

## RESOLUTION NO. 2016-XXX

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2  
3 **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF**  
4 **NAPA, STATE OF CALIFORNIA, APPROVING A LEASE DISPOSITION AND**  
5 **DEVELOPMENT AGREEMENT WITH THE CORPORATION FOR BETTER HOUSING**  
6 **TO EFFECUTATE THE GROUND LEASE OF, AND DEVELOPMENT OF AN**  
7 **AFFORDABLE SENIOR APARTMENT PROJECT ON CITY PROPERTY AT 611**  
8 **WASHINGTON STREET, AND AUTHORIZING THE CITY MANAGER TO EXECUTE**  
9 **THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE,**  
10 **AFFORDABLE HOUSING AGREEMENT AND OTHER DOCUMENTS**

11  
12 **WHEREAS**, the City of Calistoga ("City") owns approximately .87 acres of  
13 property at 611 Washington Street ("Property"); and

14 **WHEREAS**, the Property was purchased by the City with funding from the City's  
15 Affordable Housing Fund for the purpose of developing affordable housing; and

16 **WHEREAS**, on August 17, 2015, the City entered into an Agreement with  
17 Corporation for Better Housing ("CBH") to exclusively negotiate the terms and  
18 conditions of a Lease Disposition and Development Agreement ("DDA") for the  
19 development and construction of a senior rental housing project of approximately 30  
20 units affordable to very low- and low- income households; and

21 **WHEREAS**, the City and CBH have negotiated the terms of a Lease Disposition  
22 and Development Agreement, Ground Lease and Affordable Housing Agreement,  
23 whereby City would ground lease the property to CBH for an annual rent of \$1.00 per  
24 year and the Club would agree to develop the Project, all contingent on certain  
25 conditions precedent to closing; and

26 **WHEREAS**, this action is exempt under the California Environmental Quality Act  
27 (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be  
28 seen with certainty that there is no possibility it will have a significant effect on the  
29 environment, and a mitigated negative declaration of environmental impact was adopted  
30 for the Project by the Planning Commission on January 13, 2016; and

31 **WHEREAS**, the City Council desires to approve and authorize the execution of  
32 the Lease Disposition and Development Agreement in order to effectuate the  
33 development and use of the Project.

34 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of  
35 Calistoga hereby:

36 1. Approves, and authorizes the City Manager to execute the Lease  
37 Disposition and Development Agreement with CBH, in the form attached hereto, with  
38 minor revisions as may be approved by the City Manager in consultation with the City  
39 Attorney;

40 2. Approves, and authorizes the City Manager to execute the ground lease of  
41 the Property at a rent of \$1.00 per year in accordance with the terms of the DDA and  
42 Ground Lease;

43 3. Approves, and authorizes the City Manager to execute the Affordable  
44 Housing Agreement to limit the rents of the Project apartments to very low- and low-  
45 income levels, and limit the occupancy of the Project to tenants with a minimum age of  
46 62; and

48 4. Authorizes the City Manager to take other actions and execute other  
49 documents as necessary to implement the terms of the DDA and execution of the  
50 Ground Lease and Joint Use Agreement.

51  
52 **PASSED AND APPROVED** by the City Council of the City of Calistoga at a  
53 regular meeting held this **1st day of March, 2016**, by the following vote:

54  
55 **AYES:**  
56 **NOES:**  
57 **ABSTAIN:**  
58 **ABSENT:**

59  
60  
61 **CHRIS CANNING, Mayor**

62  
63 **ATTEST:**  
64  
65 \_\_\_\_\_  
66 **KATHY FLAMSON, City Clerk**

**LEASE DISPOSITION AND  
DEVELOPMENT AGREEMENT**

by and between the

**CITY OF CALISTOGA**

and

**CORPORATION FOR BETTER HOUSING**

Dated: \_\_\_\_\_, 2016

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## **EXHIBITS**

Exhibit A	Property Map
Exhibit B	Legal Description of Property
Exhibit C	Schematic Plans
Exhibit D	Schedule of Performance
Exhibit E	Form of Ground Lease
Exhibit F	Form of Affordable Housing Agreement

1                                   **LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

2                   THIS LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (“**Agreement**”)  
3 dated as of this \_\_\_\_ day of \_\_\_\_\_, 2016 (the “**Effective Date**”), is entered into by and  
4 between the CITY OF CALISTOGA, a municipal corporation (“**City**”), and CORPORATION  
5 FOR BETTER HOUSING, a California nonprofit public benefit corporation, and its permitted  
6 successors and assigns (“**Developer**”). The City and Developer may each be referred to as a  
7 “**Party**” or collectively as the “**Parties**.”

8   **RECITALS**

9                   The following Recitals are a substantive part of this Agreement; capitalized terms used  
10 herein and not otherwise defined are defined in Section 1.1 of this Agreement:

11                   A.       The City of Calistoga (“**City**”) owns approximately 0.87 acres of property located  
12 at 611 Washington Street, depicted on Exhibit A, attached hereto and incorporated herein by this  
13 reference, and legally described on Exhibit B, attached hereto and incorporated herein by this  
14 reference (the “**Property**”). The Property was purchased by the City for affordable housing  
15 purposes.

16                   B.       Developer and City entered into an Agreement to Negotiate Exclusively dated  
17 August 5, 2015, in order to set forth the terms under which the Parties would negotiate a Lease  
18 Disposition and Development Agreement. This Agreement is the culmination of those  
19 negotiations.

20                   C.       Developer desires to construct a new senior rental housing project of 30 units  
21 affordable to very low- and low-income households, as shown on the Schematic Plans in Exhibit  
22 C, attached hereto and incorporated herein by reference (the “**Project**”) on the Property, and City  
23 desires to effectuate such construction by leasing the Property to Developer. The Project will  
24 provide uses similar to those originally contemplated when the Property was purchased by City.  
25 The annual rent under the Ground Lease will be One Dollar (\$1.00) per year for the seventy-five  
26 (75) year term. It is anticipated that the Ground Lease will be executed concurrently with the  
27 closing of construction financing for the Project.

28                   D.       City and Developer desire to enter into this Agreement in order to set forth the  
29 terms and conditions relating to (1) Developer’s ground lease of the Property from City; (2)  
30 Developer’s development of the Project on the Property; and (3) Developer’s agreement to  
31 provide senior affordable housing on the Property.

33 **A G R E E M E N T**

34 **NOW, THEREFORE**, City and Developer hereby agree as follows:

35 1. **DEFINITIONS / REPRESENTATIONS AND WARRANTIES / ASSIGNMENT.**

36 1.1 **Definitions.**

37 “*Affordable Housing Agreement*” means that Affordable Housing Agreement attached as  
38 Exhibit F.

39 “*Affordable Units*” is defined in Section 4.1.

40 “*Agreement*” means this Lease Disposition and Development Agreement between City  
41 and Developer.

42 “*AHP*” means the Affordable Housing Program operated by the Federal Home Loan  
43 Bank.

44 “*AHSC*” means the Affordable Housing and Sustainable Communities Program of the  
45 State of California.

46 “*As Is Condition*” is defined in Section 2.3.

47 “*Award Date*” means the date of an award of federal tax credits from the Tax Credit  
48 Allocation Committee of the State of California to Developer with respect to the Project.

49 “*City*” means the City of Calistoga, a municipal corporation of the State of California,  
50 and any assignee of or successor to its rights, powers and responsibilities.

51 “*City’s Conditions Precedent to Ground Lease*” is defined in Section 2.6.

52 “*City Manager*” means the City Manager of the City of Calistoga.

53 “*City Party*” is defined in Section 2.3.

54 “*Claims*” means liabilities, obligations, orders, claims, damages, governmental fines or  
55 penalties, and expenses of defense with respect thereto, including attorneys’ fees and costs.

56 “*Closing*” is defined in Section 2.9.

57 “*Closing Date*” is defined in Section 2.9.

58 “*Completion*” is defined in Section 1.3(b).

59 “*Construction Contract*” is defined in Section 2.6(f).



60           “*Default*” means the failure of a Party to perform any action or covenant required by this  
61 Agreement within the time periods provided herein following Notice and opportunity to cure as  
62 set forth in Section 5.1.

63           “*Developer*” means Corporation for Better Housing, a California nonprofit public benefit  
64 corporation (“*CBH*”), or an entity in which CBH is the managing general partner (if such entity  
65 is a limited partnership) or the managing member (if such entity is a limited liability company).

66           “*Developer Pre-Approved Exceptions*” is defined in Section 2.10.

67           “*Developer Title Policy*” is defined in Section 2.11.

68           “*Developer Condition of Title*” is defined in Section 2.10(b).

69           “*Developer’s Conditions Precedent to Ground Lease*” is defined in Section 2.7.

70           “*Effective Date*” means the date set forth above.

71           “*Financing Plan*” is defined in Section 3.3.

72           “*Governmental Requirements*” means all laws, ordinances, statutes, codes, rules,  
73 regulations, orders and decrees, of the United States, the State of California, the County of Napa,  
74 the City, or any other political subdivision in which the Property is located, and of any other  
75 political subdivision, City or instrumentality exercising jurisdiction over City, Developer or the  
76 Property.

77           “*Ground Lease*” means the Ground Lease, attached hereto as Exhibit E.

78           “*Ground Lease Rent*” means rent payable by Developer to City under the Ground Lease.

79           “*Hazardous Materials*” means any substance, material, or waste which is or becomes  
80 regulated by any local governmental authority, the State of California, or the United States  
81 Government, including any material or substance which is: (i) defined as a “hazardous waste,”  
82 “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or  
83 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code,  
84 Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a “hazardous  
85 substance” under Section 25316 of the California Health and Safety Code, Division 20,  
86 Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a  
87 “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the  
88 California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release  
89 Response Plans and Inventory); (iv) defined as a “hazardous substance” under Section 25281 of  
90 the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of  
91 Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls;  
92 (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to  
93 Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20;  
94 (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act  
95 (33 U.S.C. §1317); (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource  
96 Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as

97 “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response,  
98 Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and  
99 regulations now exist or may hereafter be amended.

100 “HCD” means Department of Housing and Community Development of the State of  
101 California.

102 “Notice” means a written notice in the form prescribed by Section 6.1.

103 “Organizational Documents” means the articles and bylaws of Developer, as the same  
104 may be amended from time to time. In the event of an approved transfer or assignment, the term  
105 “Organizational Documents” shall be deemed to refer to the bylaws, operating agreement,  
106 partnership agreement or other organizational documents, as applicable, of Developer’s approved  
107 successor(s)-in-interest.

108 “Outside Date for Ground Lease” is defined in Section 2.9.

109 “Partnership” means 611 Washington St, L.P., a California limited partnership, of which  
110 Corporation for Better Housing is the managing general partner, which is anticipated to be the  
111 assignee of Developer.

112 “Project” is defined in Recital C.

113 “Project Documents” means this Agreement, the Ground Lease, and the Affordable  
114 Housing Agreement.

115 “Property” is defined in Recital A.

116 “Resident Services” is defined as the ongoing resident services that will be provided at  
117 the Project free of charge to meet the needs of the senior residents.

118 “Schedule of Performance” means the Schedule of Performance attached hereto as  
119 Exhibit D, setting out the dates and/or time periods by which certain obligations set forth in this  
120 Agreement must be accomplished.

121 “TCAC” means the Tax Credit Allocation Committee of the State of California.

122 **1.2 Representations and Warranties.**

123 (a) **City Representations.** City represents and warrants to Developer as  
124 follows:

125 (i) **Authority.** City is a municipal corporation of the State of  
126 California. City has full right, power and lawful authority to perform its obligations hereunder  
127 and the execution, performance and delivery of this Agreement by City has been fully authorized  
128 by all requisite actions on the part of City.

129 (ii) **No Conflict.** City's execution, delivery and performance of its  
130 obligations under this Agreement will not constitute a default or a breach under any contract,  
131 agreement or order to which City is a party or by which it is bound.

132 (iii) **No Litigation or Other Proceeding.** To City's current actual  
133 knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding  
134 or has been threatened which would prevent, hinder or delay the ability of City to perform its  
135 obligations under this Agreement.

136 Until the expiration or earlier termination of this Agreement, City shall, upon  
137 learning of any fact or condition which would cause any of the warranties and representations in  
138 this Section (a) not to be true, immediately give written Notice of such fact or condition to  
139 Developer.

140 (b) **Developer's Representations.** Developer represents and warrants to City  
141 as follows:

142 (i) **Authority.** Developer is duly organized as a nonprofit public  
143 benefit corporation within and in good standing under the laws of the State of California and  
144 authorized to do business in the State of California. Developer has full right, power and lawful  
145 authority to undertake all of its obligations hereunder and the execution, performance and  
146 delivery of this Agreement by Developer has been fully authorized by all requisite actions on the  
147 part of Developer.

148 (ii) **No Conflict.** Developer's execution, delivery and performance of  
149 its obligations under this Agreement will not constitute a default or a breach under any contract,  
150 agreement or order to which Developer is a party or by which it is bound.

151 (iii) **No Litigation or Other Proceeding.** To Developer's current  
152 actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is  
153 outstanding or has been threatened which would prevent, hinder or delay the ability of Developer  
154 to perform its obligations under this Agreement.

155 (iv) **No Developer Bankruptcy.** Developer is not the subject of any  
156 bankruptcy proceeding, and no general assignment or general arrangement for the benefit of  
157 creditors or the appointment of a trustee or receiver to take possession of all or substantially all  
158 of Developer's assets has been made.

159 Until the expiration or earlier termination of this Agreement, Developer shall,  
160 upon learning of any fact or condition which would cause any of the warranties and  
161 representations in this Section (b) not to be true, immediately give written Notice of such fact or  
162 condition to City.

### 163 1.3 **Limitations on Transfer.**

164 (a) **General.** The qualifications and identity of the Developer are of  
165 particular concern to the City. It is because of the demonstrated qualifications and identity of  
166 Developer that the City has entered into this Agreement. Developer may not transfer, assign or

167 sell any interest in the Property or the Project nor any rights or powers under this Agreement,  
168 except as expressly set forth herein. It is expressly stipulated and agreed that any assignment,  
169 sale, transfer or other disposition of the Project or the Property, or any portion(s) thereof or  
170 interest(s) therein or of any rights or powers under this Agreement in violation of this Section 1.3  
171 shall be null, void and without effect, shall cause a reversion of title to Developer, and shall be  
172 ineffective to relieve Developer of its obligations under this Lease.

173 (b) **Prior to Completion.** Prior to completion of the Project, as evidenced by  
174 City's issuance of final certificates of occupancy ("**Completion**"), the Developer shall not assign  
175 or transfer this Agreement, the Project or the Property, or any portion(s) thereof, or interest(s)  
176 therein, or any right(s) hereunder without the prior written approval of the City's City Manager.  
177 Except as expressly set forth herein, the City Manager shall have the right to disapprove any  
178 transfer, assignment or refinancing, which, as determined in his or her reasonable discretion,  
179 would diminish or otherwise impair the ability of the Developer to fulfill all its duties and  
180 obligations under this Lease.

181 (c) **Following Completion.** Following Completion, Developer shall not  
182 assign or transfer this Agreement, the Project or the Property, or any portion(s) thereof, or  
183 interest(s) therein, or any right(s) hereunder without the prior written approval of the City  
184 Manager, which approval shall not be unreasonably withheld or delayed, and shall be granted  
185 upon City's receipt of evidence acceptable to City that the following conditions have been  
186 satisfied:

187 (i) Developer is not in Default under this Agreement, the Ground  
188 Lease or the Affordable Housing Agreement, or the purchaser or assignee agrees to undertake to  
189 cure any Defaults or violations of Developer to the reasonable satisfaction of City.

190 (ii) The continued operation of the Project shall comply with the  
191 provisions of this Agreement, the Ground Lease and the Affordable Housing Agreement.

192 (iii) Either (i) the purchaser or assignee or its property manager has at  
193 least three years' experience in the ownership, operation and management of similar size rental  
194 housing projects, and at least one year's experience in the ownership, operation and management  
195 of rental housing projects containing below-market-rate units, without any record of material  
196 violations of discrimination restrictions or other state or federal laws or regulations or local  
197 governmental requirements applicable to such projects, or (ii) the purchaser or assignee agrees to  
198 retain a property management firm with the experience and record described in subclause (i)  
199 above, or (iii) Developer or its management company will continue to manage the Project for at  
200 least one year following such transfer and during such period will provide training to the  
201 purchaser or assignee and its manager in the responsibilities relating to the Affordable Units.

202 (iv) The person or entity which is to acquire the Project does not have  
203 pending against it, and does not have a history of, significant and material building code  
204 violations or complaints concerning the maintenance, upkeep, operation and regulatory  
205 agreement compliance of any of its projects as identified by any local, state or federal regulatory  
206 agencies.

207 (v) The proposed purchaser or assignee enters into a written  
208 assignment and assumption agreement in form and content reasonably satisfactory to City's legal  
209 counsel, and, if requested by City, an opinion of such purchaser or assignee's counsel to the  
210 effect that this Agreement is a valid, binding and enforceable obligation of such purchaser or  
211 assignee, subject to bankruptcy and other standard limitations affecting creditor's rights.

212 (d) **Pre-Approved Transfers.** Notwithstanding any other provision of this  
213 Agreement to the contrary, City approval of a transfer or assignment of this Agreement, the  
214 Project, or the Developer's interest in the Property shall not be required in connection with any  
215 of the following:

216 (i) Any assignment for the purpose of obtaining and securing  
217 Developer's financing, as contemplated by this Agreement, including, without limitation, the  
218 grant of a deed of trust, assignment of rents and security agreement to secure the funds necessary  
219 for Developer's financing as contemplated in the Financing Plan as described in Section 3.3  
220 below and subject to the requirements set forth in this Agreement;

221 (ii) The rental, in the ordinary course of business, of the residential  
222 units at the Project, provided such rental is in accordance with the terms of this Agreement and  
223 the Affordable Housing Agreement;

224 (iii) Any transfer to any entity of which Corporation for Better Housing  
225 (or its successor in interest) or an affiliate of Corporation for Better Housing (or its successor in  
226 interest) is the general partner, or managing member, or sole member, or controlling shareholder;

227 (iv) Any transfer of limited partnership interests in Developer to any  
228 institutional investor or fund or syndicator making a capital contribution to the limited  
229 partnership in exchange for partnership interests in Developer;

230 (v) Any transfer of the ownership interests of any entity which,  
231 directly or indirectly, owns or holds a partnership, membership, manager, shareholder, or other  
232 ownership interest in Developer's limited partner or the partners, members, managers,  
233 shareholders or owners of Developer's limited partner;

234 (vi) Any transfers of Corporation for Better Housing's partnership  
235 interest in Developer to any entity which is an affiliate of Corporation for Better Housing (or its  
236 successor in interest);

237 (vii) The removal and replacement by Developer's limited partner of  
238 any of Developer's general partners as permitted under Developer's limited partnership  
239 agreement;

240 (viii) Any transfer of Developer's leasehold interest in the Property that  
241 occurs by foreclosure or deed in lieu of foreclosure of any permitted senior lien to the respective  
242 holder thereof or to their nominees or assignees exclusive of the Developer; or

243 (ix) Any conveyance or dedication of any portion of the Property to the  
244 City or other appropriate governmental agency, or the granting of easements or permits to  
245 facilitate the construction of the Project.

246 In the event of an assignment or transfer by Developer under the above subsections not  
247 requiring the City's prior approval (other than in subsection (i) and (ii) above), Developer  
248 nevertheless agrees that it shall give at least fifteen (15) days prior written Notice to City of such  
249 assignment or transfer. In addition, City shall be entitled to review such documentation as may  
250 be reasonably required by the City Manager for the purpose of determining compliance of such  
251 assignment or transfer with the requirements above. Notwithstanding anything to the contrary  
252 contained herein, in connection with any transfer permitted under this Section 1.3(d) without the  
253 consent of the City, no transfer fees, processing fees, or other associated costs shall be due and  
254 payable by Developer in connection therewith.

255 **2. GROUND LEASE OF THE PROPERTY.**

256 **2.1 Ground Lease.** Subject to the terms and conditions of this Agreement, City shall  
257 ground lease to Developer and Developer shall ground lease from City the Property. The ground  
258 lease for the Property shall be in the form of the Ground Lease attached hereto as Exhibit E,  
259 subject to such minor revisions as may be approved by City and Developer. Developer  
260 acknowledges and agrees that the ground lease of the Property to Developer shall be for purposes  
261 of development of a senior affordable housing project and for no other purpose, as set forth in  
262 more detail in the Ground Lease.

263 **2.2 Ground Lease Rent Payments.** Payments of Ground Lease Rent for the  
264 Property shall be as provided in the Ground Lease.

265 **2.3 As-Is Conveyance.** DEVELOPER SPECIFICALLY ACKNOWLEDGES AND  
266 AGREES THAT DEVELOPER IS LEASING THE PROPERTY ON AN "AS IS WITH ALL  
267 FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS  
268 AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE  
269 CLOSING, INCLUDING THE ENVIRONMENTAL CONDITION ("AS IS CONDITION")  
270 AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, DEVELOPER IS NOT  
271 RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM CITY OR ANY OF  
272 CITY'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES,  
273 REPRESENTATIVES, ATTORNEYS OR BROKERS (EACH, A "CITY PARTY" AND  
274 COLLECTIVELY, "CITY PARTIES") AS TO ANY MATTERS CONCERNING THE  
275 PROPERTY.

276 **2.4 Disclaimers.** Developer acknowledges and agrees that except as expressly set  
277 forth in this Agreement: (i) neither City, nor any City Party, has made any representations,  
278 warranties, or promises to Developer, or to anyone acting for or on behalf of Developer,  
279 concerning the condition of the Property, suitability of the Property for the Project or any other  
280 aspect of the Property; (ii) the condition of the Property has been independently evaluated by  
281 Developer prior to the Closing; and (iii) any information, which Developer has received or may  
282 hereafter receive from City or any City Party were and are furnished without warranty of any  
283 kind and on the express condition that Developer has made its own independent verification of

284 the accuracy, reliability and completeness of such information and that Developer will not rely  
285 on any of the foregoing.

286           **2.5 Waivers and Releases.** Developer hereby releases City from any and all manner  
287 of Claims whatsoever, in law or equity, of whatever kind or nature, whether known or unknown,  
288 direct or indirect, foreseeable or unforeseeable, absolute or contingent that Developer now has or  
289 may have or which may arise in the future arising out of, directly or indirectly, or in any way  
290 connected with (i) all warranties of whatever type or kind with respect to the physical or  
291 environmental condition of the Property, whether express, implied or otherwise, including those  
292 of fitness for a particular purpose or use; (ii) use, management, ownership or operation of the  
293 Property; (iii) the physical, environmental or other condition of the Property; (iii) the application  
294 of, compliance with or failure to comply with any Governmental Requirements as to the  
295 Property; (iv) Hazardous Materials as to the Property; and (v) the As Is Condition. By releasing  
296 and forever discharging the foregoing Claims, Developer expressly waives any rights under  
297 California Civil Code Section 1542, which provides:

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

303                           INITIALS:    Developer \_\_\_\_\_

304           Notwithstanding the foregoing and anything to the contrary contained herein, the release  
305 and waiver of Claims set forth in this Section 2.5 shall not apply to any Claims arising from a  
306 breach by City of this Agreement or arising from the gross negligence or willful misconduct of  
307 the City or any of its officers, employees, representatives or agents. The provisions of this  
308 Section 2.5 are a material portion of the consideration given by Developer to City in exchange  
309 for City’s performance under this Agreement and shall survive the Closing.

310           **2.6 City’s Conditions Precedent to Ground Lease.** City’s obligation to proceed  
311 with the ground lease of the Property is subject to the fulfillment or waiver by City of each and  
312 all of the conditions precedent described below (“**City’s Conditions Precedent to Ground**  
313 **Lease**”). City’s Conditions Precedent to Ground Lease are solely for the benefit of City and  
314 shall be fulfilled or waived within the time periods provided for herein:

315                   (a)    **No Default.** Developer shall not be in Default under this Agreement and  
316 no event shall have occurred which with the passage of time or giving of notice or both would  
317 constitute a default hereunder.

318                   (b)    **Execution of Documents.** Developer shall have executed (and, where  
319 appropriate, acknowledged), as applicable, the Ground Lease, the Affordable Housing  
320 Agreement and any other documents required hereunder and delivered those documents into  
321 escrow.

322 (c) **Financing Plan.** City shall have approved Developer’s Financing Plan  
323 (which approval shall not be unreasonably withheld, conditioned or delayed), and Developer  
324 shall have secured all funding necessary to construct and develop the Property.

325 (d) **Insurance.** Developer shall have provided proof of insurance as required  
326 by this Agreement.

327 (e) **Permits and Land Use Approvals.** Developer shall have obtained all  
328 City and governmental City permits and land use approvals and all other entitlements for the  
329 Project, and the periods for administrative and legal challenge to such land use approvals and  
330 entitlements shall have expired and, subject to payment of all applicable fees, City shall be ready  
331 to issue building permits for construction of the Project.

332 (f) **Construction Contract.** Developer shall have entered into a guaranteed  
333 maximum price construction contract for the Project being constructed with a licensed general  
334 contractor (“**Construction Contract**”) indicating that the Developer is prepared to immediately  
335 proceed with construction upon Closing. The Construction Contract shall be consistent with  
336 Developer’s approved Financing Plan. The certificates of insurance furnished by Developer  
337 pursuant to the Construction Contract shall name the City as an additional insured.

338 (g) **Delivery of Bonds.** If and to the extent required by the construction  
339 lender, Developer shall have delivered or caused to be delivered to City copies of labor and  
340 materials bonds as required by this Agreement.

341 (h) **Condition of the Property.** Developer shall have provided Notice to City  
342 pursuant to Section 2.14 below that all physical aspects of the Property are acceptable to  
343 Developer.

344 2.7 **Developer’s Conditions Precedent to Ground Leases.** Developer’s obligation  
345 to proceed with the Ground Lease is subject to the fulfillment or waiver by Developer of each  
346 and all of the conditions precedent described below (“**Developer’s Conditions Precedent to**  
347 **Ground Lease**”), which are solely for the benefit of Developer, and which shall be fulfilled or  
348 waived within the time periods provided for herein:

349 (a) **Execution of Documents by City.** City shall have executed (and, where  
350 appropriate, acknowledged), as applicable, the Ground Lease, the Affordable Housing  
351 Agreement and any other documents required hereunder and delivered those documents into  
352 escrow.

353 (b) **No Default by City.** City shall not be in Default under this Agreement,  
354 and no event shall have occurred which with the passage of time or giving of notice or both  
355 would constitute a default hereunder.

356 (c) **Permits and Land Use Approvals.** Developer shall have obtained all  
357 City and governmental City permits and land use approvals and all other entitlements for the  
358 Project, as applicable, and the period for administrative and legal challenge to such land use  
359 approvals and entitlements shall have expired and, subject to payment of all applicable fees, City  
360 shall be ready to issue, without condition, building permits for construction of the Project.



361 (d) **Review and Approval of Title.** Developer shall have reviewed and  
362 approved the Developer Condition of Title.

363 (e) **Developer Title Policy.** The Title Company shall, upon payment of Title  
364 Company's regularly scheduled premium, be ready to issue the Developer Title Policy upon  
365 recordation of the Ground Lease.

366 (f) **Condition of the Property.** Developer shall have provided Notice to City  
367 pursuant to Section 2.14 below that all physical aspects of the Property are acceptable to  
368 Developer.

369 (g) **Cure of Outstanding Title Issues.** City shall have cured the Outstanding  
370 Title Issues, to Developer's satisfaction in its sole and absolute discretion, pursuant to Section  
371 2.15 below.

372 2.8 **Ground Lease Escrow.** Within the time set forth in the Schedule of  
373 Performance, City shall open an escrow with First American Title Insurance Company with an  
374 office at 7010 North Palm Avenue, Fresno, CA 93650 ("**Escrow Agent**") for the ground lease  
375 conveyance of the Property to Developer.

376 (a) **Costs of Ground Lease Escrow.** The City shall pay documentary  
377 transfer taxes, if any, due with respect to the ground lease of the Property to Developer, and City  
378 and Developer each agree to pay one-half of all other usual fees, charges, and costs chargeable  
379 for the escrow including recording fees and document fees.

380 (b) **Escrow Instructions.** This Agreement constitutes the joint escrow  
381 instructions of Developer and City with respect to the ground lease of the Property, and the  
382 Escrow Agent to whom these instructions are delivered is hereby empowered to act under this  
383 Agreement. The Parties shall use reasonable good faith efforts to close the escrow for the  
384 Ground Lease in the shortest possible time. All funds received in the escrow shall be deposited  
385 in interest-bearing accounts for the benefit of the depositing party in any state or national bank  
386 doing business in the State of California. All disbursements shall be made by check or wire  
387 transfer from such accounts. If, in the opinion of either Party, it is necessary or convenient in  
388 order to accomplish the Closing, such Party may require that the Parties sign supplemental  
389 escrow instructions; provided that if there is any inconsistency between this Agreement and the  
390 supplemental escrow instructions, then the provisions of this Agreement shall control. The  
391 Closing shall take place when both City's and Developer's Conditions Precedent to Ground  
392 Lease have been satisfied or waived by the appropriate Party. Escrow Agent is instructed to  
393 release City's and Developer's escrow closing statements to the respective Party.

394 (c) **Authority of Escrow Agent.** Escrow Agent is authorized to, and shall:

395 (i) Pay and charge Developer for the premium of the applicable  
396 Developer Title Policy, including any endorsements requested by Developer.

397 (ii) Pay and charge Developer for any escrow fees, charges, and costs  
398 of the ground lease escrow.

399 (iii) Disburse funds and record the Ground Lease, or a memorandum  
400 thereof, when both Developer's and City's Conditions Precedent to Ground Lease have been  
401 fulfilled or waived in writing by Developer and City, as applicable.

402 (iv) Do such other actions as necessary, including obtaining the  
403 Developer Title Policy, to fulfill its obligations under this Agreement.

404 (v) Direct City and Developer to execute and deliver any instrument,  
405 affidavit, and statement, and to perform any act, reasonably necessary to comply with the  
406 provisions of FIRPTA, if applicable, and any similar state act and regulations promulgated  
407 thereunder.

408 (vi) Prepare and file with all appropriate governmental or taxing  
409 authorities uniform settlement statements, closing statements, tax withholding forms including  
410 IRS 1099-S forms, and be responsible for withholding taxes, if any such forms are provided for  
411 or required by law.

412 2.9 **Closing.** The escrow for the Ground Lease shall close within thirty (30) days  
413 after the satisfaction, or waiver by the appropriate Party, of all of City's and Developer's  
414 Conditions Precedent to Ground Lease, but in no event later than three years after the Effective  
415 Date ("**Outside Date for Ground Lease**"). For purposes of this Agreement, the "**Closing**" shall  
416 mean the time and day the Ground Lease, or a memorandum thereof, is filed for record with the  
417 Napa County Recorder, and the "**Closing Date**" shall mean the date on which the Closing  
418 occurs. In the event that the Closing does not take place on or before the Outside Date for  
419 Ground Lease, this Agreement shall immediately terminate unless the Parties, in their sole and  
420 absolute discretion, agree to an extension.

421 2.10 **Review and Approval of Developer Condition of Title.**

422 (a) Within the time set forth in the Schedule of Performance, Developer shall  
423 cause First American Title Company, 7010 North Palm Avenue, Fresno, CA 93650 or another  
424 title company mutually acceptable to City and Developer ("**Title Company**") to deliver to  
425 Developer and to City a standard preliminary title report with respect to the Property, together  
426 with legible copies of the documents underlying the exceptions set forth in the preliminary title  
427 report. Developer shall have the right to reasonably approve or disapprove all exceptions.  
428 Developer hereby approves the following exceptions which shall be referred to herein as the  
429 "**Developer Pre-Approved Exceptions**": (a) the lien of any non-delinquent property taxes and  
430 assessments (which, if any exist, shall be prorated by the Title Company at Closing); (b) any  
431 incidental easements or other matters affecting title which do not preclude Developer's intended  
432 development and use of the Property; (c) the covenants, conditions and restrictions set forth in  
433 the Ground Lease and Affordable Housing Agreement; and (d) Exceptions 8, 9 and 11  
434 (Exceptions from Coverage) contained in that certain First American Title Owner's Policy dated  
435 August 21, 2015 under Policy No. 5011400-941895 insuring ownership in the name of the City  
436 of Calistoga, a California municipal corporation.

437 (b) Within the time set forth in the Schedule of Performance, Developer shall  
438 give Notice to City of Developer's approval or disapproval of any of the title exceptions, except

439 the Developer Pre-Approved Exceptions. Developer’s failure to give written disapproval of the  
440 exceptions within such time period shall be deemed Developer’s approval of the exceptions. If  
441 Developer delivers Notice of disapproval of any exceptions, City shall have the right, but not the  
442 obligation, to cause any disapproved exceptions to be removed within 15 days after receiving  
443 such Notice of disapproval or provide assurances satisfactory to Developer that such exceptions  
444 will be removed on or before the Closing. Failure to notify Developer within such 15-day period  
445 shall be deemed City’s election not to remove the disapproved exceptions. City’s election not to  
446 remove any disapproved exceptions shall not be a Default under this Agreement. If City cannot  
447 or does not elect to remove any of the disapproved exceptions within such 15-day period,  
448 Developer shall have ten days after the expiration of such 15-day period to either give City  
449 Notice that Developer elects, in its sole discretion, to proceed with the ground lease transaction,  
450 subject to the disapproved exceptions, or to give City Notice that Developer elects to terminate  
451 this Agreement. The exceptions to title approved by Developer as provided herein are  
452 hereinafter referred to as the “**Developer Condition of Title.**”

453 (c) If any exceptions other than Developer Pre-Approved Exceptions are  
454 reported by the Title Company after Developer has approved the Developer Condition of Title  
455 for the Property pursuant to the foregoing procedures, then any such new exception shall be  
456 subject to the same procedures for review and approval set forth above for exceptions  
457 constituting the Developer Condition of Title.

458 2.11 **Developer Title Insurance.** Concurrently with recordation of the Ground Lease,  
459 the Title Company shall issue to Developer such applicable leasehold policy of title insurance for  
460 the Property (“**Developer Title Policy**”) as may be required by Developer, together with such  
461 endorsements as are reasonably requested by Developer, insuring that Developer has valid  
462 ground leasehold interests in the Property. The Developer Title Policy for the Property shall be  
463 in the amount of \$669,000. The premium for the Developer Title Policy, plus any additional  
464 costs, including the cost of surveys, and any endorsements requested by Developer shall be paid  
465 by Developer.

466 2.12 **Property Taxes and Assessments.** *Ad valorem* taxes and assessments levied,  
467 assessed or imposed on the Property for any period prior to each closing, if any, together with  
468 any costs incurred in connection with the payoff or reallocation of any such taxes and  
469 assessments, shall be paid by City. *Ad valorem* taxes and assessments levied, assessed or  
470 imposed on the Property, the Project or any other improvements thereon, if any, for the period  
471 after the Closing, including possessory interest taxes, shall be paid by Developer.

472 2.13 **Access to Property.** Prior to the Closing, City shall cooperate to enable  
473 representatives of Developer to obtain the right of access to all portions of the Property for the  
474 purpose of obtaining data and making surveys and tests which Developer determines are  
475 reasonably necessary or desirable, including the investigation of the soils and environmental  
476 condition of the Property. Developer agrees to provide written Notice to City at least 24 hours  
477 prior to undertaking any studies or work upon the Property. Developer shall indemnify, defend,  
478 protect and hold City harmless from any Claims arising out of the acts, omissions, negligence or  
479 willful misconduct of Developer or its employees, agents, contractors or representatives in  
480 connection with such studies and investigations, except for any pre-existing conditions and  
481 except for any Claims arising out of the gross negligence or willful misconduct of the City or its

482 employees, agents, contractors or representatives. In addition, in the event Developer causes any  
483 damage to any portion of the Property, Developer shall promptly restore the Property as nearly as  
484 possible to the physical condition existing immediately prior to Developer's entry onto the  
485 Property.

486           2.14 **Approval of Condition of Property.** As soon as practicable following  
487 Developer's completion of its studies and investigations, but in any event no later than the date  
488 set forth in the Schedule of Performance, Developer shall notify City in writing of whether  
489 Developer approves or disapproves all physical aspects of the Property, including but not limited  
490 to the soils and environmental condition of the Property. Developer's failure to give written  
491 Notice of approval or disapproval within such period shall be deemed Developer's approval of  
492 the physical aspects of the Property. If Developer disapproves of any physical aspect of the  
493 Property which may reasonably be cured by City, then Developer's written Notice shall state and  
494 sufficiently describe such condition(s) with respect to the physical aspect of the Property which  
495 is subject to cure, and City shall have ten (10) business days after receipt of such Notice to notify  
496 Developer whether City will cure such condition(s) prior to the date set forth in the Schedule of  
497 Performance. If City elects to cure such condition(s), City shall diligently proceed to cure such  
498 condition(s). Failure of City to deliver such notice shall mean that City will not cure such  
499 condition(s). If City elects not to or cannot cure any such condition, then Developer shall be  
500 deemed to have disapproved such condition(s) with respect to the physical aspects of the  
501 Property. In the event Developer disapproves, or is deemed to have disapproved, the physical  
502 aspects of the Property, then this Agreement shall terminate.

503           2.15 **Outstanding Title Issues.** Prior to the Closing, City shall remedy, to the  
504 satisfaction of Developer in its sole and absolute discretion, the following title issues  
505 (collectively, the "**Outstanding Title Issues**"):

506           (a) City shall abandon or vacate that portion of Fir Street which lies on the  
507 Property in a manner which allows Developer to secure any and all necessary title insurance  
508 endorsements required for the construction of the Project, which the Parties agree and understand  
509 shall be considered by City in its reasonable discretion; and

510           (b) City shall take all necessary steps to confirm alignment of those certain  
511 pieces of land situated between Washington Street and the Property so as to allow Developer to  
512 secure all necessary title insurance as determined in its reasonable discretion.

### 513 3. **DEVELOPMENT OF THE PROJECT.**

#### 514 3.1 **Land Use Entitlements and Design Review.**

515           (a) **General.** Before Closing, Developer, at its sole cost and expense, shall  
516 secure or cause to be secured any and all land use and other entitlements, permits and approvals  
517 which may be required by City, and any other governmental agency having jurisdiction over the  
518 Project, including, without limitation, design review. City staff will work cooperatively with  
519 Developer to assist in coordinating the expeditious processing and consideration of all necessary  
520 permits, entitlements and approvals, including, without limitation, executing such applications  
521 and other documents as required in order to obtain such permits, entitlements and approvals.

522 However, the execution of this Agreement does not constitute the granting of, or a commitment  
523 to obtain, any land use permits, entitlements or approvals required by City, or any other  
524 government agency. City makes no representations as to the processing of the applications and  
525 retains discretion to approve, disapprove or condition such applications, which may include  
526 modifications to the proposed Project as approved by City in its discretion.

527 (b) **California Environmental Quality Act.** Review of the land use  
528 entitlements and Project applications will include environmental review under the California  
529 Environmental Quality Act (“CEQA”) and Developer will be required to comply with all  
530 applicable mitigation measures. Developer will pay for the costs of CEQA review, including all  
531 required technical studies.

532 3.2 **Cost of Development.** All the costs of site preparation, planning, designing,  
533 constructing and developing the Project shall be borne solely by Developer. Developer agrees  
534 and acknowledges that development of the Property would include the requirement to pay all  
535 applicable development impact fees and water and wastewater connection fees. Developer will  
536 also be responsible for utility extensions and frontage improvements.

537 3.3 **Financing Plan.** Developer shall prepare and submit to City for City’s approval,  
538 in its reasonable discretion, a financing plan, including a detailed pro forma, demonstrating the  
539 financial viability of the Project, and setting out in detail Developer’s plan for financing the costs  
540 of construction and development of the Project and evidencing any other funding required to  
541 complete the Project (“**Financing Plan**”). Developer anticipates that any or all of the following  
542 funding sources will be used: funds from AHP, AHSC and other federal and state financing  
543 sources including tax-exempt bonds, and equity financing including the use of tax credits  
544 received by Developer with respect to the Project; provided, however that until applications are  
545 submitted, underwriting is completed, and awards are made, the funding sources and amounts  
546 thereof are not known. Developer shall obtain City’s prior written approval, in City’s reasonable  
547 discretion, prior to submitting any application for funding under this Section 3.3.

548 3.4 **Development of Project Improvements.** Developer shall construct and install  
549 the Project in accordance with the requirements of this Agreement. Developer shall construct the  
550 Project in compliance with all Governmental Requirements and in accordance with the land use  
551 entitlements obtained by the City of Calistoga. During construction, Developer shall provide  
552 City with monthly updates of major construction activities and schedule. If and to the extent  
553 prevailing wage laws are applicable, initial construction and any subsequent construction shall be  
554 at prevailing wages and Developer shall cause its contractors and subcontractors to comply with  
555 prevailing wage laws and all other requirements of the California Labor Code regarding a  
556 “public work”; provided, however, that nothing in this Agreement otherwise requires the  
557 payment of prevailing wages except to the extent required by Governmental Requirements. All  
558 such work related to the Project shall be performed by licensed contractors.

559 3.5 **Payment Bonds.** If required by the construction lender for the Project, Developer  
560 shall deliver to City for review and approval (which approval shall not be unreasonably withheld,  
561 conditioned or delayed) forms of labor and materials bonds guaranteeing payment for the Project  
562 and issued by a reputable insurance company licensed to do business in California which also  
563 meet the requirements of Developer’s lenders or other institutions providing financing for the

564 Project. The bonds shall name City as co-obligee. Prior to Closing of the Ground Lease,  
565 Developer shall deliver to City copies of actually issued bonds substantially identical to the  
566 forms previously delivered to City.

567           **3.6 Schedule of Performance.** Developer shall commence and complete  
568 construction of the Project and satisfy all of Developer's other obligations under this Agreement  
569 within the times set forth in this Agreement or established in the Schedule of Performance. The  
570 Schedule of Performance is subject to revision from time to time as mutually agreed upon in  
571 writing between Developer and City's City Manager.

572           **3.7 Insurance Requirements.**

573           (a) Until Completion, Developer shall take out and maintain or shall cause its  
574 contractor to take out and maintain, Commercial General Liability and Automobile Liability  
575 policies, with minimum limits of One Million Dollars (\$1,000,000) per occurrence or accident,  
576 and if applicable, Two Million Dollars (\$2,000,000) aggregate, or such other higher policy limits  
577 as may be required by Developer's lenders or other institutions providing financing for the  
578 Project. Such policy or policies shall be written on an occurrence form.

579           (b) Until such time as Developer has completed the Project, Developer shall  
580 also obtain and maintain builder's all-risk insurance in an amount not less than the full insurable  
581 cost of the Project on a replacement cost basis, or such other greater policy limits as may be  
582 required by Developer's lenders or other institutions providing financing for the Project, and  
583 shall furnish or cause to be furnished to City evidence satisfactory to City that Developer and any  
584 contractor with whom it has contracted for the performance of work on the Property or otherwise  
585 pursuant to this Agreement carries workers' compensation insurance as required by law.

586           (c) Companies writing the insurance required hereunder shall be licensed to  
587 do business in the State of California. Insurance is to be placed with insurers with a current  
588 A.M. Best's rating of no less than A-VII or better. The commercial general liability and  
589 comprehensive automobile policies hereunder shall name City and its respective officers, agents,  
590 employees, and representatives as additional insureds.

591           (d) Developer shall furnish City with a certificate of insurance evidencing the  
592 required insurance coverage and a duly executed endorsement evidencing such additional  
593 insured status. The certificate shall contain a statement of obligation on the part of the carrier to  
594 notify City of any material change, cancellation or termination of the coverage at least 30 days in  
595 advance of the effective date of any such material change, cancellation or termination. Coverage  
596 provided hereunder by Developer shall be primary insurance and shall not be contributing with  
597 any insurance, self-insurance or joint self-insurance maintained by City and the policy shall so  
598 provide. The insurance policies shall contain a waiver of subrogation for the benefit of City.  
599 The required certificate and endorsement shall be furnished by Developer to City within the time  
600 provided in the Schedule of Performance.

601           (e) Upon Completion, Developer will remain subject to the insurance  
602 requirements set forth in the Ground Lease and the Affordable Housing Agreement.

603           3.8     **Rights of Access.** City representatives shall have the right of access to the  
604 Property, without charges or fees, at reasonable times and after prior arrangement with  
605 Developer, so long as such representatives comply with all safety rules of Developer and its  
606 contractors and insurers and do not unreasonably interfere with the progress of construction of  
607 the Project. Nothing herein shall be deemed to limit the ability of City to conduct code  
608 enforcement and other administrative inspections of the Property or Project in accordance with  
609 applicable law.

610           3.9     **Compliance with Laws; Indemnity and Waiver.** Developer shall carry out the  
611 Project work in conformity with all applicable Governmental Requirements, including all state  
612 labor laws and standards; the City zoning and development standards, as modified by any land  
613 use entitlements; building, plumbing, mechanical and electrical codes; all other provisions of the  
614 City of Calistoga Municipal Code; and all applicable disabled and handicapped access  
615 requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*,  
616 Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the  
617 Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Developer shall defend, indemnify and  
618 hold harmless City and its officers, employees, volunteers, agents and representatives from and  
619 against any and all present and future Claims, arising out of or in any way connected with  
620 Developer's failure to comply with all Governmental Requirements with respect to the Project,  
621 including all state labor laws and standards including prevailing wage requirements (if  
622 applicable), except to the extent that Claims arise out of the gross negligence or willful  
623 misconduct of City or its officers, employees, agents or representatives. Developer hereby  
624 waives, releases and discharges forever City and its employees, officers, volunteers, agents and  
625 representatives, from any and all present and future Claims arising out of or in any way  
626 connected with Developer's failure to comply with such Governmental Requirements.

627           3.10    **Liens and Stop Notices.** Developer shall not allow to be placed on the Property  
628 or any part thereof any lien or stop notice arising from any work or materials performed or  
629 provided or alleged to have been performed or provided by Developer's contractors,  
630 subcontractors, agents or representatives. If a claim of a lien or stop notice is given or recorded  
631 affecting the Property, Developer shall within thirty (30) days of such recording or service:

632                   (a)     Pay and discharge the same; or

633                   (b)     Affect the release thereof by recording and delivering to City Manager a  
634 surety bond in sufficient form and amount.

635           3.11    **Right of City to Satisfy Other Liens After Closing.** After Closing, and  
636 provided the requirements set forth in Section 3.10 have not been met by Developer, City shall  
637 have the right, but not the obligation, to satisfy any such liens or stop notices without further  
638 notice to Developer. In such event Developer shall be liable for and City shall be entitled to  
639 reimbursement by Developer for such paid lien or satisfied stop notice.

640           3.12    **Mortgage, Deed of Trust, Sale and Lease-Back Financing.** Leasehold  
641 mortgages and leasehold deeds of trust shall be permitted prior to completion of the construction  
642 of the Project, but only for the purpose of financing Project costs. Developer shall not enter into  
643 any conveyance for such financing without City's prior written approval, which may be

644 conditioned upon City's review and approval of all proposed financing or other loan documents.  
645 City's review and approval of such financing or other loan documents shall be limited to  
646 ensuring consistency with the provisions of this Agreement, the Ground Lease and the  
647 Affordable Housing Agreement and shall not be unreasonably withheld, delayed or conditioned.  
648 City's fee interest in the Property shall not be subordinated to the lien of any financing  
649 documents, leasehold mortgage or leasehold deed of trust without the City's prior written  
650 approval which may be granted or withheld in City's sole and absolute discretion, except that if  
651 an approved mortgagee requires, as a condition to its financing of the Project, mortgages or  
652 deeds of trust to be recorded against the City's fee interest, then the City shall not unreasonably  
653 withhold its approval thereof, subject to negotiating reasonable provisions giving adequate  
654 protection to the City, as reasonably determined by the City, from foreclosure by such mortgagee  
655 upon the City's fee interest. Following Completion, Developer's ability to enter into  
656 conveyances for financing purposes involving any future bond financings or other grant of  
657 leasehold mortgages or leasehold deeds of trust shall be governed by the applicable provisions of  
658 the Ground Lease.

659           **3.13 Holder Not Obligated to Construct Improvements.** The holder of any  
660 leasehold mortgage or deed of trust authorized by this Agreement shall not be obligated by the  
661 provisions of this Agreement to construct or complete the Project or to guarantee such  
662 construction or completion. Nothing in this Agreement shall be deemed to or be construed to  
663 permit or authorize any such holder to devote the Property to any uses or to construct any  
664 improvements thereon or therein other than those uses and improvements provided for or  
665 authorized by this Agreement and the Ground Lease.

666           **3.14 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.**  
667 With respect to any leasehold mortgage or deed of trust granted by Developer as provided herein,  
668 whenever City shall deliver any Notice to Developer with respect to any Default by Developer  
669 hereunder, City shall at the same time deliver a copy of such Notice to each holder of record of  
670 any leasehold mortgage or deed of trust authorized by this Agreement. No Notice of Default  
671 shall be effective as to the holder unless such notice is given. Each such holder shall (insofar as  
672 the rights of City are concerned) have the right, at its option, within 60 days after the receipt of  
673 the copy of the Notice, to cure or remedy or commence to cure or remedy any such Default. In  
674 the event possession of the Property (or portion thereof) is required to effectuate such cure or  
675 remedy, the holder shall be deemed to have timely cured or remedied if it commences the  
676 proceedings necessary to obtain possession thereof within 60 days after receipt of the copy of the  
677 Notice, diligently pursues such proceedings to completion, and, after obtaining possession,  
678 diligently completes such cure or remedy.

679           **3.15 Right of City to Cure Mortgage or Deed of Trust Default.** If a leasehold  
680 mortgage or deed of trust default or breach by Developer prior to the completion of the  
681 construction of the Project occurs, and the holder of any mortgage or deed of trust has not  
682 exercised its option to cure the default, City may cure the default, without acceleration of the  
683 subject loan, following ten business days' prior Notice thereof to Developer. In such event,  
684 Developer shall be liable for, and City shall be entitled to reimbursement from Developer of, all  
685 costs and expenses incurred by City associated with and attributable to the curing of the  
686 leasehold mortgage or deed of trust default or breach. City shall also be entitled to record a lien



687 against the Project improvements to the extent of such incurred costs and disbursements. Any  
688 such lien shall be subject and subordinate to all prior encumbrances and deeds of trust.

689           **3.16 Notice of Default to Limited Partners; Right to Cure.** Whenever City shall  
690 deliver any Notice to Developer with respect to any Default by Developer hereunder, City shall  
691 at the same time deliver a copy of such Notice to the limited partner(s) of Developer at the notice  
692 address provided by Developer to City. No Notice of Default shall be effective as to such  
693 limited partner(s) unless such notice is given. Each limited partner shall (insofar as the rights of  
694 City are concerned) have the right, at its option, within 60 days after the receipt of the copy of  
695 the Notice, to cure or remedy or commence to cure or remedy any such Default. Any cure of any  
696 Default hereunder made or tendered by the limited partner shall be deemed to be a cure by  
697 Developer and shall be accepted or rejected on the same basis as if made or tendered by the  
698 Developer.

699 **4. COVENANTS, RESTRICTIONS AND AGREEMENTS.**

700           **4.1 Affordable Housing Agreement.** Developer and City shall enter into the  
701 Affordable Housing Agreement, in the form attached hereto as Exhibit F, for the use of the  
702 property and Project for affordable housing purposes. Developer shall construct, maintain and  
703 lease approximately 30 units to very-low and low income households, as provided in the  
704 Affordable Housing Agreement (the “**Affordable Units**”). For the duration of the Ground Lease  
705 term, Developer shall remain in compliance with the terms and conditions of the Affordable  
706 Housing Agreement, including the requirement that all of the Affordable Units shall be rented to  
707 tenants with a minimum age of 62.

708           **4.2 Reserved.**

709           **4.3 Priority and Subordination of Documents.** The Ground Lease and Affordable  
710 Housing Agreement shall have priority over any leasehold deeds of trust, except insofar as the  
711 Ground Lease otherwise expressly provides. Notwithstanding anything to the contrary contained  
712 herein, if required by the applicable holder or record of any leasehold mortgage or deed of trust  
713 authorized by this Agreement or other permitted lender, City may agree to subordinate the  
714 Ground Lease and Affordable Housing Agreement on terms approved by City (which approval  
715 shall not be unreasonably withheld, conditioned or delayed) provided that such lender(s) agree to  
716 provide reasonable notice and the right but not obligation of the City to cure.

717 **5. DEFAULTS AND REMEDIES.**

718           **5.1 Default Remedies.** Failure by either Party to perform any action or covenant  
719 required by this Agreement within the time periods provided herein following Notice shall  
720 constitute a “Default” under this Agreement. A Party claiming a Default shall give written  
721 Notice of Default to the other Party specifying the Default complained of. Except as otherwise  
722 expressly provided in this Agreement, the claimant shall not institute any proceeding against the  
723 other Party if such Party within 30 days following receipt of such Notice of Default immediately,  
724 with due diligence, commences to cure, correct or remedy such failure or delay and completes  
725 such cure, correction or remedy with diligence. In addition to the foregoing, any default by  
726 either Party under one or more of the other Project Documents which is not cured following

727 notice and expiration of any applicable cure periods thereunder shall also constitute a Default  
728 under this Agreement, and upon occurrence of such Default and without any right to further  
729 notice or additional cure period the non-defaulting Party shall have all remedies available to it  
730 under this Agreement, including the right to terminate this Agreement as set forth in Section 5.4  
731 below.

732           **5.2 Dispute Resolution.** In the event that the Party receiving a Notice of Default  
733 disputes the allegations or is not intending to cure, correct or remedy the alleged default, the  
734 Parties shall promptly meet in an effort to resolve the issues raised. If the Parties fail to resolve  
735 the issues raised, mediation may be pursued by mutual agreement. It is the intent of the Parties  
736 to the extent possible that litigation be avoided as a method of dispute resolution.

737           **5.3 Institution of Legal Actions.** Except as otherwise specifically provided herein,  
738 upon the occurrence of a Default hereunder, any Party shall have the right, in addition to any  
739 other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or  
740 remedy any Default, or to recover actual damages for any Default, or to obtain any other remedy  
741 consistent with the purpose of this Agreement. In no event, however, shall either Party be  
742 entitled to special, consequential or punitive damages in the event of a breach. Such legal  
743 actions must be instituted in the Superior Court of the County of Napa, State of California, or in  
744 the Federal District Court for the Northern District of the State of California. Neither Party shall  
745 have the right to recover any consequential, punitive or special damages.

746           **5.4 Termination.** This Agreement may be terminated: (1) if there is an uncured  
747 Default, after Notice from the Party not in default and expiration of all cure periods, or (2) if  
748 there is a failure of an express condition (which is not waived by the Party whom the condition  
749 benefits) by timely Notice from the Party whom the condition benefits. If this Agreement is  
750 terminated by either Party due to an uncured Default by the other Party, after Notice and  
751 expiration of all cure periods, then the non-defaulting Party may recover all of its reasonable out  
752 of pocket expenses in connection with its performance hereunder and the negotiation of this  
753 Agreement, including any nonrefundable deposits made and financing fees incurred by  
754 Developer in connection with obtaining financing for the construction and development of the  
755 Property.

756           **5.5 Rights and Remedies Are Cumulative.** The rights and remedies of the Parties  
757 are cumulative, and the exercise by either Party of one or more of such rights or remedies shall  
758 not preclude the exercise by it, at the same or different times, of any other rights or remedies for  
759 the same default or any other default by the other Party, except as otherwise expressly provided  
760 herein.

761           **5.6 Inaction Not a Waiver of Default.** Any failures or delays by either Party in  
762 asserting any of its rights and remedies as to any Default shall not operate as a waiver of any  
763 Default or of any such rights or remedies, or deprive either such Party of its right to institute and  
764 maintain any actions or proceedings which it may deem necessary to protect, assert or enforce  
765 any such rights or remedies.

766

767 6. **GENERAL PROVISIONS.**

768 6.1 **Notices, Demands and Communications Between the Parties.** Any approval,  
769 disapproval, demand, document or other notice (“**Notice**”) which either Party may desire to give  
770 to the other Party under this Agreement must be in writing and shall be given by certified mail,  
771 return receipt requested and postage prepaid, personal delivery, or reputable overnight courier  
772 (but not by facsimile or email), to the Party to whom the Notice is directed at the address of the  
773 Party as set forth below, or at any other address as that Party may later designate by Notice.

To City: City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Attention: City Manager

To Developer: Corporation for Better Housing  
21031 Ventura Boulevard, Suite 200  
Woodland Hills, CA 91364  
Attention: Lori Koester

With a copy to:

Chernove & Associates, Inc.  
16027 Ventura Boulevard, Suite 660  
Encino, CA 91436  
Attention: Sheldon B. Chernove, Esq.

774 Any Notice shall be deemed received on the date of delivery if delivered by  
775 personal service, on the date of delivery or refused delivery as shown by the return receipt if sent  
776 by certified mail, and on the date of delivery or refused delivery as shown by the records of the  
777 overnight courier if sent via nationally recognized overnight courier. Notices sent by a Party’s  
778 attorney on behalf of such Party shall be deemed delivered by such Party.

779 6.2 **Enforced Delay; Extension of Times of Performance.** Subject to the  
780 limitations set forth below, performance by either Party hereunder shall not be deemed to be in  
781 Default, and all performance and other dates specified in this Agreement shall be extended,  
782 where delays are due to: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires;  
783 casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight  
784 embargoes; governmental restrictions or priority; litigation, including court delays; unusually  
785 severe weather; acts or omissions of the other Party; or acts or failures to act of City or any other  
786 public or governmental City or entity (other than the acts or failures to act of City which shall not  
787 excuse performance by City). An extension of time for any such cause shall be for the period of  
788 the enforced delay and shall commence to run from the time of the commencement of the cause,  
789 if Notice by the Party claiming such extension is sent to the other Party within 30 days of the  
790 commencement of the cause. Times of performance under this Agreement may also be extended  
791 in writing by the mutual agreement of City and Developer. The City Manager shall have  
792 authority, at his or her discretion, to approve, on behalf of the City, extensions of time of  
793 performance under this Agreement not to exceed a total of 180 days. Developer expressly agrees

794 that adverse changes in economic conditions, either of Developer specifically or the economy  
795 generally, changes in market conditions or demand, and/or Developer's inability to obtain  
796 financing or other lack of funding, or to complete the work of the Project shall not constitute  
797 grounds of enforced delay pursuant to this Section 6.2. Developer expressly assumes the risk of  
798 such adverse economic or market changes and/or financial inability, whether or not foreseeable  
799 as of the Effective Date.

800           **6.3 Successors and Assigns.** Subject to the restrictions on Developer transfers set  
801 forth in Section 1.3 above, all of the terms, covenants and conditions of this Agreement shall be  
802 binding upon Developer and City and their respective permitted successors and assigns.  
803 Whenever the term "Developer" is used in this Agreement, such term shall include any permitted  
804 successors and assigns as herein provided.

805           **6.4 Relationship Between City and Developer.** It is hereby acknowledged that the  
806 relationship between City and Developer is not that of a partnership or joint venture and that City  
807 and Developer shall not be deemed or construed for any purpose to be the agent of the other.  
808 Accordingly, except as expressly provided herein or in the exhibits hereto, City shall have no  
809 rights, powers, duties or obligations with respect to the development, operation, maintenance or  
810 management of the Project. City is not acting as a developer of the Project and City will not  
811 undertake any actions that could be construed as City acting as a developer. Developer shall  
812 indemnify, protect, hold harmless and defend City from any Claims made against City arising  
813 from a claimed relationship of partnership or joint venture between City and Developer with  
814 respect to the development, operation, maintenance or management of the Project.

815           **6.5 City Approvals and Actions.** Whenever a reference is made herein to an action  
816 or approval to be undertaken by City, the City Manager or his or her designee is authorized to act  
817 on behalf of City, unless specifically provided otherwise or the context requires otherwise.

818           **6.6 Counterparts.** This Agreement may be signed in multiple counterparts each of  
819 which shall be deemed to be an original.

820           **6.7 Integration.** This Agreement, including the exhibits hereto, and the other Project  
821 Documents contain the entire understanding between the Parties relating to the transactions  
822 contemplated by this Agreement. All prior or contemporaneous agreements, understandings,  
823 representations and statements, oral or written, other than the other Project Documents, are  
824 merged in this Agreement and shall be of no further force or effect. Each Party is entering this  
825 Agreement based solely upon the representations set forth herein and upon each Party's own  
826 independent investigation of any and all facts such Party deems material.

827           **6.8 Brokerage Commissions.** City and Developer each represents to the other that it  
828 has not engaged the services of any finder or broker and that it is not liable for any real estate  
829 commissions, broker's fees, or finder's fees which may accrue by means of the acquisition or  
830 leasing of all or part of the Property. Each Party shall indemnify, defend, protect and hold the  
831 other Party harmless from any and all Claims based upon any assertion that such commissions or  
832 fees are allegedly due from the Party making such representations.

833           6.9     **Titles and Captions.** Titles and captions are for convenience of reference only  
834 and do not define, describe or limit the scope or the intent of this Agreement or of any of its  
835 terms. References to section numbers are to sections in this Agreement, unless expressly stated  
836 otherwise. References to specific section numbers shall include all subsections which follow the  
837 referenced section.

838           6.10   **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender  
839 and the singular or plural number shall each be deemed to include the others where and when the  
840 context so dictates. The words “include” and “including” shall be construed as if followed by  
841 the words “without limitation.” The Parties acknowledge that each Party and its counsel have  
842 reviewed and revised this Agreement and that the rule of construction to the effect that any  
843 ambiguities are to be resolved against the drafting Party shall not be employed in the  
844 interpretation of this Agreement or any document executed and delivered by either Party in  
845 connection with this Agreement.

846           6.11   **Modifications.** Any alteration, change or modification of or to this Agreement,  
847 in order to become effective, shall be made in writing and in each instance signed on behalf of  
848 each Party.

849           6.12   **Severability.** If any term, provision, condition or covenant of this Agreement or  
850 its application to any Party or circumstances shall be held, to any extent, invalid or  
851 unenforceable, the remainder of this Agreement, or the application of the term, provision,  
852 condition or covenant to persons or circumstances other than those as to whom or which it is  
853 held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the  
854 fullest extent permitted by law.

855           6.13   **Computation of Time.** The time in which any act is to be done under this  
856 Agreement is computed by excluding the first day, and including the last day, unless the last day  
857 is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall  
858 mean all holidays as specified in Sections 6700 and 6701 of the California Government Code. If  
859 any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

860           6.14   **Legal Advice.** Each Party represents and warrants to the other the following:  
861 they have carefully read this Agreement, and in signing this Agreement, they do so with full  
862 knowledge of any right which they may have; they have received independent legal advice from  
863 their respective legal counsel as to the matters set forth in this Agreement, or have knowingly  
864 chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have  
865 freely signed this Agreement without any reliance upon any agreement, promise, statement or  
866 representation by or on behalf of the other Party, or their respective agents, employees, or  
867 attorneys, except as specifically set forth in this Agreement, and without duress or coercion,  
868 whether economic or otherwise.

869           6.15   **Time of Essence.** Time is expressly made of the essence with respect to the  
870 performance by City and Developer of each and every obligation and condition of this  
871 Agreement.

872           6.16   **Cooperation.** Each Party agrees to cooperate with the other in this transaction  
873 and, in that regard, shall execute any and all documents which may be reasonably necessary,  
874 helpful, or appropriate to carry out the purposes and intent of this Agreement.

875           6.17   **Conflicts of Interest.** No member, official or employee of City shall have any  
876 personal interest, direct or indirect, in this Agreement, nor shall any such member, official or  
877 employee participate in any decision relating to the Agreement which affects his personal  
878 interests or the interests of any corporation, partnership or association in which he is directly or  
879 indirectly interested.

880           6.18   **Developer's Indemnity.** Developer shall indemnify, defend (with counsel  
881 reasonably acceptable to City), protect and hold City and its officers, employees, agents and  
882 representatives, harmless from, all Claims relating to the development of the Project whether  
883 caused by any of Developer's activities under this Agreement or by anyone directly or indirectly  
884 employed or contracted with by Developer and whether such Claims shall accrue or be  
885 discovered before or after termination of this Agreement. Developer's indemnity obligations  
886 under this Section 6.18 shall not extend to Claims caused by the negligence or willful  
887 misconduct of City or its officers, employees, agents or representatives.

888           6.19   **Cooperation in the Event of Legal Challenge.**

889           (a)     **Cooperation of Parties.** City and Developer, at each party's own cost  
890 and expense, shall cooperate in the event of any court action instituted by a third party or other  
891 governmental entity or official challenging the validity of any provision of this Agreement.  
892 Nothing herein shall authorize Developer to settle such legal challenge on terms that would  
893 constitute an amendment or modification of this Agreement or any other Project Documents,  
894 unless such amendment or modification is approved by City in accordance with applicable legal  
895 requirements, and City reserves its full legislative discretion with respect thereto.

896           (b)     **City Election to Contest or Defend.** In addition, City shall have the  
897 right, but not the obligation, to contest or defend such litigation challenges, in the event that  
898 Developer elects not to do so. Each Party shall bear its own costs and expenses in connection  
899 with such litigation challenges to the extent such Party is involved in such litigation.

900           6.20   **Non-liability of Officials and Employees of City.** No member, official or  
901 employee of City shall be personally liable to Developer, or any successor in interest, in the  
902 event of any Default or breach by City or for any amount which may become due to Developer  
903 or its successors, or on any obligations under the terms of this Agreement. Developer hereby  
904 waives and releases any claim it may have against the members, officials or employees of City  
905 with respect to any Default or breach by City or for any amount which may become due to  
906 Developer or its successors under the terms of this Agreement except to the extent any such  
907 claim arises from the willful misconduct of any such member, official or employee of City.

908           6.21   **Applicable Law.** The laws of the State of California, without regard to conflict  
909 of laws principles, shall govern the interpretation and enforcement of this Agreement.

910           6.22   **Attorneys' Fees.** In any action among the Parties to interpret, enforce, reform,  
911 modify, rescind, or otherwise in connection with any of the terms of provisions of this

912 Agreement, the prevailing party in the action shall be entitled, in addition to any other relief to  
913 which it might be entitled, reasonable costs and expenses including, without limitation,  
914 litigations costs and reasonable attorneys' fees.

915           **6.23 Compliance with Laws.** Developer shall, at Developer's sole cost, promptly  
916 comply with all federal, state and local laws, ordinances and regulations ("Laws") and with the  
917 requirements of any governmental authority having jurisdiction over the Property, relating to or  
918 affecting the Property or the condition, use, or occupancy of the Property, including the  
919 obligation to make improvements, repairs, and alterations required by such Laws, regardless of  
920 the cost thereof, at what point in time compliance is required, and whether such compliance was  
921 foreseen or unforeseen. The judgment of any court of competent jurisdiction or the admission of  
922 Developer in any action against Developer, whether City is a party thereto or not, that Developer  
923 has violated any of the foregoing shall be conclusive of that fact between City and Developer.  
924 Developer shall promptly furnish City with a copy of any notices received from any  
925 governmental agency in connection with the Property. Notwithstanding the foregoing, if there is  
926 any conflict in laws, Developer shall comply with applicable federal laws.

927           **6.24 Non-recourse Liability of Developer.** Notwithstanding anything to the contrary  
928 in this Agreement or any other Project Document, neither Developer nor any of its partners,  
929 members, officials or employees shall be personally liable for any default, loss, claim, damage,  
930 expense or liability to any person and the sole remedy against Developer hereunder shall be  
931 limited to its interest in the Project.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**CITY:**

CITY OF CALISTOGA, a municipal corporation

By: \_\_\_\_\_  
    , City Manager

**DEVELOPER:**

CORPORATION FOR BETTER HOUSING, a California nonprofit public benefit corporation

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

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

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
    Michelle Marchetta Kenyon, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
    Kathy Flamson, City Clerk



**EXHIBIT A**  
**PROPERTY MAP**

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT C**

**SCHEMATIC PLANS**

**EXHIBIT D**

**SCHEDULE OF PERFORMANCE**

Action	Date	Estimated Outside Date
1. <b>Execution and Delivery of Agreement by the Developer.</b> Developer shall execute and deliver this Agreement to the City.	At least 14 days prior to City Council hearing on Agreement.	_____, 2016
2. <b>Approval and Execution of Agreement by City.</b> The City shall hold a hearing to approve and authorize execution of this Agreement by the City. If so authorized, the City shall execute and deliver this Agreement to Developer within 10 days of approval.	Execution of Agreement by City within 10 days of approval by City.	_____, 2016
3. <b>Opening of Escrow.</b> The City shall open an escrow for ground lease of the Property to Developer and cause the Title Company to issue a preliminary title report.	Within 30 days after the Award Date.	_____, 2016
4. <b>Developer Notification of Condition of Title.</b> Developer shall deliver written notice of any disapproved title exception.	Within 60 days after Award Date.	_____, 2016
5. <b>Developer Notification of Unacceptable Conditions on Property.</b> Developer shall deliver written notice to the City if the conditions of the Property are not acceptable.	Within 90 days after the Award Date.	_____, 2016
6. <b>Evidence of Financing.</b> Developer shall submit to the City for review and approval preliminary evidence of construction and operating cost financing necessary for development of the Property.	Prior to the close of escrow.	_____, 2016
7. <b>Construction Contract.</b> Developer shall submit to the City a Construction Contract for the improvements to be constructed on the Property.	Prior to the close of escrow.	_____, 2016

<p>8. <b>Governmental Permits.</b> Developer shall obtain any and all permits required by City and any other governmental agency.</p>	<p>Prior to the close of escrow.</p>	<p>_____, 2016</p>
<p>9. <b>Deposit of Escrow Documents.</b> The City and Developer shall deposit with the Escrow Agent, as respectively required, the escrow fees, charges and costs, and the Ground Lease and all properly executed documents prior to the close of escrow.</p>	<p>Prior to close of escrow.</p>	<p>_____, 2016</p>
<p>10. <b>Submission – Certificates of Insurance.</b> Developer shall furnish to the City duplicate originals or appropriate certificates of insurance policies described in Section 3.7.</p>	<p>Prior to close of escrow.</p>	<p>_____, 2016</p>
<p>11. <b>Close of Escrow.</b> The Parties shall close escrow on the Ground Lease of the Property.</p>	<p>No later than 150 days after Award Date.</p>	<p>_____, 2016</p>
<p>12. <b>Commencement of Construction of Improvements.</b> Developer shall commence construction of the improvements on the Property.</p>	<p>Within 45 days after Developer and City have entered into the Ground Lease.</p>	<p>_____, 201__</p>
<p>13. <b>Completion of Construction of Improvements.</b> Developer shall have completed the construction of the improvements on the Property.</p>	<p>Within 18 months after commencement of construction.</p>	<p>_____, 201__</p>



22 **ARTICLE I**  
23 **LEASE OF PREMISES; STATE OF TITLE**

24 1.1 Property. Landlord leases to Tenant, and Tenant leases from Landlord, the  
25 Property described and depicted in Exhibit A to this Lease. Tenant shall have no rights to  
26 subsurface minerals, petroleum, and other hydrocarbon substances, and Landlord expressly  
27 reserves all of its rights to same.

28 1.2 State of Title. This Lease is subject to (a) all easements, covenants, conditions,  
29 restrictions, reservations, rights-of-way, and other matters of record; and (b) Exceptions 8, 9 and  
30 11 (Exceptions from Coverage) contained in that certain First American Title Owner's Policy  
31 dated August 21, 2015 under Policy No. 5011400-941895 insuring ownership in the name of the  
32 City of Calistoga, a California municipal corporation ("Permitted Exceptions"). Tenant may,  
33 with Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or  
34 delayed, enter into, and record against the Property certain regulatory agreements in form and  
35 substance reasonably acceptable to Landlord in connection with the issuance of tax credits or  
36 other financing of the construction and development of the Property.

37 1.3 As-Is Conveyance. TENANT SPECIFICALLY ACKNOWLEDGES AND  
38 AGREES THAT LANDLORD IS LEASING THE PROPERTY ON AN "AS IS WITH ALL  
39 FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS  
40 AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE  
41 CLOSING, INCLUDING THE ENVIRONMENTAL CONDITION ("AS IS CONDITION")  
42 AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, TENANT IS NOT RELYING  
43 ON ANY REPRESENTATIONS OR WARRANTIES FROM LANDLORD OR ANY OF  
44 LANDLORD'S ELECTED OFFICIALS, OFFICERS, AGENTS, EMPLOYEES,  
45 REPRESENTATIVES, ATTORNEYS OR BROKERS (EACH A "**LANDLORD PARTY**")  
46 AND COLLECTIVELY, "**LANDLORD PARTIES**") AS TO ANY MATTERS  
47 CONCERNING THE PROPERTY.

48 1.4 Disclaimers. Tenant acknowledges and agrees that except as expressly set forth  
49 in this Agreement: (i) neither Landlord, nor any Landlord Party, has made any representations,  
50 warranties, or promises to Tenant, or to anyone acting for or on behalf of Tenant, concerning the  
51 condition of the Property, suitability of the Property for the Project or any other aspect of the  
52 Property; (ii) the condition of the Property has been independently evaluated by Tenant prior to  
53 the Closing; and (iii) any information, which Tenant has received or may hereafter receive from  
54 Landlord or any Landlord Party were and are furnished without warranty of any kind and on the  
55 express condition that Tenant has made its own independent verification of the accuracy,  
56 reliability and completeness of such information and that Tenant will not rely on any of the  
57 foregoing.

58 1.5 Waivers and Releases. Tenant hereby releases Landlord from any and all manner  
59 of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages,  
60 costs, expenses (including attorney's fees and costs) or other compensation whatsoever, in law or  
61 equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or  
62 unforeseeable, absolute or contingent that Tenant now has or may have or which may arise in the  
63 future arising out of, directly or indirectly, or in any way connected with (i) all warranties of

64 whatever type or kind with respect to the physical or environmental condition of the Property,  
65 whether express, implied or otherwise, including those of fitness for a particular purpose or use;  
66 (ii) use, management, ownership or operation of the Property; (iii) the physical, environmental or  
67 other condition of the Property; (iii) the application of, compliance with or failure to comply with  
68 any federal, state or local laws, regulations or governmental requirements as to the Property;  
69 (iv) the presence of hazardous materials or substances on to the Property; and (v) the As Is  
70 Condition (the foregoing are collectively referred to as “**Claims**”). By releasing and forever  
71 discharging the Claims, Tenant expressly waives any rights under California Civil Code Section  
72 1542, which provides:

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

78 INITIALS: TENANT \_\_\_\_\_

79 Notwithstanding the foregoing, the release and waiver of Claims set forth in this Section  
80 shall not apply to any Claims arising from a breach by Landlord of this Lease or the gross  
81 negligence or willful misconduct of Landlord or its officers, employees, agents or  
82 representatives. The provisions of this section are a material portion of the consideration given  
83 by each Party to the other in exchange for such Party’s performance under this Lease.

84 **ARTICLE II**  
85 **IMPROVEMENTS**

86 2.1 Construction of Improvements. Tenant shall bear the sole responsibility for  
87 constructing the Project and any related improvements required by the City of Calistoga or any  
88 other governmental agency, including but not limited to infrastructure for water, sewer, and other  
89 utilities to serve the Property (“**Improvements**”). Tenant is responsible for obtaining all  
90 necessary permits and approvals required to construct the Project and Improvements, provided  
91 that Landlord shall reasonably cooperate with Tenant in connection with obtaining such permits  
92 and approvals. The Project and Improvements shall be constructed in accordance with all  
93 applicable laws and regulations and in accordance with the requirements of the DDA.

94 2.2 Title to Improvements. Tenant shall have title to the Project and Improvements  
95 that are constructed on the Property by Tenant under this Lease during the Term. Upon  
96 termination of this Lease or expiration of the Term, title to the Project and Improvements shall  
97 immediately and automatically vest in the Landlord, without any compensation or payment to  
98 Tenant. This Section 2.2 shall survive the expiration or termination of this Lease.

99 **ARTICLE III**  
100 **TERM**

101 3.1 Term. The term of this Lease shall be for 75 years from the Effective Date, unless  
102 earlier terminated as provided herein (“**Term**”).



103 **ARTICLE IV**  
104 **MONETARY PROVISIONS**

105 4.1 Rent. Tenant shall pay to Landlord during the Term one dollar (\$1.00) per year  
106 on or before the first day of the Term and annually thereafter, commencing on the Effective Date  
107 (“**Rent**”).

108 4.2 Property Taxes; Transfer Taxes.

109 a. Personal Property Taxes. Tenant shall pay before delinquency all taxes,  
110 assessments, license fees, and other charges that are levied and assessed on Tenant’s personal  
111 property.

112 b. Real Property Taxes. At all times during the Term, Tenant agrees to pay  
113 in a timely manner all taxes, assessments, fees, and charges that at any time during the Term may  
114 be levied or charged by the federal government, the state, county, City, or any other tax or  
115 assessment levying body on any activity carried on under this Lease, any interest in this Lease,  
116 any possessory right that Tenant may have in or to the Property, or that is levied and assessed  
117 against the land that comprises the Property and all improvements on the Property. Tenant, at no  
118 cost to Landlord, reasonably may contest the legal validity or amount of any such taxes,  
119 assessments, or charges for which Tenant is responsible, and institute such proceedings as  
120 Tenant considers necessary; provided, however, that Tenant shall at all times Indemnify  
121 Landlord or any officer, director, employee, partner, agent, or contractor of Landlord  
122 (“**Authorized Representative**”) against any and all Claims resulting therefrom, and protect  
123 Landlord and the Property from foreclosure of any lien, and that Landlord shall not be required  
124 to join in any proceeding or contest brought by Tenant. The term “Indemnify” includes  
125 indemnify, hold harmless, protect, and defend with counsel reasonably acceptable to the  
126 Landlord. The term “Claims” refers to all claims, damages, suits, liability, penalties, costs, and  
127 expenses, including, without limitation, attorneys’ fees.

128 c. Transfer Taxes on Lease. If any governmental authority levies, assesses,  
129 and/or imposes on Landlord a transfer tax as a result of this Lease, Tenant shall, at Landlord’s  
130 election in its sole discretion, either pay such tax directly to the governmental authority or pay  
131 the amount of such tax to Landlord, in which latter event Landlord shall pay such tax directly to  
132 the governmental authority.

133 4.3 Utilities.

134 a. Payment of Utilities and Services. Tenant, at its cost, shall be responsible  
135 for arranging for all utilities to be provided to the Property that are required to serve the Project.  
136 Tenant shall promptly pay all charges for water, gas, electricity, telephone, sewage, refuse, and  
137 any other utilities or materials used or consumed on the Property directly to the party providing  
138 such utilities or services.

139 b. Interruption of Utility Services. Landlord shall not be liable to Tenant in  
140 damages or otherwise (i) if any utility becomes unavailable from any public utility company,  
141 public authority, or any other person or entity supplying or distributing such utility; or (ii) for  
142 any disruption in any utility service caused by the making of any repairs or improvements or by

143 any cause beyond Landlord’s reasonable control, and such interruption shall not constitute a  
144 termination of this Lease, or an eviction of Tenant, or give Tenant the right to reduce or abate  
145 Rent.

146 **ARTICLE V**  
147 **USE OF THE PREMISES**

148 5.1 Permitted Uses. Tenant shall use the Property for the construction of the Project  
149 and Improvements on the Property and the subsequent utilization of the Project and  
150 Improvements by Tenant for use as a senior rental affordable housing project. If Tenant desires  
151 to change the Permitted Uses on the Property to another use or uses, such change in use shall  
152 require the prior written approval of Landlord, in its sole and absolute discretion.

153 5.2 Use Covenants. Developer shall continuously operate the Property as a senior  
154 rental affordable housing project. The Property shall be managed in a first-class fiscally  
155 responsible manner to ensure continual use of the project.

156 5.3 Affordable Housing Agreement. The Parties shall comply with the provisions of  
157 the Affordable Housing Agreement.

158 5.4 Compliance with Laws.

159 a. Tenant shall, at Tenant’s sole cost, promptly comply with all federal, state  
160 and local laws, ordinances and regulations (“**Laws**”) and with the requirements of any  
161 governmental authority having jurisdiction over the Property, relating to or affecting the Property  
162 or the condition, use, or occupancy of the Property, including the obligation to make  
163 improvements, repairs, and alterations required by such Laws, regardless of the cost thereof, at  
164 what point in time during the Term compliance is required, and whether such compliance was  
165 foreseen or unforeseen. The judgment of any court of competent jurisdiction or the admission of  
166 Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has  
167 violated any of the foregoing shall be conclusive of that fact between Landlord and Tenant.  
168 Tenant shall promptly furnish Landlord with a copy of any notices received from any  
169 governmental agency in connection with the Property.

170 b. Tenant may reasonably and in good faith contest any Law through  
171 appropriate proceedings, and, during such contest, Tenant need not comply therewith; provided  
172 further that Tenant shall at all times reasonably protect the interests of Landlord under this Lease,  
173 shall Indemnify Landlord from all Claims actually and reasonably incurred as a result of the  
174 contest, and shall promptly comply with any such contested Law if any such contest is resolved  
175 against Tenant. Tenant agrees to Indemnify Landlord or any officer, director, employee, partner,  
176 agent, or contractor of Landlord (“**Landlord Party**”) from and against any Claims imposed or  
177 sought to be imposed on or involving Landlord for any violation or alleged violation of any such  
178 Laws except to the extent such Claims arise from the gross negligence or willful misconduct of  
179 any Landlord Party.

180



222 required permits or approvals and (b) has provided Landlord with at least ten business days'  
223 notice of the date for commencement of work (except for repair work required to be performed  
224 in cases of emergency or to relieve an imminent threat to life or property), to permit Landlord an  
225 opportunity to post an appropriate notice of non-responsibility. Once begun, all such work shall  
226 be diligently prosecuted to completion. If this Lease terminates before completion of any  
227 Alteration or repair by Tenant, on request Tenant shall assign its rights under any construction,  
228 design, or material supply contract required for completion of the work to Landlord or its  
229 designee.

230           6.4    No Landlord Obligation. Landlord shall have no obligation whatsoever to  
231 maintain, repair, alter, improve, or reconstruct the Property or the Improvements or to comply  
232 with any applicable law or with any other legal or insurance requirement concerning the  
233 condition or repair of the Property, Project or Improvements. Tenant expressly recognizes that,  
234 because of the potential length of the Term of this Lease, it may be necessary for Tenant to  
235 perform substantial maintenance, repair, rehabilitation, or reconstruction of the Project or  
236 Improvements in order to ensure that the Project or Improvements are kept in the condition  
237 required by this Lease. In this regard, Tenant expressly waives (a) all defenses to its  
238 maintenance obligations under this Lease; (b) the right to require Landlord to make repairs; (c)  
239 any right to make repairs at the expense of Landlord; (d) the right to reduce or offset rent as a  
240 consequence of the condition of the Property, Project or Improvements; (e) the benefits of  
241 California Civil Code §§1932, 1941, and 1942, as amended from time to time; and (f) any law,  
242 judicial pronouncement, or common law principle similar thereto, which is now or hereafter in  
243 effect or is otherwise inconsistent with the provisions of this Lease. However, these waivers do  
244 not limit Tenant's rights or Landlord's obligations arising out of the gross negligence or willful  
245 misconduct of Landlord or its agents, representatives, employees, contractors, or invitees.

246           6.5    Right to Enter. Tenant will permit Landlord and any Landlord Party to enter the  
247 Property at all times during usual business hours, on giving Tenant reasonable written notice, to  
248 inspect the same and to perform any work required of Tenant by this Lease that Tenant has failed  
249 to perform within 30 days following written notice to Tenant of default; provided, however, that  
250 in the event of any Tenant default that creates an imminent threat to life or property, Landlord  
251 may enter the Property without notice and may take such actions as may be required to relieve  
252 such threat. As additional rent, Tenant shall reimburse Landlord for the actual and reasonable  
253 cost of any repairs, replacements, or improvements to the Property, Project or Improvements  
254 incurred by Landlord under this Section, promptly on receipt of an invoice. Nothing in this  
255 Section shall imply any duty on the part of Landlord to make any inspection, take any action, or  
256 do any such work, nor shall Landlord's performance of any repairs, alterations, or improvements  
257 constitute a waiver of Tenant's default in failing to do the same. Except to the extent arising out  
258 of the gross negligence or willful misconduct of Landlord, or its agents, representatives,  
259 employees, contractors, or invitees, no exercise by Landlord of any rights herein reserved shall  
260 entitle Tenant to any compensation, abatement of Rent, damages, reimbursement, or other relief  
261 for any interference with any business conducted on the Property or any other injury, property  
262 damage, loss, or liability as a consequence of such entry or repairs.

263  
264

**ARTICLE VII**  
**INSURANCE**

265           7.1    Insurance Required of Tenant. Tenant shall, at Tenant’s expense, obtain and  
266 provide insurance on or before the commencement of construction on the Property, and shall  
267 maintain in full force and effect at all times thereafter during the Term the insurance coverages  
268 set forth in this Section.

269                   a.       Casualty Insurance. Casualty Insurance includes Broad Form or Special  
270 Form Casualty Insurance in an amount not less than the full replacement value covering the  
271 Project and Improvements located on the Property. Such replacement value shall be  
272 redetermined from time to time during the Term not less frequently than every three years. Such  
273 policy or policies of insurance shall name Landlord as an additional insured. Landlord and  
274 Tenant agree that the proceeds from any such policy or policies shall be used for the  
275 reconstruction of the Project and Improvements located on the Property.

276                   b.       Earthquake Insurance. If required by the permitted senior lender(s)  
277 providing financing for the Project, Tenant shall take out and maintain earthquake insurance  
278 covering the Project and Improvements located on the Property, in amounts and deductibles as  
279 determined by Landlord in its reasonable discretion in accordance with such requirements of  
280 such permitted senior lender(s).

281                   c.       Liability Insurance. Liability Insurance includes commercial general  
282 liability insurance, including, without limitation, products liability coverage, liquor liability (if  
283 applicable), broad form contractual liability endorsement, and with such limits and deductibles as  
284 may reasonably be required and permitted by Landlord from time to time, but not less than two  
285 million dollars (\$2,000,000.00) for bodily injury (including death) and personal injury to any one  
286 person, injury, and/or death to any number of persons in any one incident, and for property  
287 damage in any one occurrence. Such policy or policies shall be written on a claims-made basis,  
288 and shall name Landlord as an additional insured. Such liability insurance shall specifically  
289 insure the indemnity provisions of Section 10.1, and shall contain a provision that Landlord,  
290 although an additional insured, shall nevertheless be entitled to recover under such policy or  
291 policies for any damage or injury to Landlord or any Landlord Party by reason of acts or  
292 omissions of Tenant.

293           7.2    Policy Form. All insurance required of Tenant shall be in a form reasonably  
294 satisfactory to Landlord and written by one or more insurance companies reasonably approved  
295 by Landlord and that are licensed to do business in the State of California. Insurance companies  
296 must be rated at least A-VII or better as rated in the most current available “Best’s Insurance  
297 Reports,” or equivalent rating. All such insurance may be carried under a blanket policy  
298 covering the Property and other locations, provided that the coverage afforded Landlord by such  
299 blanket policy shall not be reduced or diminished by reason of the use of such blanket policy of  
300 insurance, and provided further that the requirements of this Article 7 are otherwise satisfied.  
301 All such insurance shall contain endorsements that (a) such insurance shall not be canceled or  
302 amended except on thirty (30) days’ prior notice to Landlord by the insurance company; (b)  
303 Tenant shall be solely responsible for payment of premiums; and (c) Tenant’s insurance is  
304 primary in the event of overlapping coverage, which may be carried by Landlord. The minimum

305 limits of the commercial general liability insurance policy required by Section 7.1 shall in no  
306 way limit or diminish Tenant's liability under this Lease. Tenant shall deliver to Landlord at  
307 least thirty (30) days prior to the time such insurance is first required to be carried by Tenant and  
308 thereafter at least thirty (30) days prior to the expiration of such policy a duplicate original  
309 clearly showing compliance by Tenant with Tenant's obligations under this Lease, together with  
310 evidence satisfactory to Landlord of the payment of the premiums. Landlord may require a  
311 reasonable increase in any policy limits required in this Article 7 every three (3) years during the  
312 Lease Term.

313 7.3 Waiver of Subrogation. Provided the respective insurance carriers recognize the  
314 waivers of the Parties in this Section 7.3, the Parties release each other, and their respective  
315 authorized representatives, from any Claims for damage and/or injury to any part of the Property,  
316 and the Project and Improvements on the Property that are caused by or result from risks insured  
317 against under any insurance policies carried by the Parties and in force at the time of any such  
318 damage to the extent of the available insurance proceeds. Each Party shall cause each casualty  
319 or property damage insurance policy carried by it to be written to provide that the insurance  
320 company waives all right of recovery by way of subrogation against either Party in connection  
321 with any damage covered by any policy.

322 **ARTICLE VIII**  
323 **ASSIGNMENT**

324 8.1 Limitations on Transfer.

325 a. General. The qualifications and identity of the Tenant are of particular  
326 concern to the City. It is because of the demonstrated qualifications and identity that the City has  
327 entered into the DDA and this Lease with the Tenant. Tenant may not transfer, assign or sell any  
328 interest in the Property or the Project nor any rights or powers under this Lease, except as  
329 expressly set forth herein. It is expressly stipulated and agreed that any assignment, sale, transfer  
330 or other disposition of the Project or the Property, or any portion(s) thereof or interest(s) therein  
331 or of any rights or powers under this Lease in violation of this Article VIII shall be null, void and  
332 without effect, shall cause a reversion of title to Tenant, and shall be ineffective to relieve Tenant  
333 of its obligations under this Lease.

334 b. Prior to Completion. Prior to Completion, the Tenant shall not assign or  
335 transfer this Lease, the Project or the Property, or any portion(s) thereof, or interest(s) therein, or  
336 any right(s) hereunder without the prior written approval of the City Manager. The City  
337 Manager shall have the right to disapprove any transfer, assignment or refinancing, which would  
338 diminish or otherwise impair the ability of the Developer to fulfill all its duties and obligations  
339 under this Agreement.

340 c. Following Completion. Following Completion, Tenant shall not assign or  
341 transfer this Lease, the Project or the Property, or any portion(s) thereof, or interest(s) therein, or  
342 any right(s) hereunder without the prior written approval of the City Manager, which approval  
343 shall not be unreasonably withheld or delayed, and shall be granted upon City's receipt of  
344 evidence acceptable to City that the following conditions have been satisfied:

345 i. Tenant is not in Default under the DDA, Affordable Housing  
346 Agreement or this Lease, or the purchaser or assignee agrees to undertake to cure any Defaults or  
347 violations of Tenant to the reasonable satisfaction of City.

348 ii. The continued operation of the Project shall comply with the  
349 provisions of the DDA, this Lease and the Affordable Housing Agreement.

350 iii. Either (i) the purchaser or assignee or its property manager has at  
351 least three years' experience in the ownership, operation and management of similar size rental  
352 housing projects, and at least one year's experience in the ownership, operation and management  
353 of rental housing projects containing below-market-rate units, without any record of material  
354 violations of discrimination restrictions or other state or federal laws or regulations or local  
355 governmental requirements applicable to such projects, or (ii) the purchaser or assignee agrees to  
356 retain a property management firm with the experience and record described in subclause (i)  
357 above, or (iii) Developer or its management company will continue to manage the Project for at  
358 least one year following such transfer and during such period will provide training to the  
359 purchaser or assignee and its manager in the responsibilities relating to the Affordable Units.

360 v. The person or entity which is to acquire the Project does not have  
361 pending against it, and does not have a history of significant and material building code  
362 violations or complaints concerning the maintenance, upkeep, operation and regulatory  
363 agreement compliance of any of its projects as identified by any local, state or federal regulatory  
364 agencies.

365 vi. The proposed purchaser or assignee enters into a written  
366 assignment and assumption agreement in form and content reasonably satisfactory to City's legal  
367 counsel, and, if requested by City, an opinion of such purchaser or assignee's counsel to the  
368 effect that this Lease is a valid, binding and enforceable obligation of such purchaser or assignee,  
369 subject to bankruptcy and other standard limitations affecting creditor's rights.

370 d. Pre-Approved Transfers. Notwithstanding any other provision of this  
371 Lease to the contrary, City approval of a transfer or assignment of this Lease, the Project, or the  
372 Property or any interest therein shall not be required in connection with any of the following:

373 i. Any assignment for the purpose of obtaining and securing Tenant's  
374 financing, as contemplated by this Agreement, including, without limitation, the grant of a deed  
375 of trust, assignment of rents and security agreement to secure the funds necessary for Tenant's  
376 financing as contemplated in the DDA;

377 ii. The rental, in the ordinary course of business, of the residential  
378 units at the Project, provided such rental is in accordance with the terms of the DDA, this Lease  
379 and the Affordable Housing Agreement;

380 iii. Any transfer to any entity of which Corporation for Better Housing  
381 (or its successor in interest) or an affiliate of Corporation for Better Housing (or its successor in  
382 interest) is the general partner, or managing member, or sole member, or controlling shareholder;

383 iv. Any transfer of limited partnership interests in Tenant to any  
384 institutional investor or fund or syndicator making a capital contribution to the limited  
385 partnership in exchange for partnership interests in Tenant;

386 v. Any transfer of the ownership interests of any entity which,  
387 directly or indirectly, owns or holds a partnership, membership, manager, shareholder, or other  
388 ownership interest in Tenant's limited partner or the partners, members, managers, shareholders  
389 or owners of Tenant's limited partner;

390 vi. Any transfers of Corporation for Better Housing's partnership  
391 interest in Tenant to any entity which is an affiliate of Corporation for Better Housing (or its  
392 successor in interest);

393 vii. The removal and replacement by Tenant's limited partner of any of  
394 Tenant's general partners as permitted under Tenant's limited partnership agreement;

395 viii. Any transfer of Tenant's leasehold interest in the Property that  
396 occurs by foreclosure or deed in lieu of foreclosure of any permitted senior lien to the respective  
397 holder thereof or to their nominees or assignees exclusive of the Tenant;

398 ix. Any conveyance or dedication of any portion of the Property to the  
399 City or other appropriate governmental agency, or the granting of easements or permits to  
400 facilitate the construction of the Project.

401 In the event of an assignment or transfer by Tenant under the above subsections not  
402 requiring the City's prior approval (other than in subsection (i) and (ii) above), Tenant  
403 nevertheless agrees that it shall give at least fifteen (15) days prior written Notice to City of such  
404 assignment or transfer. In addition, City shall be entitled to review such documentation as may  
405 be reasonably required by the City Manager for the purpose of determining compliance of such  
406 assignment or transfer with the requirements above. Notwithstanding anything to the contrary  
407 contained herein, in connection with any transfer permitted under this Section 8.1(d) without the  
408 consent of the City, no transfer fees, processing fees, or other associated costs shall be due and  
409 payable by Tenant in connection therewith.

410 **ARTICLE IX**  
411 **DEFAULT; REMEDIES**

412 9.1 Remedies. If Tenant at any time shall be in default in the payment of Rent or any  
413 other monetary sum called for by this Lease for more than ten (10) days following written notice  
414 from Landlord to Tenant, or if Tenant at any time shall be in default in the keeping and  
415 performing of any of its other covenants or agreements in this Lease, and should such other  
416 default continue for thirty (30) days after written notice thereof from Landlord to Tenant  
417 specifying the particulars of such default, or if such other default is of a nature that curing the  
418 default will take more than thirty (30) days and Tenant has failed to commence to cure the  
419 default within thirty (30) days and diligently pursue completion of such cure, then, in addition to  
420 any and all other rights and remedies of Landlord hereunder and by law provided, Landlord may  
421 terminate this lease by giving Tenant written notice of termination. On the giving of the notice,  
422 all Tenant's rights in the Property shall terminate. In addition to the foregoing, any default by



423 Tenant under the DDA or the Affordable Housing Agreement which is not cured following  
424 notice and expiration of any applicable cure periods thereunder shall also constitute a default  
425 under this Lease, and upon occurrence of such default, City shall have all remedies available to it  
426 under this Lease, including the right to terminate this Agreement as set forth herein. Promptly  
427 after notice of termination, Tenant shall surrender and vacate the Property and shall commence  
428 and diligently prosecute the restoration of the Property to its pre-Lease condition as required by  
429 Section 2.2 of this Lease. Landlord may reenter and take possession of the Property and all  
430 remaining improvements and eject all parties in possession. Termination under this Section shall  
431 not relieve Tenant from the payment of any sum then due to Landlord or from any claim for  
432 damages previously accrued or then accruing against Tenant.

433 9.2 Damages. Should Landlord elect to terminate this Lease under the provisions of  
434 Section 9.1, Landlord shall be entitled to recover from Tenant as damages an amount, including  
435 actual and reasonable attorneys' fees and court costs, necessary to compensate Landlord for all  
436 detriment proximately caused by Tenant's default, including, without limitation, costs of  
437 removing the Project and Improvements from the Property.

438 9.3 Landlord's Right to Cure Tenant's Default. Landlord, at any time after Tenant  
439 commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of  
440 Tenant's default, pays any sum, the sum paid by Landlord shall be due immediately from Tenant  
441 to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the  
442 maximum rate allowed by law from the date the sum is paid by Landlord until Landlord is  
443 reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

444 **ARTICLE X**  
445 **INDEMNITY**

446 10.1 Tenant's Indemnity. Except to the extent caused by the gross negligence or  
447 willful misconduct of Landlord or any Landlord Party, Tenant shall indemnify Landlord and any  
448 Landlord Party from all Claims arising from or in connection with (a) the conduct or  
449 management of the Property or of any business therein, or any work or thing whatsoever done, or  
450 any condition created in or about the Property during the Term; (b) any act, omission, or  
451 negligence of Tenant or any of Tenant's invitees, tenants, managers, or assignees; (c) any  
452 accident, injury, or damage whatsoever occurring in or at the Property; (d) any breach or default  
453 by Tenant in the full and prompt payment of any amount due Landlord under this Lease, and for  
454 any breach, violation, or nonperformance of any term, condition, covenant, or other obligation of  
455 Tenant under this Lease or the Affordable Housing Agreement or any representation made by  
456 Tenant; and (e) any liens or encumbrances arising out of any work performed or materials  
457 furnished by or for Tenant, including any work Landlord may have performed or caused to be  
458 performed for Tenant for which Tenant has not paid Landlord. In the event Landlord, without  
459 fault on Landlord's part, is made a party to any litigation commenced by or against Tenant, then  
460 Tenant shall indemnify Landlord from all Claims resulting from such litigation, and shall pay all  
461 costs, expenses, and attorney fees actually and reasonably incurred or paid by Landlord in  
462 connection with such litigation.

463 10.2 Landlord's Indemnity. Except to the extent caused by the gross negligence or  
464 willful misconduct of Tenant or any of Tenant's officers, agents, employees or representatives

465 (each, a “**Tenant’s Party**”), Landlord shall indemnify Tenant and any Tenant Party from all  
466 Claims arising from or in connection with (a) any act, omission, or negligence of Landlord or  
467 any Landlord Party; and (b) any breach, violation, or nonperformance of any term, condition,  
468 covenant, or other obligation of Landlord under this Lease or the Affordable Housing Agreement  
469 or any representation made by Landlord. In the event Tenant, as a result of the negligence or  
470 willful misconduct of Landlord or any Landlord Party, is made a party to any litigation  
471 commenced by or against Landlord, then Landlord shall indemnify Tenant from all Claims  
472 resulting from such litigation, and shall pay all costs, expenses, and attorney fees actually and  
473 reasonably incurred or paid by Tenant in connection with such litigation.

474 **ARTICLE XI**  
475 **MISCELLANEOUS PROVISIONS**

476 11.1 Holding Over. If Tenant shall hold over the Property after the expiration of the  
477 Term with the consent of Landlord, either express or implied, such holding over shall be  
478 construed to be only a tenancy from month to month subject to all the covenants, conditions and  
479 obligations contained in this Lease. Tenant hereby agrees to continue payment of all monetary  
480 sums (such as taxes, insurance, etc.) which are the Tenant’s obligation under this Lease.

481 11.2 Quiet Possession. Landlord agrees that Tenant, upon paying the Rent and  
482 performing the covenants and conditions of this Lease, shall quietly have, hold and enjoy the  
483 Property throughout the Term; and Landlord warrants to Tenant that as of the Effective Date  
484 there shall be no existing tenancies on the Property.

485 11.3 Notices. Any notice to be given or other document to be delivered by either Party  
486 to the other hereunder shall be in writing and delivered to either Party personally or by  
487 depositing same in the United States mail, duly certified, with postage thereon fully prepaid and  
488 addressed to the Party for whom intended, as follows:

489  
490 To Landlord: City of Calistoga  
491 Attn: City Manager  
492 1232 Washington Street  
493 Calistoga, CA 94515  
494  
495 To Tenant: Corporation for Better Housing  
496 Attn: Lori Koester  
497 21031 Ventura Boulevard, Suite 200  
498 Woodland Hills, CA 91364  
  
499 With a copy to: Chernove & Associates, Inc.  
500 16027 Ventura Blvd., Suite 660  
501 Encino, California 91436  
502 Attn: Sheldon Chernove  
503 Phone: (818) 377-8100  
504 Fax: (818) 377-9132  
505 Email: schernove@chernovelaw.com

506 And a copy to: Alliant Asset Management Company, LLC  
507 21600 Oxnard Street, Suite 1200  
508 Woodland Hills, CA 91367  
509 Attn: Asset Management  
510 [or other tax credit syndicator]  
511

512 Either Party hereto, from time to time by written notice to the other Party, may designate  
513 a different address which shall be substituted for the one above specified. Notices shall be  
514 effective when received. Any notice or other document sent by certified mail, as aforesaid, shall  
515 be deemed received 72 hours after the mailing thereof, as above provided.

516 11.4 Waiver. No waiver of any breach of any of the terms, covenants, agreement,  
517 restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of  
518 the same or other covenants, agreements, restrictions and conditions hereof.

519 11.5 Binding. Subject to the restrictions set forth herein regarding assignment of the  
520 leasehold estate, each of the terms, covenants and conditions of this lease shall extend to and be  
521 binding on and shall inure to the benefit of not only Landlord and Tenant but to each of their  
522 respective heirs, administrators, executors, successors and assigns.

523 11.6 Disclaimer of Partnership. The relationship of the Parties hereto is that of  
524 Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any  
525 way or for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct  
526 of Tenant's business or otherwise.

527 11.7 Interpretation. The titles to the paragraphs of this Lease are not a part of this  
528 Lease and shall have no effect upon the construction or interpretation of any part of the Lease.

529 11.8 Covenants and Conditions. Each term and each provision, including, without  
530 limitation, the obligation for the payment of Rent, to be performed by Tenant or Landlord as the  
531 case may be, shall be construed to be both a covenant and a condition of this Lease.

532 11.9 Integration. This Lease, together with the exhibits incorporated by reference,  
533 constitutes the entire agreement between the Parties and there are no conditions, representations  
534 or agreements regarding the matters covered by this Lease which are not expressed herein.

535 11.10 Estoppel Certificate. If, upon any sale, assignment or hypothecation of the  
536 Property by Landlord or as required by any lender of the Property, an offset statement shall be  
537 required from either Party, each Party agrees to deliver within ten days after written request  
538 therefor by the other Party, a statement addressed to any such proposed mortgagee or purchaser,  
539 or to the requesting Party, in a form requested by such mortgagee or purchaser, certifying that  
540 this Lease is unmodified and in full force and effect (if such be the case), certifying the  
541 commencement and termination dates of the Lease term, certifying that there has been no  
542 assignment or sublease of this Lease and that there are no defenses or offsets hereto, or stating  
543 those claimed by the certifying Party, and containing such other information as reasonably may  
544 be requested by the party to whom such certificate is addressed. In the event either Party fails to  
545 deliver such offset statement to the other Party within the ten day period above provided, it shall

546 be deemed that this Lease is in full force and effect and that neither Party has any defenses or  
547 offsets against the other Party, and that the other information contained in the requested  
548 statement is correct.

549 11.11 Counterparts. This Lease may be executed in one or more counterparts, each of  
550 which shall be deemed an original, but all of which together shall constitute one and the same  
551 instrument.

552 11.12 Tenant's Limited Partners. Tenant has advised City that, concurrently with the  
553 execution of this Lease, [\_\_\_\_\_] , and its successors and assigns (collectively, the  
554 "**Investor Limited Partner**") and ]\_\_\_\_\_] , and its successors and assigns  
555 (collectively, the "**Administrative Limited Partner**") are entering into that certain Agreement  
556 of Limited Partnership of \_\_\_\_\_, a California limited partnership, dated as of  
557 \_\_\_\_\_ (as may be amended, the "**Partnership Agreement**" with Corporation for Better  
558 Housing, a California nonprofit public benefit corporation, as general partner (the "**General**  
559 **Partner**"). In connection therewith, Landlord and Tenant hereby agree:

560 a. Notwithstanding anything to the contrary contained in this Lease or the  
561 DDA, the respective interests of Tenant's Investor Limited Partner and Administrative Limited  
562 Partner shall be freely transferable and any amendment to Tenant's Partnership Agreement, to  
563 the extent such amendment effectuates such transfers, shall not require City approval or consent;  
564 provided that Tenant's Administrative Limited Partner and/or Investor Limited Partner shall  
565 inform the City in writing of any such transfers.

566 b. Notwithstanding anything to the contrary contained in this Lease or the  
567 DDA, whenever City shall deliver any Notice to Tenant with respect to any Default by Tenant  
568 hereunder, City shall at the same time deliver a copy of such Notice to the limited partner(s) of  
569 Tenant at the notice address provided by Tenant to City. No Notice of Default shall be effective  
570 as to such limited partner(s) unless such notice is given. Each limited partner shall (insofar as  
571 the rights of City are concerned) have the right, at its option, within 60 days after the receipt of  
572 the copy of the Notice, to cure or remedy or commence to cure or remedy any such Default. Any  
573 cure of any Default hereunder made or tendered by the limited partner shall be deemed to be a  
574 cure by Tenant and shall be accepted or rejected on the same basis as if made or tendered by the  
575 Tenant.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date.

**LANDLORD:**

CITY OF CALISTOGA, a municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

**TENANT:**

CORPORATION FOR BETTER HOUSING, a California nonprofit public benefit corporation

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

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

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Kathy Flamson, City Clerk

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT F**

**FORM OF AFFORDABLE HOUSING AGREEMENT**

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Calistoga )  
 1232 Washington Street )  
 Calistoga, CA 94515 )  
 Attention: City Manager )  
 )  
 )

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This document is exempt from the payment of a recording fee  
pursuant to Government Code § 6103.

**AFFORDABLE HOUSING AGREEMENT**

1           This Affordable Housing Agreement (the “**Agreement**”) is entered into as of this \_\_\_ day  
 2 of \_\_\_\_\_ (the “**Effective Date**”) by and between the CITY OF CALISTOGA, a  
 3 municipal corporation (“**City**”), and CORPORATION FOR BETTER HOUSING, a California  
 4 nonprofit public benefit corporation [or an entity of which Corporation for Better Housing is the  
 5 managing general partner or managing member] (“**Developer**”). The City and Developer may  
 6 each be referred to as a “**Party**” or collectively as the “**Parties.**”

***RECITALS***

7  
 8           A.     Developer is the ground lessor of that certain real property more particularly  
 9 described in Exhibit A, attached hereto and incorporated herein by this reference (the  
 10 “**Property**”).

11           B.     City and Developer have entered into that certain Lease Disposition and  
 12 Development Agreement dated \_\_\_\_\_, (the “**DDA**”) to set forth the terms and conditions  
 13 relating to (1) Developer’s ground lease of the Property from City; (2) Developer’s development  
 14 of the Project thereon; and (3) Developer’s agreement to develop and provide affordable housing  
 15 on the Property. Terms not otherwise defined in this Lease shall have the meaning set forth in  
 16 the DDA.

17           C.     Developer and City agree that the Property shall be subject to the conditions and  
 18 restrictions, and the rights of City under this Agreement and the DDA as specified below.  
 19 Developer and City are concurrently entering into that certain Ground Lease dated \_\_\_\_\_  
 20 \_\_\_\_\_ (the “**Ground Lease**”).

21

22 NOW, THEREFORE, the City and Developer hereby agree as follows:

23 1. Use of the Property.

24 Developer hereby covenants and agrees that during the term of this Agreement,  
25 Developer shall use the Property in compliance with all of the following:

26 (a) Development.

27 Developer shall promptly commence and diligently construct improvements on the  
28 Property and develop 30 apartments, with approximately 34 parking spaces and appurtenant  
29 landscaping improvements (the “**Project**”).

30 (b) Rent and Income Restrictions.

31 (i) All of the units shall be rented to households at or below 60  
32 percent of Area Median Income at an affordable rent for such households, adjusted for family  
33 size appropriate to the unit (the “**Affordable Units**”). “Area Median Income” means the median  
34 household income (adjusted for family size) of the Metropolitan Statistical Area in which Napa  
35 County is located, as established in accordance with Section 50093 of the California Health and  
36 Safety Code. The determination of an occupant’s status shall be made by Developer prior to  
37 initial occupancy of an Affordable Unit in the Project by such occupant.

38 (ii) All of the Affordable Units shall be rented to tenants with a  
39 minimum age of 62.

40 (iii) Notwithstanding the foregoing, Developer may set aside one of the  
41 units for use as a “Manager Unit,” which shall be occupied by a person (or household) employed  
42 as an on-site manager of the Project. If the “Manager Unit” is so occupied, it shall not be subject  
43 to the income limits set forth above, and the number of Affordable Units shall be reduced to 29  
44 Affordable Units.

45 (iv) The income of all persons residing in the Affordable Unit shall be  
46 considered for purposes of calculating the applicable income. No less than one person per  
47 bedroom shall be allowed. However, a two bedroom Affordable Unit may be occupied by a one  
48 person household. No more than three persons shall be permitted to occupy a one bedroom  
49 Affordable Unit, and no more than four persons shall be permitted to occupy a two bedroom  
50 Affordable Unit, or such other higher limitations as may be permitted or required by applicable  
51 occupancy laws that may be in effect.

52 (v) In the event of any inconsistency between the rent and income  
53 restrictions of this section 1(b) and any other affordability or regulatory agreement between  
54 Developer and any state or federal agency or the California Tax Credit Allocation Committee,  
55 the restrictions providing the lowest level of affordability shall apply.

56 (c) Reporting Requirements. Annual reports, or as often as are required by  
57 the terms of other Developer financing, and annual income certifications or recertifications must  
58 be submitted to the City. The reports, at a minimum, shall include:



- 59 (i) The number of persons per unit
- 60 (ii) Tenant name and age
- 61 (iii) Initial occupancy date
- 62 (iv) Rent paid per month
- 63 (v) Gross income per year
- 64 (vi) Percent of rent paid in relation to income
- 65 (vii) Copies of those documents used by Developer to certify the tenant
- 66 as a low-income household.

67 The first annual report and annual income certification (the “**Initial Report**”)  
68 shall be submitted to the City within 30 days of the date of the initial rental of all the Affordable  
69 Units on the Property. Subsequent annual reports and annual income certifications or  
70 recertifications shall be submitted to the City on the anniversary date of submittal of the Initial  
71 Report. The City may, from time to time during the term of this Agreement, request additional  
72 or different information and Developer shall promptly supply such information in the reports  
73 required hereunder. Developer shall maintain all necessary books and records, including  
74 Property, personal and financial records, in accordance with requirements prescribed by the City  
75 with respect to all matters covered by this Agreement. Developer, at such time and in such  
76 forms as the City may require, shall furnish to the City statements, records, reports, data and  
77 information pertaining to matters covered by this Agreement. Upon request for examination by  
78 the City, Developer, at any time during normal business hours, shall make available all of its  
79 records with respect to all matters covered by this Agreement. Developer shall permit the City to  
80 audit, examine and make excerpts or transcripts from these records.

81 (d) Resident Services. Resident Services will be made available to tenants  
82 free of charge on a regular and on-going basis. The provided services will cater to the  
83 demonstrated needs of the tenants (e.g., vocational training, computer classes, nutritional  
84 classes). Residents will be granted priority use of and access to the services and community  
85 room. To the extent permitted in connection with the reservation of Tax Credits, classes and the  
86 community room will be made available to other members of the community.

87 (e) Marketing Reports. Within 30 days of City’s request, Developer shall  
88 deliver to City marketing and leasing information, schedules and reports for the Affordable Units  
89 in form and substance reasonably acceptable to City.

90 2. Limitations on Transfer.

91 (a) General. The qualifications and identity of the Developer are of particular  
92 concern to the City. It is because of the demonstrated qualifications and identity that the City has  
93 entered into the Loan Agreement and the Agreement with the Developer. Developer may not  
94 transfer, assign or sell any interest in the Property or the Project nor any rights or powers under  
95 this Agreement, except as expressly set forth herein. It is expressly stipulated and agreed that

96 any assignment, sale, transfer or other disposition of the Project or the Property, or any portion(s)  
97 thereof or interest(s) therein or of any rights or powers under this Agreement in violation of this  
98 Section 2 shall be null, void and without effect, shall cause a reversion of title to Developer, and  
99 shall be ineffective to relieve Developer of its obligations under this Agreement.

100 (b) Prior to Completion. Prior to completion of the Project, as evidenced by  
101 the issuance of a final certificate of occupancy by City (“**Completion**”), the Developer shall not  
102 assign or transfer this Agreement, the Project or the Property, or any portion(s) thereof, or  
103 interest(s) therein, or any right(s) hereunder without the prior written approval of the City’s City  
104 Manager. The City’s City Manager shall have the right to disapprove any transfer, assignment or  
105 refinancing, which would diminish or otherwise impair the ability of the Developer to fulfill all  
106 its duties and obligations under this Agreement.

107 (c) Following Completion. Following Completion, Developer shall not assign  
108 or transfer this Agreement, the Project or the Property, or any portion(s) thereof, or interest(s)  
109 therein, or any right(s) hereunder without the prior written approval of the City’s City Manager,  
110 which approval shall not be unreasonably withheld or delayed, and shall be granted upon City’s  
111 receipt of evidence acceptable to City that the following conditions have been satisfied:

112 (i) Developer is not in Default under the DDA, Ground Lease or this  
113 Agreement, or the purchaser or assignee agrees to undertake to cure any Defaults or violations of  
114 Developer to the reasonable satisfaction of City.

115 (ii) The continued operation of the Project shall comply with the  
116 provisions of the DDA, Ground Lease and this Agreement.

117 (iii) Either (i) the purchaser or assignee or its property manager has at  
118 least three years’ experience in the ownership, operation and management of similar size rental  
119 housing projects, and at least one year’s experience in the ownership, operation and management  
120 of rental housing projects containing below-market-rate units, without any record of material  
121 violations of discrimination restrictions or other state or federal laws or regulations or local  
122 governmental requirements applicable to such projects, or (ii) the purchaser or assignee agrees to  
123 retain a property management firm with the experience and record described in subclause (i)  
124 above, or (iii) Developer or its management company will continue to manage the Project for at  
125 least one year following such transfer and during such period will provide training to the  
126 purchaser or assignee and its manager in the responsibilities relating to the Affordable Units.

127 (iv) The person or entity which is to acquire the Project does not have  
128 pending against it, and does not have a history of significant and material building code  
129 violations or complaints concerning the maintenance, upkeep, operation and regulatory  
130 agreement compliance of any of its projects as identified by any local, state or federal regulatory  
131 agencies.

132 (v) The proposed purchaser or assignee enters into a written  
133 assignment and assumption agreement in form and content reasonably satisfactory to City’s legal  
134 counsel, and, if requested by City, an opinion of such purchaser or assignee’s counsel to the

135 effect that this Agreement is a valid, binding and enforceable obligation of such purchaser or  
136 assignee, subject to bankruptcy and other standard limitations affecting creditor's rights.

137 (d) Pre-Approved Transfers. Notwithstanding any other provision of this  
138 Agreement to the contrary, City approval of a transfer or assignment of this Agreement, the  
139 Project, or the Property or any interest therein shall not be required in connection with any of the  
140 following:

141 (i) Any assignment for the purpose of obtaining and securing  
142 Developer's financing, as contemplated by this Agreement, including, without limitation, the  
143 grant of a deed of trust, assignment of rents and security agreement to secure the funds necessary  
144 for Developer's financing as contemplated in the Financing Plan as described in Section 3.3  
145 below;

146 (ii) The rental, in the ordinary course of business, of the  
147 residential units at the Project, provided such rental is in accordance with the terms of this  
148 Agreement and the Affordable Housing Agreement;

149 (iii) Any transfer to any entity of which Corporation for Better  
150 Housing (or its successor in interest) or an affiliate of Corporation for Better Housing (or its  
151 successor in interest) is the general partner, or managing member, or sole member, or controlling  
152 shareholder;

153 (iv) Any transfer of limited partnership interests in Developer to  
154 any institutional investor or fund or syndicator making a capital contribution to the limited  
155 partnership in exchange for partnership interests in Developer;

156 (v) Any transfer of the ownership interests of any entity which,  
157 directly or indirectly, owns or holds a partnership, membership, manager, shareholder, or other  
158 ownership interest in Developer's limited partner or the partners, members, managers,  
159 shareholders or owners of Developer's limited partner;

160 (vi) Any transfers of Corporation for Better Housing's  
161 partnership interest in Developer to any entity which is an affiliate of Corporation for Better  
162 Housing (or its successor in interest);

163 (vii) The removal and replacement by Developer's limited  
164 partner of any of Developer's general partners as permitted under Developer's limited  
165 partnership agreement;

166 (viii) Any transfer of Developer's leasehold interest in the  
167 Property that occurs by foreclosure or deed in lieu of foreclosure of any permitted senior lien to  
168 the respective holder thereof or to their nominees or assignees exclusive of the Developer;

169 (ix) Any conveyance or dedication of any portion of the  
170 Property to the City or other appropriate governmental agency, or the granting of easements or  
171 permits to facilitate the construction of the Project.

172 In the event of an assignment or transfer by Developer under the above subsections not  
173 requiring the City’s prior approval (other than in subsection (i) and (ii) above), Developer  
174 nevertheless agrees that it shall give at least fifteen (15) days prior written Notice to City of  
175 such assignment or transfer. In addition, City shall be entitled to review such documentation as  
176 may be reasonably required by the City’s City Manager for the purpose of determining  
177 compliance of such assignment or transfer with the requirements above. Notwithstanding  
178 anything to the contrary contained herein, in connection with any transfer permitted under this  
179 Section 2(d) without the consent of the City, no transfer fees, processing fees, or other associated  
180 costs shall be due and payable by Developer in connection therewith.

181 3. Maintenance and Management.

182 Developer shall maintain in first-class condition and in accordance with the custom and  
183 practice generally applicable to rental projects in Napa County, the private improvements and  
184 public improvements (the “**Improvements**”) and landscaping to the curblin(e)s on and abutting  
185 the Property. The Improvements shall include, but not be limited to, buildings, sidewalks,  
186 pedestrian lighting, landscaping, irrigation of landscaping, architectural elements identifying the  
187 Property and any and all other improvements on the Property and in the public right-of-way to  
188 the nearest curblin(e)s abutting the Property. To accomplish the maintenance, Developer shall  
189 either staff or contract with and hire licensed and qualified personnel to perform the maintenance  
190 work, including the provision of labor, equipment, materials, support facilities, and any and all  
191 other items necessary to comply with the requirements of this Agreement. The maintenance  
192 covenants and obligations set forth in this section 3 shall remain in effect for the period of time  
193 specified in section 6, below.

194 4. No Impairment of Lien.

195 No violation or breach of the covenants, conditions, restrictions, provisions or limitations  
196 contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge  
197 of any mortgage, deed of trust or other financing or security instrument; provided, however, that  
198 any successor of Developer to the Property shall be bound by such covenants, conditions,  
199 restrictions, limitations and provisions, whether such successor’s title was acquired by  
200 foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise.

201 5. Duration.

202 The covenants set forth in this Agreement shall remain in effect until the date which is 75  
203 years following Completion.

204 6. Successors and Assigns.

205 The covenants contained in this Agreement shall inure to the benefit of City and its and  
206 their successors and assigns and shall be binding upon Developer and any successor in interest to  
207 the Property and the Project or any part thereof. The covenants shall run in favor of City and its  
208 and their successors and assigns for the entire period during which such covenants shall be in  
209 force and effect, without regard to whether City is or remains an owner of any land or interest  
210 therein to which such covenants relate. City and its and their successors and assigns, in the event  
211 of any breach of any such covenants, shall have the right to exercise all of the rights and

212 remedies and to maintain any actions at law or suits in equity or other proper proceedings to  
213 enforce the curing of such breach.

214 7. Default.

215 (a) Any failure by Developer to perform any term or provision of this  
216 Agreement or the Ground Lease shall constitute an “**Event of Default**” (1) if Developer does not  
217 cure such failure within 30 days following written notice of default from City, including notice  
218 and opportunity to cure for lenders and Developer’s limited partners pursuant to the DDA  
219 (“**Approved Lenders**”) or (2) if such failure is not of a nature which can be cured within such 30  
220 day period, the Developer does not within such 30 day period commence substantial efforts to  
221 cure such failure, or thereafter does not within a reasonable time prosecute to completion with  
222 diligence and continuity the curing of such failure. City shall not enforce any of its rights and  
223 remedies for breach by Developer except upon the occurrence of an Event of Default. The  
224 institution of legal actions in the Event of Default shall be brought only in accordance with the  
225 DDA.

226 (b) Any failure or delay by City in asserting any of its rights or remedies as to  
227 any Event of Default shall not operate as a waiver of any Event of Default or of any such rights  
228 or remedies or deprive City of their right to institute and maintain any actions or proceedings  
229 which it may deem necessary to protect, assert or enforce any such rights or remedies.

230 8. Notices.

231 Any approval, disapproval, demand, document or other notice which any party may  
232 desire to give to the other parties under this Agreement must be in writing and may be given by  
233 U.S. mail or overnight courier, to the party to whom the Notice is directed at the address of the  
234 party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Attention: City Manager

To Developer: Corporation for Better Housing  
21031 Ventura Blvd., Suite 200  
Woodland Hills, CA 91364  
Attention: Lori Koester

With a copy to:

Chernove & Associates, Inc.  
16027 Ventura Blvd., Suite 660  
Encino, California 91436  
Attn: Sheldon Chernove  
Phone: (818) 377-8100  
Fax: (818) 377-9132  
Email: schernove@chernovelaw.com

And a copy to:

Alliant Asset Management Company, LLC  
21600 Oxnard Street, Suite 1200  
Woodland Hills, CA 91367  
Attn: Asset Management  
[or other tax credit syndicator]

235 Any written notice, demand or communication shall be deemed received immediately if  
236 delivered by hand, on the third day from the date it is postmarked if delivered by first-class mail,  
237 postage prepaid, and upon receipt if sent via nationally recognized overnight courier. Notices  
238 sent by a party's attorney on behalf of such party shall be deemed delivered by such party.

239 9. Counterparts. This Agreement may be executed in any number of identical  
240 counterparts and each counterpart shall be deemed to be an original document. All executed  
241 counterparts together shall constitute one and the same document, and any counterpart signature  
242 pages may be detached and assembled to form a single original document.

243 **IN WITNESS WHEREOF**, City and Developer have caused this Agreement to be  
244 executed on their behalf by their respective officers thereunto duly authorized.

**CITY:**

CITY OF CALISTOGA, a municipal  
corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

**DEVELOPER:**

CORPORATION FOR BETTER HOUSING, a  
California nonprofit public benefit corporation

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

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

ATTEST:

By: \_\_\_\_\_  
Kathy Flamson, City Clerk

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY