer under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

12.19 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount which may become due to the Developer or its successor or on any obligation under the terms of this Agreement.

12.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Developer shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.,* no person who is a director, officer, partner, trustee or employee or consultant of the Developer, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Developer. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.,* its implementing regulations manual and codes, and Government Code Section 1090.

SIGNATURES ON FOLLOWING PAGE(S).

Attachment H

IN WITNESS WHEREOF, the Parties have entered into this Affordable Housing Loan Agreement effective as of the date first written above.

CITY:

CITY OF ST. HELENA, a California municipal corporation

By: ________________________________

Print Name:_____________________________

Title:__________________________________

ATTEST:

By:__________________________

APPROVED AS TO FORM:

____
City Attorney

DEVELOPER:

CALISTOGA AFFORDABLE HOUSING, INC.,
a California nonprofit public benefit corporation

By: ____________________________________

Print Name:_______________________________

Title:_____________________________________

Attachment H

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of St. Helena, County of Napa, State of California, described as follows:

COMMENCING at a point on the Southeastern line of Pope Street, distant thereon 126 feet and 7 inches Northeasterly from the point of intersection thereof with the centerline of the main tract of the Southern Pacific Railroad Company; running thence Northeasterly, along said line of Pope Street, 50 feet to the Southwestern line of the lot of land heretofore conveyed to Emma R. Davis Mooney by Deed recorded February 25, 1889, in Book 45 of Deeds at page 73, said Napa County Records; thence Southeasterly along the Southwestern line of lot conveyed to Mooney, 150 feet, more or less, to the middle of Sulphur Springs Creek; thence up the middle of said creek, in a southwesterly direction, 50 feet, more or less, to the intersection thereof with a line drawn Southeasterly through the point of commencement and parallel with the Southwestern line of said lot conveyed to Mooney above referred to; thence Northwesterly, along last mentioned line, 180 feet more or less, to the point of commencement.

APN: 009-090-003

Attachment H

Exhibit B

FORM OF PROMISSORY NOTE
(Attach form of Note.)

Exhibit C

FORM OF DEED OF TRUST
(Attach form of Deed of Trust.)

Exhibit D

FORM OF AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF COVENANTS
(Attach form of Regulatory Agreement.)

Exhibit E

FINANCING PLAN
(Attach approved Financing Plan.)

Exhibit F

FORM OF CERTIFICATE OF COMPLETION
(Attach form of Certificate.)

Attachment I

Turley Financial Report

In 2009-2011 CAH researched the housing development concept called "modular factory construction" including visitation to several factories in N. California and the VP of the ZETA Corporation of San Francisco meeting with the CAH board. In 2012-2013 CAH began working with a third party consulting company, hybridCore of Santa Rosa, and the architectural firm of Farrell and Faber Associates (partners with hybridCore). hybridCore builds individual and multifamily housing units by combining stick built concepts with a modular core- a hybrid construction model.

The hybridCore designed Turley Flats that was approved by the St. Helena Planning Commission in August 2013. It was envisioned as fully equipped units being delivered to the site that included built in appliances and interior/exterior painting.. Some of the benefits of the modular concept included: eliminating the "prevailing wage" legal requirement, a 6-8 wk. construction time period, and sq. ft. cost estimated at below $100 for the factory units.

CAH used a Design and Build Team concept to design and plan the project that included two architectural firms, three engineering firms, a site work contractor, a general contractor, hybridCore representatives, and CAH representatives. The team created two financial feasibility budgets-- a modular construction($1,474,347)plan, and a stick built ($1,578,397). Though the costs estimates were close CAH decided to use the modular numbers because the factory bid is actually a closed end contract without any open items, whereas the stick built bids had several TBD, or allowance number provided. The stick built bid was not a closed end contract but had some items that required contingency funding.

Current Financial Data

- Jan. 10, 2016 project costs - $2,931,542 (without land)
- Unit costs per sq. ft.-$229; factory Core unit costs per unit- $94,000; and per unit sq. ft. cost- $112 sq. ft.
- Total cost per unit costs- $366,443; City loan per unit- $87,500, County loan per unit- $81,250
- Estimated Residual Cash for grant/loan repayment per year- $15,000, or $3740 payment to City loan/grant
- Current financial gap-$126,042 that still needs to be raised

Why Costs Increased in 2016

- **<u>Factory core</u> units** Three factory good faith estimates in 2015 were within 2013 budget projections. And the pre-development costs(architects, engineering, etc.) expended in 2015-2016 were also within the 2013 budget. Feb. 2016, the three factories working with CAH stated that they were changing their product priorities and would not be able to construct the type of units CAH needed. CAH and hybridCore began a search for factories willing to build our core units. Two new factories were found in Southern CA but the costs per sq. ft. were way beyond our budget. In April 2016, hybridCore reorganized their corporation and the corporation's VP (their factory liaison officer) left the corporation. CAH continued searching for a factory willing and capable to produce our core units through the 2016 summer. In July hybridCore principals created a new corporation called hybridBuilt that operated on different business plan than hybridCore. August 2016, the new hybridBuilt was able to obtain a bid from the Silver Crest factory(a Champion Company) in Corona,

Attachment I

CA. Their November bid for purchase of the core units increased our budget from $550,000 to $647,336 a net of increase of $97,336 or 18% increase. CAH has accepted their bid and will be signing the contract following the City's approval of our agreement.

- **Time delays** 2013-2015 CAH worked with three City Managers and two Building Dept. directors and staff in obtaining grant/loan city funding and agreement concerning required codes, and building standards. CAH is very appreciative of the working relationship of the new City manager Jennifer Phillips, and Planning Dept. Director Noah Housh. With their arrival progress began to be made on the Turley project. CAH and the City completed the agreement on the project in November 2015 and continued to work on construction standards and specific items such as storm water management and other environmental issues through November 2016.

- In November 2016 CAH made application for City and State Building Permits. It's the intent of CAH and its construction partners to begin construction as soon as the permits are granted and the weather is more cooperative. The construction timeline would be April 1– August 30.

- **Local construction cost increase** Following the Napa earthquake and the Lake/Napa county fire, a large increase of construction work in the county caused a large increase in construction work and costs. In the summer of 2016, CAH began the bidding process. CAH also reached out to non-local construction companies familiar with factory units but found that the San Joaquin valley contractors weren't interested in Napa work. CAH was able to obtain four local bids for the non-factory construction. The bidding process showed a $1,500,000 financial gap with the majority of cost increases being due to the county's abundance of work, as well as the project's three story design.

  One of the reasons for the large increase was that our General Contractor depends upon subcontractors to complete the various non factory construction items. The subcontractors had an abundance of local work causing a "supply and demand" bidding war that drove up the costs of construction. Also many subcontractors were too busy to even bid on the project. CAH made a decision to find a General Contractor who didn't depend upon subcontractors but used their own work crews. CAH chose Helmer and Sons of Angwin, and retained Paul Coates Construction as our builder's rep. to continue the work already in progress and to advise Helmer regarding cost savings items already set in motion. Paul Coates also agreed to continue as the project's liaison to the City. The Helmer contract is $647,336 and includes the costs of the factory unit's transport from the factory, setting them on site, and connecting the units regarding electrical, plumbing, and mechanical.

Funding the Turley Project

- **Bank and governmental funding** CAH began this project as a local community project. CAH has searched for and applied for several governmental financing programs such as HOME loan, tax credits, and CDBG grants but without success. It is not unusual for a small (less than 40-50 units)rural housing project to not receive these grants/loans. The tax credit program is the most used financing strategy that normally provides funding to fill the gap. Gap funding for this project is defined as funds needed beyond the First Community Bank commercial construction loan. The project's financing plan in 2013 was to obtain a construction loan (much like a general contractor)

Attachment I

that covers 90% -100% of the projects expenses. These construction loans normally cover 80% of the appraised value of the completed project. The First Community Bank construction loan was based upon approximately 60% of appraised value. It is important to understand that affordable housing projects are limited to smaller loans because the yearly rents do not produce the same amount of rent income as a market rate project of the same size and design. This is THE challenge of affordable housing construction financing.

A recent national study on housing appraisal values stated that since the recession, commercial properties are valued at a lessor value than their actual market rate value. The Turley project's rental rates are set at the 75%tile of the Napa County HUD Average Median Income (AMI) level. Affordable Housing projects that meet the 60%tile (HUD subsidized projects must have a large percentage of the units at or below the 60%tile) need higher amounts of governmental type grants. So because the Turley project isn't likely to obtain any HUD grants/loans, CAH needs to seek funding locally. The St. Helena housing market (rent rates) are actually higher than those in the cities of Napa and Calistoga because the cost of living is higher in St. Helena.

- **Matching grant/loans** The increase in the construction costs required CAH to find and negotiated a matching grant/loan program with the county to include the City of St. Helena and First Community Bank. CAH is very appreciative of the quick and positive response by City staff and council. The county and bank have processed the matching grant/loan requests through their processes such as new appraisals and underwriting and are awaiting the City's decision.

- **CAH Commitment** CAH needs to have the final approval of the City's funds so it can pay for the building permits and have funds for the various fees and earnest monies to begin the demolition and site work until the Bank monies are available. CAH is committed to raising any and all funds needed to complete the project. CAH has already applied to several foundations for the current gap of $126,042 including Home Depot, Gasser Foundation, Lowes, and local banks. Helmer and Coates construction firms are also committed to reducing expenses. The lack of funding for affordable housing is the #1 reason why there isn't sufficient housing for the county's growing work force. There is some NYBY ism but if you need to develop small infill or small multifamily projects of less than 40 units, it will require some form of additional funding. For rural projects, that additional funding normally comes from local sources such as grants, low interest loans, sweat equity (McCorkle project), or in kind donations.

Attachment I

	A	B	C	D	E	F	G	H	I
1	**Turley Flats**	**Helmers 9/16 bid (construction budget)**							
2	**St. Helena, CA**								
3	**Development Budget**								
4	hybridCore pre paid fee	$13,000.00							
5	Cash on hand (from Pope St. rent income)	$3,500.00		**USES**		**Total Cost**			
6	Land value	$0.00							
7	First Community Bank loan -	$1,300,000.00		Land		$0.00	$ -	$ -	
8	First Community loan increase pending	$100,000.00							
9	St. Helena housing loan/grant	$700,000.00		Legal fees		$5,000.00	$ -	$ -	
10	County housing grant-pending	$650,000.00		Helmer bid w/ contingency		$1,724,556.00		$ -	
11	Community donations, (on hand In bank)	$26,000.00		hybridBuilt core units		$647,336.00	$ 1	$ -	
12	Loan fee pre paid	$13,000.00		Contingency for settings, freight		$0.00		$ -	
13		$0.00		water heater		$0.00		$ -	
14	total	$2,805,500.00		Setting units		$0.00			
15				Washer/dryers (8 pr)		$8,500.00			
16	**GAP**	$126,042.00		sales tax, (included in factory bid)		$0.00		$ -	
17	**Total Sources**	$2,931,542.00		Building Permits(city)		$189,000.00		$ -	
18				Architect fee for State building permit		$5,000.00		$ -	
19				Garage sprinklers(confirmed)		$20,400.00		$ -	
20	**CALCULATION OF FEDERAL CREDIT EQUITY**			Unit costs not in factory bid		$0.00		$ -	
21				Construction Interest	5.5%	$49,750.00		$ -	
22	Eligible Basis (Acq.)	$0.00		Construction Loan Fees	1.0%	$14,000.00		$ -	
23	Eligible Basis (NC/RH)			Builders Risk Insurance	in Helmer contract	$0.00		$ -	25
24	Deduction for Historic Credit			builders rep(Paul Coates)		$35,000.00			
25	Additional Basis Deductions-Grants			Title and Recording		$3,000.00			f
26	QCT/DDA Increase			Developer fee		$60,000.00			
27	Total Qualified Basis (Acq.)			Relocation of tenants		$5,000.00		$ -	
28	Total Qualified Basis (NC/RH)							$ -	
29	Applicable Fraction			school impact fees-waived		$0.00		$ -	
30	Applicable Credit Rate (Acq.)			Misc. General liability insur		$5,000.00		$ -	
31	Applicable Credit Rate (NC/RH)			Misc Demotion- included in site work		$0.00		$ -	
32	Total Annual Credit			Pre-development costs(spent) 100,000		$100,000.00			
33	Maximum Allocated Credit			Construction Contingency		$60,000.00		$ -	
34	Total 10-Year Credit x 99.99%							$ -	
35	Investment Rate							$ -	
36	**Total Investor Equity**	$0.00						$ -	
37								$ -	
38	**CONSTRUCTION LOAN CALCULATION**							$ -	
39	Total Project Costs	$2,496,417.00						$ -	
40	Deducted Acquisition Costs	$0.00						$ -	
41	Deducted Post-Construction Costs	$0.00						$ -	
42	Deducted Reserves	$0.00							
43	Available Soft Funds	#REF!							
44	**Estimated Construction Loan**	#REF!						$ -	
45								$ -	
46	**CONSTRUCTION LOAN INTEREST CALCULATION**								
47	Estimated Construction Loan	$1,400,000.00					$ -		
48	Interest Rate	5.50%							
49	Construction Period (Mos.)	6.00					$ -	$ -	
50	**Estimated Const. Interest**	$38,500.00		**Total Costs**		**$2,931,542.00**		$ -	
51	**Plus one month rent up**	$11,250.00	1						
52	**Total**	$49,750.00				366,442.75	Cost Per Unit w/ land		
53									
54				**FEE PERCENTAGES**				**CASH ANALYSIS**	
55	**ACQUISITION PRICE**	Amount		**0% Developr Fee**		0.00	$ 439,731	First Mortgage	$ 1,400,000
56	Existing Mortgage	$0.00						Local HOME	$ -
57	Flex Subsidy	$0.00	*Jan-00*	**50% TEST**				Tax Credit Equity	$ -
58	Residual & Escrow	$0.00		Land		0.00		Replacement Reserv	$ -
59	Other	$0.00		Building		0.00		Total Sources	$ 1,400,000
60	Other	$0.00		Rehab		0.00			
61	Cash	$0.00		**Total:**		0.00		Actual Purchase Pric	$ -
62	**Total**	**$0.00**	*$ -*	**Tax-Exempt debt**		1,400,000.00		CCA Dev	$ -
63	Land	$0.00	15%	**50% Test**		**#DIV/0!**		Total Dev Cost minu	$ -
64	Building	$0.00	85%			**#DIV/0!**		Total Costs	$ -
65									
66	**HARD COSTS**							**Remaining Cash**	$ 1,400,000
67	Site Improvement(in hard cost)		$ -						
68	Hard Construction(hard costs)				1356166	1,356,166.00			
69	General Requirements (hard costs)	$0.06	$ -	$ -					
70	Overhead (hard costs)	$0.02	$ -	$ -	$ -				
71	Profit (hard costs)	$0.06		$ -					
72	Bond Premium(hard costs)								
73	Permits and Fees (hard costs)								
74		**Total**	**$ -**						
75	**Hard cost per unit**		**-**						
76									
77									

Turley construction budget1.6.1716.xls Sources-Uses 1/12/2017

Attachment I

Helmers Construction Bid (same as project construction budget)

Turley Flats
St. Helena, CA
Cash Flow Proforma

Helmers 9/16 bid (construction budget)

Income Inflation 1.50%
Expense Inflation: 2.50%

Yr. 1 PIS Date: 1/1/2014
Year 1 Vacancy: 5.00%

Stabilized Vacancy: 5.00%

9.00

Units: 8

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
INCOME																
Gross Potential Rent	$ 138,720	$ 140,801	$ 142,913	$ 145,057	$ 147,232	$ 149,441	$ 151,682	$ 153,958	$ 156,267	$ 158,611	$ 160,990	$ 163,405	$ 165,856	$ 168,344	$ 170,869	
Vacancy, Credit Loss	$ (6,936)	$ (7,040)	$ (7,146)	$ (7,253)	$ (7,362)	$ (7,472)	$ (7,584)	$ (7,698)	$ (7,813)	$ (7,931)	$ (8,050)	$ (8,170)	$ (8,293)	$ (8,417)	$ (8,543)	
Net Rental Income	$ 131,784	$ 133,761	$ 135,767	$ 137,804	$ 139,871	$ 141,969	$ 144,098	$ 146,260	$ 148,454	$ 150,681	$ 152,941	$ 155,235	$ 157,563	$ 159,927	$ 162,326	
Total Other Income	$ -	-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Effective Gross Income	$ 131,784	$ 133,761	$ 135,767	$ 137,804	$ 139,871	$ 141,969	$ 144,098	$ 146,260	$ 148,454	$ 150,681	$ 152,941	$ 155,235	$ 157,563	$ 159,927	$ 162,326	
EXPENSES																
Administrative	$ 8,200	8,405	$ 8,615	$ 8,831	$ 9,051	$ 9,278	$ 9,509	$ 9,747	$ 9,991	$ 10,241	$ 10,497	$ 10,759	$ 11,028	$ 11,304	$ 11,586	
Maintenance	$ 2,700	2,768	$ 2,837	$ 2,908	$ 2,980	$ 3,055	$ 3,131	$ 3,209	$ 3,290	$ 3,372	$ 3,456	$ 3,543	$ 3,631	$ 3,722	$ 3,815	
Utilities	$ 12,000	12,300	$ 12,608	$ 12,923	$ 13,246	$ 13,577	$ 13,916	$ 14,264	$ 14,621	$ 14,986	$ 15,361	$ 15,745	$ 16,139	$ 16,542	$ 16,956	
Taxes and Insurance	$ 5,100	5,228	$ 5,358	$ 5,492	$ 5,629	$ 5,770	$ 5,914	$ 6,062	$ 6,214	$ 6,369	$ 6,528	$ 6,692	$ 6,859	$ 7,030	$ 7,206	
Social Services	$ -	-	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Replacement Reserve	$ 3,760	3,854	$ 3,950	$ 4,049	$ 4,150	$ 4,254	$ 4,360	$ 4,469	$ 4,581	$ 4,696	$ 4,813	$ 4,933	$ 5,057	$ 5,183	$ 5,313	$67,424
Total Expenses	$ 31,760	$ 32,554	$ 33,368	$ 34,202	$ 35,057	$ 35,934	$ 36,832	$ 37,753	$ 38,696	$ 39,664	$ 40,655	$ 41,672	$ 42,714	$ 43,782	$ 44,876	
Net Operating Income	**100,024**	**101,207**	**102,399**	**103,602**	**104,814**	**106,035**	**107,266**	**108,507**	**109,757**	**111,017**	**112,285**	**113,563**	**114,850**	**116,145**	**117,450**	
								$ -	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
DEBT SERVICE																
First Mortgage	$ 90,148	90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	$ 90,148	
	$ -	$ -		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
DCR:	**1.11**	**1.12**	**1.14**	**1.15**	**1.16**	**1.18**	**1.19**	**1.20**	**1.22**	**1.23**	**1.25**	**1.26**	**1.27**	**1.29**	**1.30**	
Cash Flow after Mortgage	$ 9,876	$ 11,059	$ 12,251	$ 13,454	$ 14,666	$ 15,887	$ 17,118	$ 18,359	$ 19,609	$ 20,869	$ 22,137	$ 23,415	$ 24,702	$ 25,997	$ 27,302	
FEES																
Return to Owner	$ -	$ 12,649	$ 12,839	$ 13,031	$ 13,227	$ 13,425	$ 13,627	$ 10,000	$ 10,150	$ 10,302	$ 10,457	$ 10,614	$ 10,773	$ 10,934	$ 11,098	
Deferred Fee	-		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
interest		-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cash Flow to Deferred Fee		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Cash Flow after Fees	$ 9,876	$ -	$ -	$ 422	$ 1,439	$ 2,462	$ 3,492	$ 8,359	$ 9,459	$ 10,566	$ 11,680	$ 12,801	$ 13,929	$ 15,063	$ 16,203	
Seller Note 0.00%																
Beginning Principal	$ -	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	
Accrued Interest	$ -	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	#REF!	
	$ -	$ 12,567	$ 12,133	$ 11,700	$ 11,267	$ 10,833	$ 10,400	$ 9,967	$ 9,533	$ 9,100	$ 8,667	$ 8,233	$ 7,800	$ 7,367	$ 6,933	
	$ 1,400,000	$ 1,387,433	$ 1,375,300	$ 1,363,600	$ 1,352,333	$ 1,341,500	$ 1,331,100	$ 1,321,133	$ 1,311,600	$ 1,302,500	$ 1,293,833	$ 1,285,600	$ 1,277,800	$ 1,270,433	$ 1,263,500	
	$ 322	$ 319	$ 316	$ 314	$ 311	$ 309	$ 306	$ 304	$ 302	$ 300	$ 298	$ 296	$ 294	$ 292	$ 291	$ 4,572
	$ 5,600	$ 5,550	$ 5,501	$ 5,454	$ 5,409	$ 5,366	$ 5,324	$ 5,285	$ 5,246	$ 5,210	$ 5,175	$ 5,142	$ 5,111	$ 5,082	$ 5,054	$79,511
	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	2181	$32,715

Turley construction budget1.6.1716.xls Cash Flow Proforma 1/12/2017 3:08 PM

Attachment I

Turley Flats
St. Helena, CA
Income/Expense Schedule

1/13/2017

INCOME SCHEDULE

Household Size	2016 AMI (75%)	1		2016 FMR
1			0 BR	
2			1 BR	$ -
3			2 BR	
4	$ 65,531		2BR	$ 1,500
4	$ 65,531		3BR	$ 2,186
6				

Other Income:	Annual	Per Unit/Mnth
Laundry	$ -	0.00
Tenant Charges	$ -	0.00
Vending	$ -	0.00
Other	$ -	0.00
Total	$ -	$ -

		Rent %	#Units	Gross Rent	Utility Allowan	Net Rent	S8 contract above Rent Restriction	Annual GRP	
2	**BR**	75.00%	4	$ 1,391		5,564	$ -	66,768	
3	**BR**	75.00%	2	$ 1,607		$ 3,214	$ -	38,568	
2	**BR**	75.00%	2	$ 1,391		$ 2,782	$ -	33,384	
3	**BR**	0.00%	0	$ -	$ -	$ -	$ -	-	
3	**BR**	0.00%	0	$ -	$ -	$ -	$ -	-	f
3	**BR**	0.00%	0	$ -	$ -	$ -	$ -	-	a
4	**BR**	0.00%	0	$ -	$ -	$ -	$ -	-	
4	**BR**	0.00%	0	$ -	$ -	$ -	$ -	-	
1	**Manager's**	0.00%	0	$ -	$ -	$ -	$ -	-	
	Total		8				$ -	138,720	
	Vacancy Rate:	5.00%		$ 375					
					$ 50				

OPERATING EXPENSE SCHEI

			Annual	Per Unit
Administrative				
		Advertising	$ -	$ -
		Other Admin.	$ 100	$ 12.50
		Office Salarie	$ -	$ - `
		Office Supplies		$ -
6144	**5.00%**	Management	$ 6,900	$ 862.50
		Manager Sala	$ -	$ -
		Legal Expenses		$ -
		Auditing Expe	$ 600	$ 75.00
		Bookkeeping/	$ 600	$ 75.00
173		Phone/Interne	$ -	$ -
9000		Compliance F	$ -	$ -
		All Other	$ -	$ -
	Total		$ 8,200	$ 1,025.00
Op & Maintenance				
		Payroll		$ -
		Supplies	$ 100	$ 12.50
		Contract	$ 500	$ 62.50
		Exterminating	$ -	$ -
		Trash Removal		$ -
		Security Payroll		$ -
		Vehicle Repairs		$ -
		Snow Remov	$ -	$ -
		Grounds Con	$ 800	$ 100.00
		Repairs Payroll		$ -
		Repairs Mate	$ 500	$ 62.50
		Repairs Contr	$ 500	$ 62.50
		Extraordinary Repairs		$ -
		Elevator	$ 200	$ 25.00
		Heating/Cooling		$ -
		Decorating Su	$ -	$ -
		Decorating Contract		$ -
		All Other	$ 100	$ 12.50
	Total		$ 2,700	$ 337.50

			Annual	Per Unit
Utilities				
		Electricity/Gas	$ 4,000	$ 500.00
		Water	$ 4,500	$ 562.50
		Sewer	$ 3,500	$ 437.50
		Trash Removal	$ -	$ -
	Total		$ 12,000	$ 1,500.00
Taxes and Insurance				
		Real Estate Taxes	$ 100	$ 12.50
		Payroll Taxes	$ -	$ -
		Misc. Taxes/Permits		$ -
		Property/Liability Ir	$ 5,000	$ 625.00
	1500	MIP Service Charge		$ -
		Workers Compens	$ -	$ -
		Health Insur./Benefits		$ -
		Other Insurance	$ -	$ -
	Total		$ 5,100	$ 638
Social Servic		Salary	$ -	$ -
		Activities	$ -	$ -
			$ -	$ -
Total Operating Expenses			$ 28,000	$ 3,500.00
Replacement Reserve			$ 3,760	$ 600.00
Total			$ 31,760	$ 3,970.00

708

Turley construction budget1.1.12.17budget.xls Income-Expense Schedule 1/13/2017 8:06 AM