

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (the “**Fourth Amendment**”) is made and entered into as of [*the 30th day following final adoption of the ordinance approving it*] (“**Fourth Amendment Effective Date**”) by and between the CITY OF HEALDSBURG, a California municipal corporation (“**City**”) and CCS HEALDSBURG, LLC, a Delaware limited liability company (“**Developer**”). City and Developer may each be referred to as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. On May 6, 2020, the Parties entered into that certain Development Agreement (the “**Original Agreement**”), which Original Agreement was recorded on June 1, 2020 in the Official Records of Sonoma County (“**Official Records**”) as Document No. 2020041464, as amended by that certain First Amendment to Development Agreement (“**First Amendment**”) dated as of June 21, 2022, and memorialized in that certain Memorandum of First Amendment to Development Agreement dated June 21, 2022, which recorded in the Official Records on September 30, 2022 as Document No. 2022063576, and by that certain Second Amendment to Development Agreement (“**Second Amendment**”) dated as of April 18, 2022 and memorialized in the certain Memorandum of Second Amendment to Development Agreement dated April 18, 2022 and recorded in the Official Records on September 13, 2022 as Instrument No. 2022059935, and by that certain Third (Administrative Agreement) Amendment to Development Agreement (the “**Third Amendment**”) dated as of December 22, 2022, (the Original Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and this Fourth Amendment shall be referred to as the “**Development Agreement**”). The Development Agreement concerns the development of an approximately 32-acre parcel of land at 16977 Healdsburg Avenue in the City of Healdsburg, defined as the “**Property**” in the Development Agreement, and shown on Exhibit A attached to the Original Agreement. The Development Agreement was assigned in part to KENDAL AT SONOMA, A ZEN INSPIRED COMMUNITY, a California nonprofit public benefit company (“**Kendal**”), pursuant to that certain Partial Assignment of Rights and Assumption of Obligations Under Development Agreement (the “**Partial Assignment**”) dated August 20, 2020, which was recorded in the Official Records on August 21, 2020 as Instrument No. 2020071885.

B. The parties agree to modify the Development Agreement pursuant to Government Code Sections 65867 and 65868, and Healdsburg Municipal Code Section 17.20.060, in order to modify the terms related to the affordable housing conditions as provided below.

C. On _____, 2023, the City Council, after duly noticed public hearing, introduced its Ordinance _____ approving this Fourth Amendment and authorizing its execution and adopted that Ordinance _____ on _____. Ordinance _____ became effective on _____.

AGREEMENT

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants contained herein, Parties consent to this Fourth Amendment as follows:

1. Defined Terms. All capitalized terms used herein shall have the meanings given in the Development Agreement, except as expressly otherwise defined herein.

2. Enumeration of Specific Deletions and Amendments. The Development Agreement is hereby revised to incorporate the following amendments.

(a) Replace and restate Recital E, Paragraphs 1.a. and 1.b. in their entirety as

1.a. Fifty-three (53) affordable/workforce apartments subject to recorded restrictions that require occupancy by households with very low, low, and moderate incomes, of which approximately ten (10) units are anticipated to be for households at or below 50% of area median income (“AMI”), approximately forty-two (42) units are anticipated to be for households between 50% and 120% of AMI and one (1) unit, the manager’s unit will be restricted to be for a household of up to 120% of AMI (collectively, “**Affordable/Workforce Housing**”).

1.b. Twenty-four (24) multi-family housing units subject to recorded restrictions that require occupancy by Middle Income Households (or below), (collectively, “**Middle Income Housing**”).

(b) Replace and restate Section 5.1 in its entirety as follows:

5.1 Affordable/Workforce Housing Units.

(a) Developer shall cause construction of a minimum of fifty-three (53) units of Affordable/Workforce Housing within the Project, affordable to households with very low, low, and moderate incomes, as follows:

(i) Approximately ten (10) dwelling units are anticipated to be made available for occupancy at an affordable rent, adjusted for household size, to Very Low Income Households.

(ii) Approximately forty-two (42) dwelling units are anticipated to be made available for occupancy at an affordable rent, adjusted for household size, to Low and Moderate Income Households.

(iii) One (1) dwelling unit, the manager’s unit, will be a restricted unit up to 120% of AMI.

(b) Notwithstanding the foregoing, the final mix of Affordable/Workforce Housing units in any given affordability category may vary, but in no event shall less than three (3) units be occupied by Very Low Income Households, and no greater than thirteen (13) units be occupied by Moderate Income Households.

(c) Developer shall provide approximately eighteen (18) one-bedroom dwelling units, twenty-four (24) two-bedroom dwelling units, and eleven (11) three-bedroom dwelling units within the Affordable/Workforce Housing. Notwithstanding the foregoing, Developer shall have the right to construct at least eight (8) three-bedroom dwelling units within the Affordable/Workforce Housing.

(d) Developer or its successor in interest with respect to the parcel or parcels on which the Affordable/Workforce Housing is to be located shall enter into an “Affordable Housing Agreement” with City setting forth its obligations to provide and maintain the Affordable/Workforce Housing units for a term of 55 years. The Affordable Housing Agreement shall be executed by Developer or developer's successor in interest with respect to the portion of the Property containing the Affordable/Workforce Housing units and be recorded against such portion of the Property containing the Affordable/Workforce Housing units prior to City issuance of a final certificate of occupancy for the hotel. The Affordable Housing Agreement shall be assignable to and assumable by the owner and operator of the Affordable/Workforce Housing units, and all portions of the Property except for the parcel containing the Affordable/Workforce Housing units shall be released from the Affordable Housing Agreement upon the first to occur of (i) issuance of a certificate of occupancy for the Affordable/Workforce Housing units or (ii) delivery to City of a completion guaranty pursuant to Section 5.5(a) of this Agreement, whichever is earlier. After satisfaction of the earliest to occur of such conditions, and upon request of Developer or its successor, City will provide a release in recordable form from the obligations of the Affordable Housing Agreement with respect to those portions of the Property no longer subject to such obligations and authorize recordation thereof in the Official Records.

(c) Replace and restate Section 5.2 in its entirety as follows:

5.2 Middle Income Housing Units.

(a) Developer shall cause construction of a minimum of twenty-four (24) units of Middle Income Housing within the Project, which shall be made available at an affordable rent to Middle Income Households, as follows:

(i) Twenty-four (24) dwelling units shall be made

available for occupancy at an affordable rent, adjusted for household size, to Middle Income Households.

(b) The Middle Income Housing will require Growth Management Ordinance (“GMO”) Category C allocations. Developer may, in its sole discretion, develop the Middle Income Housing for sale rather than for rent at an affordable sales price to Middle Income Households.

(c) Developer or its successor in interest shall enter into a “Middle Income Housing Agreement” with City setting forth its obligations to provide and maintain the Middle Income Housing units for a term of 55 years. The regulatory agreement shall meet any applicable requirements of the GMO Policies and Procedures as may be amended, or applicable new GMO policies and procedures that may be adopted, by the City Council specifically for Middle Income Housing units that do not otherwise conflict with the terms of this Agreement. The Middle Income Housing Agreement shall be executed by Developer or its successor in interest with respect to the portion of the Property containing the Middle Income Housing units and be recorded against such portion of the Property containing the Middle Income Housing units prior to City issuance of a final certificate of occupancy for the hotel. The Middle Income Housing Agreement shall be assignable to and assumable by the owner and operator of the Middle Income Housing units, and all portions of the Property except for the parcel containing the Middle Income Housing units shall be released from the Middle Income Housing Agreement upon the first to occur of (i) issuance of a final certificate of occupancy for the last Middle Income Housing unit to be constructed or (ii) delivery to City of a completion guaranty pursuant to Section 5.5(a) of this Agreement. After satisfaction of the earliest to occur of such conditions, upon request of Developer or its successor, City will provide a release in recordable form from the obligations of the Middle Income Housing Agreement with respect to those portions of the Property no longer subject to such obligations, and authorize recordation thereof in the Official Records.

(d) The final sentence in Section 5.4(c) is deleted in its entirety and replaced with the following:

“The obligations with respect to the Senior Living Community Affordable Housing Agreement has been assigned to Kendal pursuant to the Partial Assignment, as the owner and operator of the Senior Living Community, and the obligations arising thereunder, and all other obligations set forth in Section 5.4 of the Development Agreement with respect to Senior Living Community Affordable Housing are not applicable to any other parcels of the Property other than the Senior Living Community.”

- (e) Replace and restate Section 5.5(a) in its entirety as follows:

5.5(a) All Workforce/Affordable Housing units and Middle Income Housing units must have received a certificate of occupancy before City will issue a final certificate of occupancy for the hotel portion of the Property. Notwithstanding the foregoing, in lieu of obtaining certificates of occupancy for Workforce/Affordable Housing or Middle Income Housing units required immediately above, Developer or its successor may provide a completion guaranty in favor of City, in substantially the form attached as Exhibit 1 hereto, or in a form reasonably acceptable to the City Manager, whose approval thereof shall not be unreasonably withheld, conditioned, or delayed, in order to secure the obligation to obtain certificates of occupancy for any Workforce/Affordable Housing units or Middle Income Housing units otherwise required under this Agreement but not yet obtained. The completion guaranty(ies) that may be provided with respect to this Section 5.5(a) (and also including the corresponding provisions of Sections 5.1(d) and 5.2(c) with respect to the delivery of a completion guaranty as to the Workforce/Affordable Housing units and/or Middle Income Housing units, respectively), may be provided by (or if previously provided by Developer, assigned to and assumed by) the owner and operator of the Workforce/Affordable Housing units and/or Middle Income Housing units, respectively, and upon such completion guaranty being provided (or assigned and assumed) by such party, City shall release the remainder of the Property from the obligations imposed by this Section 5.5(a) and Sections 5.1(d) and 5.2(c), as applicable.

3. Interpretation. The Development Agreement shall be construed as having been modified by this Fourth Amendment. Except as expressly modified by this Fourth Amendment, the Development Agreement remains in full force and effect. In the case of conflict between the provisions hereof and the terms of the Development Agreement, the provisions of this Fourth Amendment shall control.

4. Recording of Memorandum. Approximately concurrent with the Fourth Amendment Effective Date, the Parties shall execute, acknowledge and record a Memorandum of this Fourth Amendment in the Official Records.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

CITY

City of Healdsburg, a California municipal corporation

By: _____
Jeff Kay
City Manager

APPROVED AS TO FORM:

By: _____
Samantha Zutler, Esq. City Attorney

ATTEST:

By: _____
Raina Allan City Clerk

DEVELOPER

CCS Healdsburg, LLC, a Delaware limited liability company

By: CCS Healdsburg Manager, LLC, a Delaware limited liability company

Its: Manager

By: CCA Management, LLC,
a California limited liability company

Its: Manager

By: Comstock Crosser & Associates
Development Company, LLC, a California
limited liability company

Its: Manager

By: _____
Nicholas Long, CFO

EXHIBIT 1

FORM OF COMPLETION GUARANTY

THIS COMPLETION GUARANTY (the “**Guaranty**”) is made as of _____ (“**Guarantor**”), for the benefit of the **CITY OF HEALDSBURG**, a California municipal corporation (“**City**”), with reference to the following recitals of fact:

RECITALS

A. **WHEREAS, CCS HEALDSBURG, LLC, a Delaware limited liability company (“Master Developer”)** and City entered into that certain Development Agreement (the "**Original Agreement**"), which Original Agreement was recorded on June 1, 2020 in the Official Records of Sonoma County (“**Official Records**”) as Document No. 2020041464, as amended by that certain First Amendment to Development Agreement (“**First Amendment**”) dated as of June 21, 2022, and memorialized in that certain Memorandum of First Amendment to Development Agreement dated June 21, 2022, which recorded in the Official Records on September 30, 2022 as Document No. 2022063576, and by that certain Second Amendment to Development Agreement (“**Second Amendment**”) dated as of April 18, 2022 and memorialized in the certain Memorandum of Second Amendment to Development Agreement dated April 18, 2022 and recorded in the Official Records on September 13, 2022 as Instrument No. 2022059935, and by that certain Third (Administrative Agreement) Amendment to Development Agreement (the “**Third Amendment**”) dated as of December 22, 2022, (the Original Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and this Fourth Amendment shall be referred to as the “**Development Agreement**”). The Development Agreement concerns the development of an approximately 32-acre parcel of land at 16977 Healdsburg Avenue in the City of Healdsburg, defined as the "Property" in the Development Agreement, and shown on Exhibit A attached to the Original Agreement. The Development Agreement was assigned in part to KENDAL AT SONOMA, A ZEN INSPIRED COMMUNITY, a California nonprofit public benefit company (“**Kendal**”), pursuant to that certain Partial Assignment of Rights and Assumption of Obligations Under Development Agreement (the "**Partial Assignment**") dated August 20, 2020, which was recorded in the Official Records on August 21, 2020 as Instrument No. 2020071885.;

B. **WHEREAS, the Development Agreement contemplates the construction of affordable/workforce apartments subject to recorded restrictions that require occupancy by households with very low, low, and moderate incomes (the “Workforce/Affordable Housing”)** as well as housing units subject to recorded restrictions that require occupancy by households with moderate and middle incomes (“**Middle Income Housing**”), on certain real property located within the City, commonly known as Parcels 2 and 4 of the North Village Site, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (“**Parcel 2**” and “**Parcel 4**”, respectively);

C. **WHEREAS, pursuant to Section 5.5(a) of the Development Agreement, Master**

Developer is obligated to provide evidence of a completion guaranty to City, in a form reasonably acceptable to the City, to secure Master Developer's obligation to deliver all Workforce/Affordable Housing units and Middle Income Housing units under the Development Agreement; and

D. *WHEREAS, Master Developer (also referred to in this Agreement as "Developer"), has provided to City this Guaranty from [Master Developer or an affiliate of Master Developer], in order to satisfy its obligation set forth in Section 5.5(a) of the Development Agreement with respect to the [Workforce/Affordable Housing units and the Middle Income Housing units]; and*

[OR]

D. *WHEREAS, in connection with the transfer of fee title from Master Developer to _____ with regard to [Parcel ___] ("Developer"), Developer has provided to City this Guaranty from Developer or its affiliate (referred to in this Agreement as "Guarantor"), in order to satisfy its obligation set forth in Section 5.5(a) of the Development Agreement; and*

E. *WHEREAS, Guarantor desires to guaranty to City completion of construction of the Workforce/Affordable Housing units and Middle Income Housing units in accordance with the terms of the Development Agreement and this Guaranty.*

NOW, THEREFORE, in consideration of the foregoing and the agreements set forth below, Guarantor hereby agrees as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined in this Guaranty are as defined in the Development Agreement.

2. **Guaranty.** Subject to the terms and conditions set forth herein, Guarantor unconditionally and irrevocably guarantees construction of the [Workforce/Affordable Housing units and/or Middle Income Housing units] by Developer as required by, and in accordance with, the terms and conditions of the Development Agreement.

3. **Obligations of Guarantor Upon Default By Developer.** If Developer fails to complete the construction of the [Workforce/Affordable Housing Units as may be provided in the Affordable Housing Agreement to be entered into with respect to the Project as provided in Section 5.1(d) of the Development Agreement with respect to the Workforce/Affordable Housing units], [and as may be provided in the Middle Income Housing Agreement to be entered into with respect to the Project as provided in Section 5.2(d) of the Development Agreement with respect to the Middle Income Housing units], in each case as such obligation may be amended pursuant to a written amendment to the Development Agreement, following written notice from City to Guarantor, City may elect, at its sole discretion, to require Guarantor to: (A) complete construction of the [Workforce/Affordable Housing units and/or Middle Income Housing units], at Guarantors' sole cost and expense; (B) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the [Workforce/Affordable

Housing units and/or Middle Income Housing units]; and (C) release and discharge all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise in connection with the construction of the [*Workforce/Affordable Housing units and/or Middle Income Housing units*].

4. Guarantor Default. City may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events (each a “**Guarantor Default**”): (a) Guarantor fails to perform any of its obligations under this Guaranty; (b) Guarantor revokes or attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; (c) any representation or warranty made or given by Guarantor to City proves to be false or misleading in any material respect; (d) Guarantor is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or commences or has commenced against it a proceeding under the Federal Bankruptcy Code or any other law or statute providing for the relief of debtors; or (e) Guarantor dissolves or liquidates.

5. Remedies. If Guarantor fails to promptly perform its obligations under Section 3 of this Guaranty or in the event of a Guarantor Default, in addition to any other remedies available to City, City will have the following remedies:

(a) City may bring any action at law or in equity, or both, to compel Guarantor to perform its obligations under this Guaranty and to collect compensation for all loss, cost, damage, injury and expense which may be sustained or incurred by City as a consequence of Guarantor's failure to perform those obligations. City from time to time may bring such an action regardless of whether City has first required performance by Developer, or whether City has exhausted any or all security (if any). Nothing herein shall be construed to prohibit the City from pursuing any remedies under any other agreement, against any person other than the Guarantor.

(b) The City, at City's option, shall have the right to perform or cause to be performed any or all obligations required to be performed by Guarantor under this Guaranty, which City reasonably deems necessary, and expend such sums as City reasonably deems proper in order so to complete such obligation. Guarantor shall reimburse City immediately on demand for all costs and expenses, including any attorneys' fees, which City may incur in performing those obligations, notwithstanding City's pursuit of any other rights or remedies.

6. Rights of City. Guarantor authorizes City, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time in City's sole discretion to do any one or more of the following: (a) approve modifications to the approved plans and building permits for the [*Workforce/Affordable Housing units and/or Middle Income Housing units*]; (b) change the terms of the Development Agreement or any part thereof (subject to the consent of the Developer); (c) renew, modify, compromise or extend all or any portion of Developer's obligations under the Development Agreement; (d) take and hold security for the performance of Developer's obligations under the Development Agreement and Guarantor's obligations under this Guaranty, accept additional or substituted security for either, and exchange, enforce, waive, subordinate, compromise, fail to perfect, and release, sell or otherwise dispose of any such security in whole or part; (e) apply such security and direct the order and manner of sale thereof as City in its sole discretion may determine; (f)

apply payments or recoveries received by City from Developer, Guarantor or any other source to any obligations of Developer to City, in such order, manner and priority as City shall determine in its sole discretion, whether or not any such obligations are covered by this Guaranty; (g) substitute, add or release any one or more guarantors; and (h) release Developer from all or any part of its obligations under the Development Agreement.

7. Guarantors' Warranties. Guarantor warrants, represents, covenants and acknowledges to City that: (a) Guarantor acknowledges and agrees that City would not enter into the Assignment Agreement but for this Guaranty, and that this Guaranty and the agreements of Guarantor in this Guaranty is a material part of the consideration which City is receiving for entering into the Assignment Agreement; (b) Guarantor has reviewed and understands all of the terms and provisions of the Development Agreement; (c) there are no conditions precedent to the effectiveness of this Guaranty; (d) the Guarantor has established adequate means of obtaining from sources other than City, on a continuing basis, financial and other information pertaining to Developer's financial condition, the [*Workforce/Affordable Housing units and/or Middle Income Housing units*], and Developer's activities relating thereto and the status of Developer's performance of obligations under the Development Agreement; (d) the most recent financial statements of Guarantor and all other financial information relating to Guarantor heretofore or hereafter delivered to City are true and correct in all material respects, and the financial statements have been, and any hereafter delivered will be, prepared in accordance with generally accepted accounting principles consistently applied ("GAAP") and fairly and accurately represent the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; and (e) Guarantor is not "insolvent" and will not be, as a consequence of the execution and delivery of this Guaranty, rendered "insolvent", as that term is defined in Section 101 of the Federal Bankruptcy Code, or otherwise rendered unable to pay Guarantor's debts as the same mature. Guarantor acknowledges and agrees that City may request and obtain public or non-confidential information from third parties regarding any of the above, including, without limitation, credit reports.

8. Reserved.

9. Termination. This Guaranty shall terminate and be of no further force or effect upon the issuance of a certificate of occupancy for all of the [*Workforce/Affordable Housing units and/or Middle Income Housing units*].

10. Interest. Any sums required to be paid by the Guarantor to the City pursuant to the terms hereof that are not paid within thirty (30) days of the date due, shall bear interest at the prime rate announced by Wells Fargo plus three percent (3%), from the date said sums shall have become due until the date said sums are paid.

11. No Waiver, Extension or Modification. No failure on the part of the City to pursue any remedy hereunder shall constitute a waiver on its part of the right to pursue said remedy on the basis of the same or a subsequent breach. No extension, modification, amendment or renewal of the Development Agreement shall serve to waive the provisions hereof or discharge the Guarantor from any obligation herein contained, in whole or in part, except to the extent expressly

approved by the City by written instrument signed by the City, specifying the nature and the extent of the intended waiver and discharge of the Guarantor.

12. Guaranty Independent; Waiver of Exoneration.

(a) Guarantor agrees that the obligations hereunder are independent of and in addition to the undertakings of the Developer pursuant to the Development Agreement, any other Guarantees given in connection with the Development Agreement, and other obligations of the Guarantor to the City.

(b) Guarantor agrees that the validity of this Guaranty shall continue and the obligations of Guarantor hereunder shall in no way be terminated, affected, diminished or impaired by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting the Developer or its partners, parents, principals, or members whether or not notice is given to the Guarantor, or by any other circumstances or condition that may grant or result in a discharge, limitation or reduction of liability of the Developer or its partners, parents, principals, members or of a surety or a guarantor.

(c) Guarantor waives all rights and remedies accorded by applicable law to guarantors and agrees not to assert or take advantage of any such rights or remedies including but not limited to any right to require the City to, after expiration of applicable notice and cure periods to Developer, (1) proceed against the Developer, any partner or member of the Developer or any other person, (2) proceed against or exhaust any security held by the City, or (3) pursue any remedy in the power of the City whatsoever. If Guarantor is liable pursuant to this Guaranty, Guarantor waives any defense arising by reason of any disability or other defense of the Developer or any partner or member of the Developer, or any of their parents, principals, or affiliated entities or by reason of the cessation from any cause whatsoever of the liability of the Developer or any member or partner of the Developer, or any of their parents, principals, or affiliated entities other than the full discharge and performance of all of Developer's obligations under the Development Agreement. Guarantor, except as expressly set forth herein, waives any defense it may acquire by reason of the City's election of any remedy against it or the Developer, or both, even though the Guarantors' right of subrogation may be impaired thereby or extinguished under the anti-deficiency statutes of the State of California. Without limiting the generality of the foregoing, Guarantor waives (a) any defense that may arise by reason of the lack of authority or of any other person or persons or the failure of City to file or enforce a claim against the estate (in administration, bankruptcy, or any other proceeding) of any other person or persons; (b) demand, protest and notice of any kind including but not limited to notice of any kind (except for the notice required in Sections 3 and 14 hereof or under the Development Agreement) including but not limited to notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Developer, City, any endorser or creditor of Developer or Guarantor or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by City as collateral or in connection with any obligations the performance of which are hereby Guaranty; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal.

(d) Guarantor waives: (i) any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about Developer, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intended to assume or has reason to believe that such facts are unknown to Guarantor; (ii) any defense arising because of City's election, in any proceeding instituted under the federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code; and (iii) any defense based on any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code. Without limiting the generality of the foregoing or any other provision hereof, Guarantor hereby expressly waives any and all benefits which might otherwise be available to Guarantor under California Civil Code Sections 2809, 2810, 2819, 2839, 2845, 2849, 2850, 2899, and 3433 and California Code of Civil Procedure Sections 580(a), 580(b), 580(d), and 726.

(e) Until termination of this Guaranty (as set forth in Section 4), Guarantor shall have no right of subrogation, and waives any right to enforce any remedy that the City now has or may hereafter have against the Developer or any member of Developer, or any other person, and waives the benefit of, and any right to participate in, any security now or hereafter held by City from the Developer.

13. Transfer or Assignment. The obligations of Guarantor under this Guaranty may be assigned or transferred in whole or in part, to one or more successor developers of [*Parcel 2 and/or Parcel 4*], in each case in connection with the assignment and assumption of the rights and obligations of Master Developer under the Development Agreement with respect to [*Parcel 2 and/or Parcel 4*], pursuant to which Master Developer has assumed or has assigned to the successor guarantor and/or its affiliate, and successor guarantor and/or its affiliate has assumed from Master Developer, the rights and obligations under those portions of the Development Agreement and this Guaranty applicable to [*Parcel 2 and/or Parcel 4, as applicable*]. Any such transfer and assumption will release Guarantor from any liability to City pursuant to this Guaranty so assigned and assumed, provided that the designated replacement guarantor is the Master Developer or an affiliate thereof of meets the City's standards applicable to a Partial Transferee pursuant to Section 9.1 of the Development Agreement, and such party has been approved by City in its discretion, as provided in and pursuant to Section 9.1 of the Development Agreement. Except as provided immediately above, the obligations of Guarantor under this Guaranty may not be assigned or transferred without, in each case, the express written approval of the City, which approval shall be within the sole and absolute discretion of the City.

14. Notices. City shall provide Guarantor with all written notices delivered to Developer pursuant to the Development Agreement at the same time such notice is delivered to Developer. Guarantor shall not be liable under this Guaranty unless and until it has received such notice. The Guarantor shall have the right to perform any and all of Developer's obligations under the Development Agreement.

15. Enforceability. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of City's consideration for entering into this transaction City has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses, and (d) Guarantor

has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to City that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by City, and that City is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

16. Miscellaneous.

(a) This Guaranty shall inure to the benefit of City and its successors and assigns and shall bind the heirs, executors, administrators, personal representatives, successors and assigns of Guarantor.

(b) This Guaranty shall be governed by and shall be construed in accordance with the laws of the State of California.

(c) If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, provisions, covenants and conditions hereof and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

(d) Guarantor assumes the responsibility for keeping informed of (1) the financial condition of Developer, (2) any change in the management or control of Developer, and (3) all other circumstances bearing upon the risk of nonperformance by Developer of its obligations under the Development Agreement.

(e) This Guaranty shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Guaranty shall be filed and heard in the Superior Court of Sonoma County, California.

(f) Any notice or communication required hereunder between City or Guarantor must be in writing, and may be given either personally, by e-mail (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by email transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party. Notices transmitted after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If

given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City: City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attention: City Manager

With a Copy to: City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
Attention: City Attorney

If to Guarantor:

With a Copy to:

(g) In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Guaranty, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled.

[Signatures on following page]

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

GUARANTOR:

By: _____
Name: _____
Its: _____

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

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me
_____ (insert name and title of the officer)
personally appeared

_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)