

## LOAN AGREEMENT

This Loan Agreement (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2014 (“**Effective Date**”) by and between **Davis Street Family Resource Center**, a California non-profit organization (“**Borrower**”) and the **City of San Leandro**, a charter city formed under the laws of the State of California (“**Lender**”). Lender and Borrower are hereinafter collectively referred to as the “**Parties**.”

### RECITALS

A. Borrower is the fee simple owner of that certain real property located at 1190 Davis Street, in San Leandro, California, Alameda County Assessor’s Parcel Number \_\_\_\_\_ and more particularly described in Exhibit A attached hereto (“**Property**”).

B. Borrower has requested, and Lender has agreed to provide, a loan (“**Loan**”) pursuant to the terms and conditions hereof for the purpose of providing Lender bridge financing to pursue establishment of a community health clinic.

C. Concurrently herewith, Borrower shall execute a promissory note (“**Note**”) in the amount of the Loan, and a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (“**Deed of Trust**”), which shall provide Lender with a security interest in the Property. This Agreement, the Note, and the Deed of Trust are collectively hereinafter referred to as the “**Loan Documents**.”

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

### ARTICLE I

#### LOAN TERMS

1.1 LOAN AND NOTE. Lender agrees to loan to Borrower, and Borrower agrees to borrow from and repay to Lender, the sum of one million five hundred thousand Dollars (\$1,500,000.00) upon the terms and conditions and for the purposes set forth in this Agreement. The Loan shall be evidenced by the Note, which shall be dated as of the Effective Date and executed by Borrower substantially in the form attached hereto as Exhibit B. The Note shall be secured by the Deed of Trust executed by Borrower as trustor for the benefit of the Lender substantially in the form attached hereto as Exhibit C. Provided that Borrower has complied with all conditions precedent to disbursement of the Loan set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. Lender shall disburse Loan Proceeds only for the purposes set forth in Section 2.1.

1.2 INTEREST RATE; PAYMENT DATES; MATURITY DATE. Interest shall accrue on the outstanding principal balance of the Loan at a rate of four and one-half percent (4.5%) simple interest per annum. Monthly payments shall be due and payable in accordance with the terms set forth in the Note. The entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents shall be payable

in full on the second (2nd) anniversary of the Effective Date (the “**Maturity Date**”). Notwithstanding the foregoing, the Lender shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the occurrence of an Event of Default.

1.3 SECURITY. As security for repayment of the Note, Borrower shall execute the Deed of Trust in favor of Lender as beneficiary pursuant to which Lender shall be provided a lien against Borrower’s interest in the Property. The Deed of Trust shall be dated as of the Effective Date, shall be substantially in the form attached hereto as Exhibit C, and shall be recorded in the Official Records of Alameda County (“**Official Records**”). The Deed of Trust may be subordinated to such liens and encumbrances as Lender shall approve in writing.

1.4 PREPAYMENT; ACCELERATION.

(a) Prepayment. The Note or any portion of the outstanding principal balance due under the Note may be prepaid at any time and from time to time, without penalty or premium. Any prepayment of principal must be accompanied by interest accrued (if any) but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to accrued but unpaid interest (if any) and then to principal.

(b) Due On Transfer. Unless Lender agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer, absent the prior written consent of Lender, of all or any part of or interest in the Property. “**Transfer**” shall include any assignment, sale or other conveyance of the Property.

## ARTICLE II

### USE AND DISBURSEMENT OF PROCEEDS

2.1 USE OF PROCEEDS. Borrower shall use the proceeds of the Loan (“**Loan Proceeds**”) solely and exclusively for bridge financing to establish a community health clinic.

2.2 DISBURSEMENT OF PROCEEDS. Provided that Borrower has satisfied all of the conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed to Borrower within fourteen (14) days of the Effective Date.

2.3 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS.

Lender’s obligation to fund the Loan and disburse the proceeds thereof is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower’s execution and delivery to Lender of this Agreement, the Note, and the Deed of Trust;

(b) Recordation of the Deed of Trust in the Official Records of Alameda County;

(c) Borrower's delivery to Lender of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Borrower is in good standing and authorized to do business in the State of California, and (ii) a certified resolution indicating that Borrower has authorized this transaction and that the persons executing the Loan Documents on behalf of Borrower have been duly authorized to do so, and;

(d) No material adverse change as determined by Lender in its reasonable judgment shall have occurred in the condition of the Property or in the financial or other condition of Borrower since the date of this Agreement.

2.4 **NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT.**

Notwithstanding any other provision of this Agreement, the Lender shall have no obligation to disburse or authorize the disbursement of any portion of the Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties set forth in this Agreement to be true and correct in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the Loan set forth in Section 2.3 have not been satisfied within seven (7) days following the Effective Date, unless an extension of such date is approved by Lender in writing; or
- (iv) the occurrence of any Event of Default hereunder.

### **ARTICLE III**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 Borrower makes the following representations, warranties and covenants and acknowledges that Lender is relying thereupon in making the Loan:

(a) **LEGAL STATUS; AUTHORITY; OWNERSHIP.** Borrower is a non-profit entity duly organized and in good standing under the laws of the State of California. The persons executing this agreement on behalf of Borrower have been duly authorized to do so. Borrower has all requisite power and authority to execute, deliver and perform its obligations under the Loan Documents. Borrower is the fee simple owner of the Property, subject only to liens, encumbrances, easements, restrictions, conditions, and other matters of record or disclosed in writing to Lender.

(b) **NO VIOLATION.** The execution of the Loan Documents and Borrower's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, indenture or other instrument to which Borrower is a party or by which Borrower may be bound.

(c) AUTHORIZATION. The Loan Documents and the transactions contemplated thereby have each been duly authorized by Borrower, and when executed and delivered will each constitute a valid and binding obligation of Borrower, enforceable in accordance with the respective terms thereof.

(d) LITIGATION. There are no pending or to Borrower's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of Borrower or Borrower's interest in the Property.

(e) COMPLIANCE WITH LAWS. Borrower is in compliance in all material respects with all local, state and federal laws, rules, regulations, orders and decrees which are applicable to the Property or to Borrower in relation thereto ("**Applicable Law**") including without limitation, all environmental, health and safety and employment laws. Borrower has received no notice from any governmental authority regarding any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not been corrected, and no condition on the Property violates any Applicable Law.

(f) DISCLOSURE. No representation or warranty made by Borrower in this Agreement or in the Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading. There is no fact known to Borrower which has or might reasonably be anticipated to have a material adverse effect on the business, assets, financial condition of Borrower which has not been disclosed to Lender in writing.

## ARTICLE IV

### AFFIRMATIVE COVENANTS

4.1 USE OF FUNDS. Borrower covenants that it shall use the Loan Proceeds solely for purposes set forth in Section 2.1.

4.2 PUNCTUAL PAYMENT. Borrower covenants to punctually pay the principal balance of the Note and interest (if any) accrued thereon at the times and place and in the manner specified in the Note.

4.3 ACCOUNTING RECORDS; PROPERTY INSPECTION. Borrower covenants to maintain accurate books and records relating to the Loan in accordance with standard accounting principles consistently applied, and to permit the Lender, during business hours and upon reasonable notice to inspect, audit and examine such books and records and to inspect the Property during normal business hours upon reasonable notice to ensure compliance with this Agreement.

4.4 COMPLIANCE WITH LAWS. Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property. Without limiting the generality of the foregoing, Borrower shall comply with all applicable requirements

of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

4.5 INSURANCE. Borrower shall maintain and keep in force at Borrower's expense, insurance coverage with respect to the Property in accordance with the requirements set forth in Exhibit D attached hereto and incorporated herein.

4.6 FACILITIES. Borrower shall keep the Property and any improvements thereon, and the personal property used in Borrower's operations, in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property and improvements shall be preserved and maintained.

4.7 INDEMNIFICATION. Borrower shall indemnify, defend (with counsel approved by Lender), and hold harmless Lender and its officers, agents, employees, consultants and contractors (collectively, the **Indemnitees**"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, deficiencies, fines, orders, judgments, actions, suits, judicial or administrative proceedings, injunctive or other relief, expenses and charges (including attorneys' fees and court costs) (collectively "**Claims**") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the improvements thereon, the Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations in connection with the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the Loan.

4.8 TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Borrower in relation to the Property except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

## ARTICLE V

### EVENTS OF DEFAULT

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

(a) If Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for five (5) days after Lender notifies Borrower thereof in writing.

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

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

(d) If the Borrower fails to maintain insurance as required pursuant to the Loan Documents, and Borrower fails to cure such default within five (5) calendar days.

(e) If any representation or warranty contained in the Loan Documents or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of Loan Proceeds proves to have been false or misleading in any material adverse respect when made.

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

(g) If the Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or in any other Loan Document, and unless such document specifies a shorter cure period for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which Lender shall have given written notice of the default to Borrower (or such longer time as Lender) may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

## ARTICLE VI

## **REMEDIES**

6.1 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, Lender shall have all remedies available to it under law or equity, including, but not limited to the following, and Lender may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to the Loan Documents, exercise one or more of the following remedies:

- a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;
- b) Seek specific performance to enforce the terms of the Loan Documents;
- c) Foreclose on the Property pursuant to the Deed of Trust;
- d) Pursue any and all other remedies available under law or equity to enforce the terms of the Loan Documents and Lender's rights thereunder.

6.2 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. Lender may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

## **ARTICLE VII**

### **MISCELLANEOUS**

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (a) personal delivery, in which case notice shall be deemed delivered upon receipt;
- (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;
- (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or
- (d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

**Lender:** City of San Leandro  
City Hall  
835 E. 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attn: City Manager

**Borrower:** Davis Street Family Resource Center  
3081 Teagarden Street  
San Leandro, CA 94577  
Attn: Executive Director

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 FURTHER ASSURANCES. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

7.7 PARTIES NOT CO-VENTURERS. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.8 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties consent to the jurisdiction of any federal or state court in the jurisdiction in which the Property is located (the "**Property Jurisdiction**"). Borrower agrees that any controversy arising under or in relation to this Agreement or any other Loan Document shall be litigated exclusively in courts having jurisdiction in the Property Jurisdiction. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and



waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

7.9 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.10 ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, Lender's obligation to make the Loan is personal to Borrower, and shall not be assignable by Borrower by operation of law or otherwise absent the express written consent of Lender, and any such assignment by operation of law or otherwise shall be void.

7.11 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.12 ENTIRE AGREEMENT; EXHIBITS. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through D attached hereto are incorporated herein by reference as though fully set forth herein.

7.13 SURVIVAL. All representations made by Borrower herein and the provisions of Sections 4.7 and 4.10 hereof shall survive the expiration or termination of this Agreement and the making and repayment of the Loan. The representations of Borrower made herein have been or will be relied upon by the Lender, notwithstanding any investigation made by the Lender or on its behalf.

**SIGNATURES ON FOLLOWING PAGE.**

**IN WITNESS WHEREOF**, the Parties have each caused this Agreement to be duly executed as of the date first written above.

**BORROWER:**

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

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

Title: \_\_\_\_\_

**LENDER:**

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

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

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

Exhibit A

PROPERTY DESCRIPTION

Exhibit B

**FORM OF PROMISSORY NOTE**

Exhibit C

**FORM OF DEED OF TRUST**

Exhibit D

**INSURANCE REQUIREMENTS**

INSURANCE: The Borrower, and any contractors and sub-contractors making repairs, alterations or improvements for Borrower, shall comply with the following:

A. Borrower's Insurance Obligations. The Borrower shall procure and maintain during the Term of the Loan at Borrower's sole cost and expense the following insurance (and increased yearly as applicable), and supply Lender certificates of insurance:

(1) Comprehensive or commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, sudden and accidental pollution, broad-form property damage all of which shall be primary coverage responding to any and all structure and property losses related to Borrower's building usage, personal injury, products and completed operations, and explosion, collapse and underground (XCU),

(2) Fire and extended coverage insurance in an amount equal to one hundred percent (100%) of the full replacement value of the Property, will be provided by Borrower. The cost of this coverage will be borne by the Borrower. The Policy shall be endorsed to name Lender as Loss Payee.

(3) Comprehensive or Business Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage including coverage for Owned, Non-owned and Hired Vehicles, as applicable.

(4) Workers' Compensation, with Employer's Liability limits (including employment practices coverage) not less than One Million Dollars (\$1,000,000) each, if applicable.

(5) If any policies are written on a claims-made form, Borrower agrees to maintain such insurance continuously in force for the term of the Loan.

(6) The Public Liability and Comprehensive Automobile Liability Insurance shall be endorsed to provide the following:

(i) Name as additional insured the City of San Leandro, its City Council, officers, directors, and employees.

(ii) That such policies are primary insurance to any other insurance available to the additional insured, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought

(7) The Borrower's and its contractors' and sub-contractors' Certificate(s) of Insurance shall include the additional insured endorsement, loss payable to Lender and thirty (30) days advance written notice to the Lender of cancellation, non-renewal or reduction in coverage. Borrower shall maintain in full force and effect and at Borrower's and its contractors' and sub-contractors' own expense the insurance policies with companies certified by the California Insurance Commission. In the event Borrower shall fail to procure such insurance, or to deliver such policies or certificates, Lender may procure, at its option, the same for the account of Borrower, and the cost thereof shall be paid by Borrower within five (5) business days after delivery to Borrower of bills therefor.

(8) Upon Lender's request, Borrower and Lender shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City of San Leandro or County of Alameda is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Borrower for risks comparable to those associated with the Property, then Lender shall, at Lender's request, increase the amounts or coverage carried by Borrower to conform to such general commercial practice at no additional cost to Lender.

(9) Approval of the insurance by Lender shall not relieve or decrease the liability of the Borrower hereunder. The entire responsibility for any and all injury to the public and to individuals and damage to property resulting from work and activities arising from this loan shall rest entirely with the Borrower. Contracts entered into by Borrower with contractors and subcontractors in connection with operations under this Loan shall not relieve Borrower of any of its responsibilities under this Loan, nor act as a waiver by Lender of any of the conditions thereof.

(10) Notwithstanding anything to the contrary in this Loan, if any of the required insurance coverages lapse, the Loan shall

terminate upon ten (10) business days written notice of such termination from Lender to Borrower, unless Borrower has taken appropriate steps to renew the insurance coverage within the notice period.

(11) Borrower shall be responsible, at its sole expense, for separately insuring Borrower's personal property.

B. Borrower acknowledges that Lender may self-insure partially or entirely against casualty, property damage and public liability risks and agrees that Lender may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Property or otherwise. Nothing in this sub-paragraph shall reduce or otherwise modify Borrower's obligation to maintain insurance as required herein. At all times, Borrower's insurance shall be primary to any insurance that Lender may choose to carry.

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