

RECORDING REQUESTED BY:

Sonoma County Community }
Development Commission }

WHEN RECORDED MAIL TO:

Sonoma County Community }
Development Commission }
Attn: Executive Director }
Post Office Box 12025 }
Santa Rosa, California 95406 }

AFFORDABLE RENTAL HOUSING AGREEMENT
(Development, Area)

THIS AGREEMENT is made and entered into this ____ day of _____, 2003, by and between the County of Sonoma (hereinafter referred to as "County"), and Developer Name, a Description (hereinafter referred to as "Developer").

WHEREAS, Developer is the owner of that X.XX acres of real property commonly known as Address, City, in the unincorporated area of Sonoma County, and as Sonoma County Assessor's Parcel Number XXX-XXX-XXX (hereinafter referred to as "the Property") and is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS, the General Plan and Zoning Ordinance of the County of Sonoma permit no more than XX (xx) housing units on the Property; and

WHEREAS, Developer proposes to develop a total of XX (xx) housing units on the Property, consisting generally of XX (x) studio apartments, XX (x) one bedroom units, XX (x) two bedroom units, XX (x) three bedroom units, and XX (x) four bedroom units. The residential units will be grouped in XX buildings in a development that will include paved parking, landscaping and an approximately XX square foot multi-use building that will include kitchen and laundry facilities and a manager's office ("the Development"); and

WHEREAS, the Developer estimates the total development cost of the

Development to be approximately \$XX,XXX,XXX; and

WHEREAS, pursuant to Government Code section 65915, section 26-89-050 of the Sonoma County Zoning Ordinance adopted by the Sonoma County Board of Supervisors on June 7, 2005, and Sections 1.6 and 2.2.1 and policy HE-1c of the Sonoma County Housing Element adopted by the Sonoma County Board of Supervisors on December 11, 2001, the Developer has proposed to construct and rent the xx (XX) affordable rental housing units in the Development at rents affordable to very low- or low-income households in exchange for a DENSITY BONUS PROGRAM TYPE density bonus of xx (X) units and other incentives.

WHEREAS, on DATE OF APPROVAL, the Sonoma County Board of Supervisors approved the Development with a DENSITY BONUS PROGRAM TYPE density bonus of XX units (“Density Bonus”) and the following additional incentives (“Other Incentives”): LIST OF ADDITIONAL INCENTIVES SUCH AS

- 1) a General Plan amendment from the Urban Residential 3 dwelling units/acre/Recreation and Visitor Serving Commercial designation to the Urban Residential X dwelling units/acre designation; and
- 2) a zone change from the R1 (Low Density Residential), B6, 3 dwelling units/acre, HD (Historic District), BR (Biotic Resource), F2 (Secondary Flood Plain)/K (Recreational and Visitor Serving Commercial) district to the R2 (Medium Density Residential), B6, X dwelling units/acre, BR, F2 or other appropriate district; and
- 3) a Specific Plan amendment of the South Sonoma Valley Area Plan from the Commercial/Low Multi-Family 6-10 dwelling units/acre to the High Multi-Family 11-16 dwelling units/acre, and
- 4) a use permit for an xx unit multi-family affordable housing development to include studio, 1, 2, 3 and 4 bedroom units, and a community building on 5.02 acres; and
- 5) Design Review for the project, all in accordance with the County’s implementing ordinances and policies (file number PLP XX-XXXX); and

WHEREAS, on DATE OF APPROVAL, County approved, as an incentive to the Development, Community Development Block Grant (CDBG) loan assistance in the total amount of \$XXX,XXX and up to \$XX,XXX of additional contingency CDBG loan assistance for predevelopment and site development costs; and

WHEREAS, on DATE OF APPROVAL, County also approved, as an incentive to the Development, HOME Investment Partnerships Program (HOME) loan assistance in the total amount of \$XXX,XXX for project construction expenses and up to \$XX,XXX of additional HOME contingency funding; and

WHEREAS, on DATE OF APPROVAL, County approved, as an incentive to the Development, a loan of County redevelopment funds in the amount of \$XXX,XXX for payment of predevelopment costs including architect and engineering, sitework, project management and continuing relocation expenses, and

WHEREAS, condition XX of the Sonoma County Board of Supervisors approval of the density bonus for the Development requires one hundred percent (XX%) of the total number of rental units to be set aside for rent to very low- and low-income households, pursuant to Government Code 65915 and Section 26-89-100 of the Sonoma County Zoning Ordinance, for a minimum period of thirty (30) years.

NOW, THEREFORE, in consideration of the foregoing and of the mutual terms and covenants hereinafter set forth, the parties hereto agree as follows:

1. Satisfaction of Board of Supervisors Conditions and Acknowledgement of Incentives. County hereby agrees that execution, recordation, performance of and compliance with this Agreement shall constitute performance of condition number XX of File Number XXX XX-XXXX of the Sonoma County Board of Supervisors' approval of the Development, dated DATE OF APPROVAL, and shall be sufficient in that respect to permit the issuance of building permits for the Development subject to satisfaction of all other applicable conditions and compliance with all provisions of the law. Notwithstanding the foregoing, the conditions of approval of Resolution No. _____, including condition number ##, shall remain forever applicable to the Development, and shall survive any transfer of title to the Property (whether voluntary or the result of a trustee's sale, judicial foreclosure, or deed in lieu of foreclosure under or relating to any senior deed of trust or senior lien on the Property) or any assignment of Developer's interest in the Development, and shall remain in effect notwithstanding the subordination of this Agreement to any senior regulatory agreement recorded against the Property in connection with other financing on the Property. Developer acknowledges and agrees that, in addition to the Density

Bonus, Developer has received significant incentives pursuant to Government Code Section 65915, including Other Incentives and the loans of Community Development Block Grant funds, HOME funds, and County redevelopment funds

2. *Rental of Housing Units.* Pursuant to and in consideration of the density bonus approved by the County and the additional incentives set forth in this Agreement, Developer hereby agrees that it shall rent not less than the eighty (80) rental housing units to very low- and low-income households, as defined at Section 1.6 of the Sonoma County Housing Element, or as those terms may hereafter be amended (“Affordable Housing Units”). The Affordable Housing Units **shall** consist of the following number of housing units subject to this Paragraph:

Unit Size	Affordable to Very Low Income Households	Affordable to Low-Income Households
Studio	X	X
One Bedroom	X	X
Two Bedrooms	X	X
Three Bedrooms	X	X
Four Bedrooms	X	X
Totals:	X	X

Developer shall not market any Affordable Housing Units in the Development until the Sonoma County Community Development Commission (“Commission”), acting on behalf of the County, has approved a marketing plan for the marketing of the Affordable Housing Units.

3. *Rent Amounts.* On or about March 1 of each year, when the U.S. Department of Housing and Urban Development issues annual updates of the income limits for Sonoma County, adjusted by household size, the Commission shall issue to Developer new gross rent limits for the Affordable Housing Units designated in Paragraph 2 for the following calendar year. Commission shall calculate gross rents in compliance with section 26-02-140 of the Sonoma County Code, using the income limits for the imputed household size appropriate to the size of each Affordable Housing Unit. The gross rents shall be subject to deduction of a utility allowance, approved and issued by Commission, and shall be consistent with the definitions of rent referenced in this paragraph 3. The utility allowance schedule includes monthly figures for utility expenses that the tenant is

required to pay in addition to the rent, and may include the costs associated with cooking, space heating, water heating, lights, other electrical, water, sewer, garbage, and renting a stove and refrigerator. Developer shall not charge its tenants more than the net rent resulting from the calculation described in this paragraph and permitted by the Commission.

The imputed household size for a unit shall be equal to the number of bedrooms in the unit plus one. For example, Commission shall calculate gross rent for a two-bedroom unit using the appropriate income limit for a three-person household. The monthly gross rent limit for each unit reserved for a very low-income tenant shall be equal to one-twelfth (1/12th) of the product of 30% of 50% of the median income for the household size imputed for that unit. The monthly gross rent limit for each unit reserved for a low-income tenant shall be equal to one-twelfth (1/12th) of the product of 30% of 60% of the median income for the household size imputed for that unit.

4. *Term.* This Agreement shall be effective on the date of its recordation and shall remain in force for a period of not less than thirty (30) years from the date that the County issues the Certificate(s) of Occupancy for the Affordable Housing Units in the Development. In the event that Developer requests an extension of the term for repayment of any of the financing that Commission has or will extend to Developer for the Development, the term of this Agreement shall be extended to coincide with the extended term of that financing.

5. *Assurance of Continued Affordability.* The incentives made to Developer by County and recited in this Agreement constitute a "subsidy" for affordable housing. In order for County to meet the requirement of Government Code section 65917 that it ensure the continued affordability of housing units priced for affordability for very low- and low-income households by this Agreement, Developer agrees that it will not rent any of the housing units identified by this Agreement at rents exceeding those established pursuant to this Agreement.

Developer agrees to submit to County, on a schedule that the County selects, but not more often than quarterly, on forms that the County provides or approves, a compliance report reporting the name, household size, income and rent of each tenant occupying an Affordable Housing Unit. Developer further agrees to certify annually the income of each tenant occupying an Affordable Housing Unit and, upon request of County, to submit to County the certifications on forms that the

County provides or approves and copies of leases in effect for each tenant residing in a unit subject to this Agreement.

At Commission's request, Developer shall permit the Commission to inspect the Property and make available for the Commission's review and inspection the tenant records that Developer shall maintain for each tenant residing in a unit subject to this Agreement. The tenant records shall include, at a minimum, the lease, income certifications, and the documents required to certify the income.

6. Maintenance Standards. During the term of this Agreement, Developer shall maintain the unit(s) subject to this Agreement and the Property in a condition that satisfies the more stringent of (a) the requirements of the applicable local building codes or (b) the United States Department of Housing and Urban Development's Housing Quality Standards (HQS). The Commission shall have the right to inspect the unit(s) subject to this Agreement and the Property prior to initial occupancy and periodically during the term of this Agreement, upon three business days' notice to Developer. The Commission shall have the right to disclose the results of those inspections to the appropriate enforcement authority. Failure to maintain the unit(s) and the Property in compliance with this section shall constitute a breach of this Agreement and subject the Developer to damages as set forth in Section 17 of this Agreement.

7. Reconciliation of Program Requirements. Developer has received and will receive financial assistance from several of the Commission's programs. In the event of differences between and among the requirements of these programs, the requirements of other funding sources, and the requirements of the Density Bonus Program, the most restrictive requirement shall prevail.

8. Interpretation and Construction. To the extent that this Agreement may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed in such a way that meets the public policy goals of Government Code section 65915, the Housing Element of the Sonoma County General Plan, and the Sonoma County Zoning Ordinance, and the requirements of the CDBG and HOME Programs, the County's redevelopment program, and other County programs that may assist the Development. If any provision of this Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Agreement and the application of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

Nothing contained herein shall be deemed compliance with or waiver of any provision of law or conditions of approval except as expressly stated herein.

9. Opinion of Counsel. At Commission's option, concurrent with the execution hereof, Developer shall provide to County a letter opinion from its legal counsel stating that in the opinion of counsel this Agreement constitutes a valid and binding contract upon Developer and its successors in interest with respect to the Property.

10. Agreement Binding on Successors. The terms, covenants and conditions of this Agreement shall apply to, and shall bind the parties hereto and any successors or assignees. Developer's obligations under this Agreement are to be considered as covenants and/or equitable servitudes, as those terms are used in Revenue & Taxation Code section 3712(d), running with and appurtenant to the Property and for the benefit of County. Any sale or conveyance of the Property shall be made subject to this Agreement.

11. Waiver. The waiver by any party of any breach or violation of any term, covenant or condition of this Agreement or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law.

12. Costs and Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and witness, expert and attorneys' fees expended in connection with such an action from the other party.

13. Recordation. Developer shall execute this Agreement, cause the same to be acknowledged and deliver said executed and acknowledged document to County in such form as to permit its recordation in the Office of the County Recorder of the County of Sonoma. County shall not be obligated to issue permits prior to such delivery and recordation of this Agreement.

14. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856.

15. Ownership of the Property. Developer represents and warrants that it is the owner of the Property and has full authority to execute this Agreement.

16. Monitoring Expenses. In order to allow Commission and County to recover their administrative expenses associated with this Agreement, Developer shall pay to Commission \$75.00 for each of the 80 Affordable Housing Units, or such other fee as may be established by the County from time to time, consistent with increases in the cost of living.. The fee shall be paid in advance by Developer to County on or before June 1st of each year of the thirty (30) year term described in paragraph 4 of this Agreement.

17. Additional Damages. In addition to any other remedy available to the County by law, in the event that the Developer charges rent in excess of that allowed by this Agreement, it shall be liable to County for damages in the amount of the rent charged or collected, whichever is greater, in excess of the maximums allowed herein and interest compounded at the maximum rate allowable for judgements.

For any other breach of this Agreement, County may, in addition to any other remedy authorized by law, elect that Developer, or any of its successors in interest, shall be liable to County in the amount of \$100.00 per day until the breach is cured.

18. Risk of Market Conditions. Developer shall bear sole responsibility for developing, constructing and marketing the units covered by this Agreement, pursuant to the approvals that the County has issued for the Development and the requirements contained in this Agreement. The County shall have no obligation to amend this Agreement, and the Developer shall reimburse the County for all administrative costs associated with any modification of this Agreement that shall require the approval the Board of Supervisors of Sonoma County.

COUNTY OF SONOMA

Dated:

By: _____

Kathleen H. Kane
Executive Director

Sonoma County Community
Development Commission

DEVELOPER:
DEVELOPER NAME AND LEGAL
DESCRIPTION

Dated:

By: _____
DEVELOPER NAME
TITLE

Approved as to substance for
County of Sonoma:

By: _____
PETE PARKINSON
Director
Permit and Resource Management
Department

Approved as to form by
County Counsel:

STEVEN S. SHUPE
Deputy County Counsel

SAMPLE