

ACCESSORY DWELLING UNIT LOAN AGREEMENT
(Affordable Accessory Dwelling Unit Forgivable Loan Program)

This Accessory Dwelling Unit Loan Agreement (this "**Agreement**") is entered into as of _____, 20__ (the "**Effective Date**"), by and between the County of Napa, a political subdivision of the State of California (the "**County**"), and _____ ("**Borrower**"). The County and Borrower are referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Pursuant to County Board of Supervisors Resolution No. XXXX-XX, the County operates an Affordable Accessory Dwelling Unit Forgivable Loan Program (the "**Program**") for the purpose of encouraging the production of affordable units in Napa County by easing the financial burden required for and incentivizing the creation of accessory dwelling units ("**ADUs**") on parcels with new or existing owner-occupied single-family homes located in the County.

B. Under the Program, the County provides participating eligible homeowners with financing in the form for a forgivable, deferred payment loan to finance a portion of the cost to create an ADU on the homeowner's property. The Program requires the newly created ADU to be rented to an eligible low-income household in accordance with the County's AADU Forgivable Loan Program Guidelines ("**Program Guidelines**").

C. Borrower is the owner and occupant of the single-family home located in the County at _____ (as more particularly described in Exhibit A attached to this Agreement, the "**Property**"), and has applied to participate in the Program. The County has reviewed the Borrower's application to participate in the Program and has determined that Borrower is eligible to participate in the Program.

D. In accordance with the terms and conditions set forth in this Agreement and the Program Guidelines (which are incorporated in this Agreement by this reference), the County has agreed to provide a loan to the Borrower to finance the construction of an ADU on the Property.

E. The Parties wish to enter into this Agreement in order to set forth the terms and conditions of Borrower's participation in the Program, Borrower's obligations with respect to the use of the loan proceeds and construction of the ADU, and the County's role with respect to the Program administration and oversight of the construction work.

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

Section 1. Incorporation of Recitals. The Parties acknowledge the accuracy of the Recitals, which by this reference are incorporated into this Agreement.

Section 2. Loan. The County will provide a loan to Borrower in an amount not to exceed [_____ **Dollars (\$_____)**] (the "**Loan**") to finance the construction of an ADU on the Property. As more particularly described in the Note (defined below), the Loan will be a deferred payment, three percent (3%) interest loan forgivable over a five (5) year term provided that Borrower complies with the rent and occupancy restrictions set forth in the Regulatory Agreement (defined below). Borrower will execute and deliver to the County a Secured Promissory Note in the amount of the Loan, in a form provided by the County (the

"Note"), and will execute a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, in a form provided by the County (the "**Deed of Trust**"), to secure Borrower's obligations. Borrower and the County will enter into an Affordable Housing Regulatory Agreement and Restrictive Covenants that imposes rent and occupancy restrictions, in a form provided by the County (the "**Regulatory Agreement**"), to evidence affordability and occupancy requirements. This Agreement, the Note, the Deed of Trust, and the Regulatory Agreement are collectively referred to in this Agreement as the "**Loan Documents**." The Deed of Trust and Regulatory Agreement will be recorded against the Property concurrently with the closing of the Loan, to secure compliance with the Program Guidelines and the Loan Documents, and repayment of the Loan upon the occurrence of a Default (as defined below in Section 11). The terms of the Note, Deed of Trust, and Regulatory Agreement are all incorporated into this Agreement by reference.

(a) Loan Components. The Loan consists of the following components:

(i) The "**Base Component**" is the portion of the Loan in an amount not to exceed [_____ Dollars (\$_____)] that is being made available to Borrower to fund construction of the [*Studio, 1-bedroom or 2-bedroom*] ADU in accordance with a construction contract to be executed by and between Borrower and a County approved contractor ("**Contractor**"). Among other requirements, the Contractor must be licensed by the California Contractors State License Board.

(ii) The "**Incentives Component**" is the portion of the Loan in an amount not to exceed [_____ Dollars (\$_____)] that is being made available to Borrower to fund: (1) building permits and fees associated with the construction and operation of the ADU; (2) use of pre-reviewed plans from Napa Sonoma ADU Center (www.napasonomaadu.org), if applicable; (3) closing costs and fees related to conventional loan financing, if applicable; and (4) the cost of securing California Housing Financing Authority ("CalHFA") state grant funds, if applicable.

Section 3. Conditions Precedent to Disbursement of Loan Proceeds. The County's obligation to disburse the Loan Proceeds to the Managed Construction Escrow Account (as defined below) are expressly conditioned upon the satisfaction or written waiver by the County of the following conditions precedent:

(a) No Material Adverse Change. There exists no material adverse change in the financial condition of Borrower from that shown by data and other information furnished by Borrower to the County prior to the Effective Date of this Agreement.

(b) No Breach. There exists no condition, event, act, or omission which constitutes a breach or Default (as defined in Section 9 of this Agreement) under any of the Loan Documents, or which would constitute such a breach or Default after notice or the lapse of time or both.

(c) Loan Documents. Borrower has executed, acknowledged (as applicable), and delivered to the County all of the Loan documents, and the Deed of Trust and Regulatory Agreement will be recorded against the Property in the Napa County Recorder's Office concurrently with the close of escrow of the Loan.

(d) Managed Construction Escrow Account. Borrower has furnished to the County information for an established Managed Construction Escrow Account. For the purposes of this Agreement, a "**Managed Construction Escrow Account**" refers to a County approved third party holding an account for funds for construction of the ADU. Borrower is required to establish and provide proof of a Managed Construction Escrow Account even if, outside of the Base Component, Borrower intends to fund construction of the ADU with cash.

(e) Insurance. Borrower has furnished to the County evidence of insurance coverage satisfying the requirements of Section 6 below.

(f) Lender's Policy. Borrower has procured and delivered to the County an ALTA Lender's Policy of Title Insurance, together with such endorsements as the County may require, in an amount equal to the principal amount of the Loan, insuring the priority of the Deed of Trust and Regulatory Agreement as liens or charges upon the Property, subject only to such exceptions and exclusions as may be reasonably acceptable to the County, and containing such endorsements as the County may reasonably require. Such policy will be issued by a title insurer reasonably approved by the County.

(f) Permits. Borrower has received all permits, including but not limited to building permits, necessary to perform the construction of the ADU.

(g) Other Financing. If Borrower is utilizing financing other than the Loan proceeds for the construction of the ADU, Borrower has provided documentation to the County's satisfaction that undisbursed proceeds of the Loan, together other funds or firm commitments for funds that Borrower has obtained, are not less than the amount that is necessary to pay for construction of the ADU.

Section 4. Compliance with Approved Construction Plans; Disbursement and Use of Loan Proceeds. Provided that all of the conditions precedent to disbursement of the Loan proceeds in Section 3 above have been either satisfied or waived in writing by the County, the County will disburse the Base Component and the Additional Incentives Component to the Managed Construction Escrow Account.

(a) Time Limits for Use of Loan Proceeds. The Borrower will have two (2) years from the date of that the County releases the Loan proceeds to the Managed Construction Escrow Account to complete construction and initiate lease-up of the ADU.

(b) Base Component Eligible Uses. Borrower will use the proceeds from the Base Component of the Loan only for following Eligible Uses:

- (i) Construction materials and labor;
- (ii) General contractor fees and overhead, not to exceed ten percent (10%) of the construction cost of the ADU;
- (iii) Demolition necessary for the construction of the ADU;

- (iv) Site work, such as water, sewer, or septic connections; utility improvements; or site leveling as is necessary for the construction of the ADU;
- (v) Permit costs beyond those that are provided through participation in the Program; and
- (vi) Other hard or soft costs approved at the discretion of the County.

(c) **Ineligible Uses.** The County will determine, in its sole discretion, costs deemed excessive or unreasonable, or uses deemed ineligible. Ineligible uses of the Loan proceeds include, but are not limited to, costs associated with construction items or materials of a luxury nature or furnishings. Ineligible costs included in project costs will be noted by the County and provided to the managed construction escrow provider at the time of loan funding. Should the County determine that Loan proceeds will not or cannot be used for the Eligible Uses described in Borrower's application, Borrower will return the Loan proceeds upon the County's written demand. Borrower's failure to return such proceeds within fifteen (15) days following the County's written demand will constitute a Default (as defined in Section 9 of this Agreement) entitling the County to pursue remedies pursuant to Section 10 of this Agreement.

(d) **Contractor Drawdown of Proceeds.** When Borrower's contractor is ready to receive funds for completed work, the contractor must submit a pay application to or request a "draw" from the escrow company. The managed construction escrow provider will approve the request based on approved projects costs and issue the funds in a timely manner. An onsite inspection may be required and completed after the request is made and before disbursement to ensure the amount requested matches the work completed. Quarterly summaries of disbursements from the managed escrow provider shall be provided to the County.

(e) **Incentives Component Eligible Uses.** Borrower will use the proceeds from the Incentives Component of the Loan for the following:

- ☐ \$ _____ for building permits and fees;
- ☐ \$ _____ for purchase of plans from Napa Sonoma ADU Center;
- ☐ \$ _____ for closing costs and fees for conventional loan;
- ☐ \$ _____ for costs related to securing CalHFA grant funds;
- ☐ \$ _____ for costs related to securing managed construction escrow services.

Section 5. Representations and Warranties. Borrower represents and warrants to the County as follows, which representations and warranties will be true and correct as of the Effective Date and acknowledges, understands, and agrees that the representations and warranties set forth in this Section are deemed to be continuing during all times when any portion of the Loan remains outstanding:

- (a) Except for mortgages secured by the Property and other liens previously disclosed to the County, there are no other liens or monetary judgments recorded against the Property.
- (b) At the time of recordation of the Deed of Trust, Borrower will have good and marketable fee title to the Property.

(c) At the time of recordation of the Deed of Trust, Borrower occupies the Property and will continue to occupy the Property as their principal residence through the Term (as defined in Section 7 of this Agreement).

Section 6. Insurance Requirements.

(a) Borrower must provide the County with evidence of flood insurance, if applicable.

(c) Borrower will keep the improvements and personal property now existing or later located on the Property insured against loss by fire, vandalism, and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy will be written on a full replacement value basis and will name the County as loss payee as its interest may appear. The full replacement value of the improvements to be insured will be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, the County will have the right to notify Borrower that it elects to have the replacement value re-determined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by the County to any indebtedness evidenced by this Agreement or secured by the Deed of Trust and in such order as the County may determine, or at the option of the County, the entire amount so collected or any part of the amount may be released to Borrower; provided however, if Borrower is not in default under the Loan Documents, the proceeds will be released to Borrower to repair or rebuild the improvements provided that sufficient additional sources of financing to complete such repair or rebuilding are available to complete such work. Such application or release will not cure or waive any default or notice of default under this Agreement or invalidate any act done pursuant to such notice.

Section 7. Term of Agreement. The term of this Agreement commences on the Effective Date and continues through the seventh (7th) anniversary of the Effective Date subject to any earlier termination or extensions as set forth in this Agreement (the "**Term**"); provided however, all provisions of this Agreement that expressly provide for continuation beyond the termination of this Agreement will survive.

(a) **Extension of Term of Agreement.** Should Borrower opt to extend the term of the Regulatory Agreement, pursuant to Section 3.2(a) of the Regulatory Agreement, the term of this Agreement will automatically be extended to continue through the new date of expiration of the Regulatory Agreement.

Section 8. Termination by Borrower. If during the Term, Borrower desires to no longer participate in the Program and to terminate this Agreement, Borrower will notify the County in writing and will repay the entire outstanding balance of the Construction Component and the full amount of the Permit/Fees Component to the County within ninety (90) days from the date of Borrower's written notification to the County. This Agreement will terminate upon the County's receipt of payment in full of the outstanding Loan balance.

Section 9. Events of Default. Each of the following constitutes a "**Default**" by Borrower under this Agreement:

(a) Borrower fails to pay the principal and other sums payable when such payment is due pursuant to the Note, and such failure continues for fifteen (15) days after County notifies Borrower of the failure in writing.

(b) Borrower fails to duly perform, comply with, or observe any of the conditions, terms, or covenants of the Program Guidelines, the Loan Documents or the Contract between Borrower and the Contract, and such failure continues beyond the expiration of the applicable cure period or if there is no applicable cure period, continues beyond thirty (30) days after written notice from the County specifying the default (provided that, in the event of a shorter cure period as set out below or in other Loan Documents, such shorter cure period prevails).

(c) Any of Borrower's representations or warranties in the Loan Documents and/or in Borrower's application for the Loan will prove to have been untrue in any material respect when made, or Borrower will have concealed any material fact from the County.

(d) The sale, lease, or change in title or ownership of the Property except as provided in Section 5.6 of the Regulatory Agreement.

(e) Borrower's failure to rent the ADU to an Eligible Tenant Household at an Affordable Rent (as those terms are defined in the Regulatory Agreement) in compliance with the Regulatory Agreement.

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

(g) Subject to Borrower's right to contest the following charges, Borrower's failure to pay taxes or assessments due on the Property or the improvements or failure to pay any other charge that may result in a lien on the Property or the improvements, and Borrower's failure to cure such default within thirty (30) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose on such lien.

Section 10. Remedies.

(a) The occurrence of any Default following the expiration of all applicable notice and cure periods will, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and will give the County the right to proceed with any and all remedies available under law, in equity, or set forth in this Agreement and the Loan Documents, including but not limited to the following:

(i) Acceleration of Note. The County may cause all indebtedness of Borrower to the County under this Agreement and the Note, together with any accrued interest on the Note, to become immediately due and payable. Borrower waives all right to presentment, demand, protest or notice of protest or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. Borrower is liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(ii) Specific Performance. The County has the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(iii) Right to Cure at Borrower's Expense. The County has the right (but not the obligation) to cure any monetary default by Borrower under a loan other than the Loan. Upon demand for reimbursement, Borrower will reimburse the County for any funds advanced by the County to cure such monetary default by Borrower, together with interest on the funds advanced from the date of expenditure until the date of reimbursement at the Default Rate (as defined in the Note).

(b) Borrower may contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default. Any such contest is to be prosecuted diligently and in a manner unprejudicial to the County or the rights of the County.

(c) No right, power, or remedy given to the County by the terms of this Agreement or the other Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy is cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies will operate as a waiver of the County rights or remedies, nor does any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 11. Indemnification. Borrower agrees to accept all responsibility for loss, damage or injury to any person or entity, and to the greatest extent permitted by law, Borrower will indemnify, defend (with counsel approved by the County) and hold the County and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising directly or indirectly, in whole or in part, as a result of or in connection with this Agreement, the construction work, the ADU, or any failure to perform any obligation as and when required by the Loan Documents. Borrower's indemnification obligations set forth in this Section: (i) will survive the expiration or earlier termination of this Agreement; and

(ii) will not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. The County does not and will not waive any rights against Borrower that the County may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by the County, or the deposit with the County by Borrower, of any of the insurance policies described in the Loan Documents.

Section 12. General Provisions.

(a) Titles. The titles and article or section headings are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the particular provisions to which they refer.

(b) Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding, or unenforceability.

(c) Applicable Law and Venue. This Agreement is governed by and construed in accordance with the laws of the State of California. Venue for any action with respect to this Agreement is the Federal and State Courts for Napa County.

(d) Attorneys' Fees. In the event any action or proceeding in court or other dispute resolution mechanism permitted under this Agreement is commenced by either Party to interpret or enforce the terms of this Agreement, the prevailing Party in such action or proceeding will be entitled to recover from the non-prevailing Party all of the prevailing Party's reasonable costs and expenses in connection with such action or proceeding, including on any appeal and including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and reasonable attorneys' fees and costs for the services rendered to the prevailing Party in such action or proceeding (which will include the reasonable costs for services of the County's in-house counsel).

(e) Modifications. This Agreement may not be modified or amended in any respect, except by written instrument specifically referencing such a modification or amendment which is executed by both of the Parties in the same manner as this Agreement is executed.

(f) Waivers. Any waiver by the County of any term or provision of this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or Default under this Agreement or to pursue any remedy allowed under this Agreement or applicable law. Waiver of a breach or Default under this Agreement will not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. Any extension of time granted to Borrower to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement.

(g) Time. In all matters under this Agreement, the Parties agree that time is of the essence. References in this Agreement to days will be to calendar days. If the last day of any period to give or reply to a notice, meet a deadline or undertake any other action occurs on a day that is not a day of the week on which the County of Napa is open to the public for carrying on substantially all business functions (a "Business Day"), then the last day for giving or replying to such notice, meeting such deadline or undertaking any such other action will be the

next succeeding Business Day. In no event will a Saturday or Sunday be considered a Business Day.

(h) Exhibits. The following exhibit is attached to this Agreement and incorporated into this Agreement by reference: Exhibit A: Legal Description of the Property

(i) Entire Understanding of the Parties. The Loan Documents constitute the entire agreement of the Parties with respect to the Loan.

(j) Notices. Except for any notice, demand, or communication required under applicable law to be given in another matter, all notices, demands, and communications to be sent pursuant to this Agreement will be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All notices demands or communications will be sent by: (i) personal delivery, with a delivery receipt; (ii) certified mail, return receipt requested; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account with a delivery receipt. Delivery will be deemed to have occurred on the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date on which the item was returned as undeliverable. Either Party may change the address to which notices are to be sent by notifying the other Parties of the new address, in the manner set forth above

County: County of Napa
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559
Attention: County Executive Officer

Borrower: At the Property address.

(k) Each Party's Role in Drafting the Agreement. The Parties have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to California Civil Code Section 1654 as may be amended from time to time, or any other state law, or common law principle) will not apply to the interpretation of this Agreement.

(l) County Approval. The County Board of Supervisors has authorized the County Executive Officer, and in their absence or unavailability, the Assistant County Executive Officer, to execute the Loan Documents and deliver such approvals or consents as are required by this Agreement. Any consents or approvals required under this Agreement will not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

(m) Parties Not Co-Venturers; Independent Contractor; No Agency Relationship; No Third-Party Beneficiaries. Nothing in this Agreement is intended to or will establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Borrower and the County will not be construed as a joint venture, equity venture, partnership or any other relationship. The County neither undertakes nor assumes any responsibility or duty to Borrower (except as expressly provided in this Agreement) or to any third party. This Agreement is not intended to, nor will it establish any third-party beneficiaries. Borrower will at no time pretend to be or hold themselves out as an employee or agent of the

County. Except as the County may specify in writing, Borrower will not have any authority to act as an agent of the County or to bind the County to any obligation.

(n) Non-Liability of the County and County Officials, Employees and Agents.

No elected and appointed officer, official, employee, agent, consultant, contractor or representative of the County will be personally liable to Borrower or any successor in interest of Borrower, in the event of any default or breach by the County, or for any amount of money which may become due to Borrower or Borrower's successor or for any obligation of the County under this Agreement.

(o) Joint and Several Obligations. If more than one person has executed this Agreement as Borrower, the obligations of each such person under this Agreement will be joint and several.

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

(q) Borrower Signatures. The individual(s) executing this Agreement on behalf of Borrower represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on Borrower.

[Signatures on following page.]

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

COUNTY:

COUNTY OF NAPA, a political subdivision of the
State of California

By: _____
David Morrison, Interim County Executive
Officer

APPROVED AS TO FORM BY:
County Counsel

Silva Darbinian, Deputy County Counsel

BORROWER:

By: _____

Name : _____

Its: _____

Exhibit A

PROPERTY

(Insert legal description.)