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Agenda Item: ID16-068

Date: 1/14/16

2016 JAN 11 AM 10 56



Supplemental Information Packet

Agenda Related Item(s) – ID16-068

Contents of Supplement: Staff Report and Exhibits

Item(s)

Actions pertaining to a mixed-use development at Blackstone and McKinley Avenues (City action only):

1. Adopt a finding of No Possibility pursuant to Article 5, Section 15061(b)(3) of the California Environmental Quality Act (CEQA)
2. Approve an Owner Participation Agreement with 1501 N. Blackstone Avenue, L.P.

Sponsor: City in its capacity as Housing Successor to the Redevelopment Agency

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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**REPORT TO THE HOUSING SUCCESSOR TO THE
REDEVELOPMENT AGENCY OF THE CITY OF FRESNO
AND FRESNO REVITALIZATION CORPORATION**

2016 JAN 11 AM 10 56

DATE: January 14, 2016

CITY CLERK, FRESNO CA

FROM: MARLENE MURPHEY, Executive Director

SUBJECT

..Title

JOINT MEETING OF CITY (IN ITS CAPACITY AS HOUSING SUCCESSOR) AND FRESNO
REVITALIZATION CORPORATION

Actions pertaining to an Owner Participation Agreement related to a mixed-use development at
Blackstone and McKinley Avenues (City action only):

1. Adopt a finding of No Possibility pursuant to Article 5, Section 15061(b)(3) of the California
Environmental Quality Act (CEQA).
2. Approve an Owner Participation Agreement with 1501 N. Blackstone Avenue, L.P.

..Body

RECOMMENDATION

The City of Fresno in its capacity as the Housing Successor to the Redevelopment Agency
recommends approval of a finding of No Possibility exemption and an Owner Participation
Agreement for property located at 1501 -1531 N. Blackstone Ave.

EXECUTIVE SUMMARY

The Housing Successor is proposing to enter into an Owner Participation Agreement with 1501
N. Blackstone L.P. for a mixed use of affordable housing and retail development located on the
west side of Blackstone between McKinley and Home Avenues. The proposed project will help
meet the affordable housing goals of SB 341 and will help redevelop an underutilized,
unattractive infill site with a mixed use development that provides affordable housing and retail
uses along the Blackstone Avenue BRT Corridor with proximity to transportation, job centers
and schools including Fresno City College.

BACKGROUND

PROPOSAL

Integrated Community Development LLC, a real estate development company, and the
Corporation for Better Housing, a 501 (c)(3) are experienced affordable housing developers
headquartered in Woodland Hills California. Together they have constructed over 3,900 units in
59 projects throughout California since 1997. Locally they have 330 units in operation in Fresno
County.

Integrated Community Development LLC Principal, Ben Lingo, and Senior Vice President, Jake
Lingo have proposed that the Housing Successor enter into an Owner Participation Agreement
which would lead to the development of ninety one (91) residential apartments and 8,500
square feet of ground floor retail in a four story building served by one hundred and thirty six
(136) on grade, on-site parking spaces. The site of approximately three acres is located on the
Bus Rapid Transit (BRT) Corridor on the west side of Blackstone between McKinley Avenue on
the north and Home Avenue on the South.

The residential portion of the development is proposed to consist of thirty one (31) one bedroom units, thirty (30) two bedroom units, twenty nine (29) three bedroom units and one (1) manager's unit. In terms of affordability eighty one (81) units shall be available to households earning 60% or less of Area Median Income (AMI) and eight (9) units shall be available to households earning 30% or less of AMI. The affordable units will be covenanted for a period of fifty five (55) years.

The mixed use project would be developed and owned by 1501 N Blackstone L.P. a California Limited partnership comprised of: the Corporation for Better Housing as the Non-Profit General Partner; Integrated Community Development LLC as the Administrative General Partner; and, the Limited Partner, Kavigem Inc., who will be replaced at the time of tax credit syndication by the tax credit investor.

FINANCING

The total project costs are estimated at \$27,212,896. The financing plan envisions \$5,780,387 from the Affordable Housing Sustainable Communities (AHSC) program administered by the California Housing and Community Development Commission (HCD); \$1,500,000 committed by the OPA from the Housing Successor's affordable housing funds; \$1,432,400 from permanent conventional loan financing; \$167,965 from an impact fee exemption (FMC 12-4.1400); \$17,861,274 from tax credit equity from the low income housing 9% tax credit program (TCAC); and, \$470,789 in deferred development fees.

The City Housing Successor loan terms provided in the OPA are as follows: the principal amount of the loan will be 1,500,000; the loan will mature fifty-five years after the "payment commencement date" (May 15 of the year immediately following the Certificate of Occupancy); and, the loan will bear a 3% per annum interest rate with interest accruing as of the payment commencement date. Repayment of the loan starts on May 15th of the year that is one year after the certificate of occupancy and is based upon residual receipts. At loan maturity the entire remaining unpaid balance of principal with interest is due and payable.

PERFORMANCE SCHEDULE

The performance schedule (Exhibit B) estimates the AHSC funding application date of February 2016 with an estimated award date in the summer of 2016. The TCAC application date is estimated to be March 2017 for Round 1 with the award announcement estimated to be in June 2017. Should a TCAC award for 9% tax credits not be obtained in Round 1, the Performance Schedule allows for an application in Round 2 estimated to be in July 2017 with an Award date in October 2015. If the Owner is not awarded 9% tax credits by October 15 2017, the OPA terminates.

OPA Highlights

The OPA sets forth conditions precedent to the City Housing Successor's obligation. Chief among these conditions are the following:

1. The Owner provides acceptable evidence of property ownership;
2. The Owner has entered into (and provides evidence of) agreements with any and all funding sources and the general contractor for the project;
3. The Owner has provided evidence that the combined monies from the funding sources are not less than the greater of the total development cost or the amount which the City Housing Successor determines is necessary to complete the project;
4. If the Owner fails to obtain both a funding commitment from AHSC (or equivalent funding) and a 9% tax credit award by October 15, 2018, the agreement terminates.

ENVIRONMENTAL FINDINGS

In accordance with Section 15061(b)(3) of the CEQA Guidelines, the project has been determined not to be subject to the requirements of CEQA as City staff can state with certainty that there is no possibility that the Owner Participation Agreement may have a significant adverse effect on the environment. Therefore, the agreement is not subject to CEQA.

LOCAL PREFERENCE

N/A

FISCAL IMPACT

Funding for the proposed project is available in the adopted FY 15-16 budget. The proposed project helps fulfill the new SB 341 goals and expenditure requirements primarily wherein at least 30% of the Housing Successor's program income funds must be spent for the development of rental housing affordable to and occupied by extremely low income households earning 30% or less of AMI. Nine of the proposed units are at 30% AMI and all of the units are at or under 60% of AMI.

In addition to the above cited requirement for 30% of program income, the proposed project is consistent with other expenditure provisions of SB 341 wherein up to 50% of program income may be spent for households earning 60% or less of AMI; and, no more than 20% of program income may be spent on households earning between 60 and 80 % of AMI.

Attachments:

- A – Environmental Finding of No Possibility
- B – OPA-1501 N. Blackstone Avenue, L.P.
- C – Vicinity Map-Project Summary
- D – Conceptual Site Plan
- E – Elevations

**CITY OF FRESNO
ENVIRONMENTAL FINDING OF NO POSSIBILITY OF SIGNIFICANT EFFECT
ENVIRONMENTAL ASSESSMENT NO. EA-16-001**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO HAVE NO
SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 5 OF THE
STATE OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES

APPLICANT: City of Fresno
2600 Fresno Street
Fresno, CA 93721-2760

Integrated Community Development
5951 Variel Avenue
Woodland Hills, CA 91367

PROJECT LOCATION: 1501-1531 North Blackstone Avenue and 1631 East Home Avenue;
Located on the northwest corner of North Blackstone and East Home
Avenues abutting the westerly boundary of the Burlington Northern
Santa Fe railroad tracks south of East McKinley Avenue in the City
and County of Fresno, California (APN: 451-064-16)

PROJECT DESCRIPTION: Owner Participation Agreement for the Blackstone/McKinley four-story
mixed use development consisting of 91 affordable residential units (one, two, and three bedroom),
community room, on-site parking, and \pm 8,500 square feet of ground floor retail space.

This project is exempt under Section 15061(b)(3) of the CEQA Guidelines.

EXPLANATION: In accordance with Section 15061(b)(3) of the CEQA Guidelines, the project has
been determined not to be subject to the requirements of CEQA as City staff can state with
certainty that there is no possibility that the Owner Participation Agreement may have a significant
adverse effect on the environment. Therefore, the agreement is not subject to CEQA.

Date: January 8, 2016

Prepared By: McKencie Contreras
Supervising Planner

Submitted By: 
Mike Sanchez, Assistant Director
City of Fresno
Development and Resource Management Department
(559) 621-8277

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno as Housing Successor to the
Redevelopment Agency of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO, a municipal
corporation, in its capacity as Housing
Successor to the Redevelopment
Agency of the City of Fresno

By: _____
Its: Executive Director

Dated: _____

OWNER PARTICIPATION AGREEMENT

by and among

CITY OF FRESNO,
a municipal corporation, in its capacity as
Housing Successor to the Redevelopment Agency of the City of Fresno

and

1501 N. BLACKSTONE AVE., L.P., a California limited partnership

Blackstone and McKinley Mixed Use Development

ATTACHMENTS

1. Exhibit A: Legal Description of Property
2. Exhibit B: Schedule of Performance/Payment Schedule
3. Exhibit C: Budget/Financial Plan
4. Exhibit D: Certificate of Completion
5. Exhibit E: Scope of Development and Project Design
6. Exhibit F: Form of Regulatory Agreement and Declaration of Covenants and Restrictions
7. Exhibit G: Form of Promissory Note
8. Exhibit H: Form of Deed of Trust

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), by and among the CITY OF FRESNO, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("City"), and 1501 N. BLACKSTONE AVE. L.P., a California limited partnership ("Owner").

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

- A. City is the housing successor in interest to the Redevelopment Agency of the City of Fresno ("Former RDA") pursuant to Resolution No. 2012-12, and as such assumes all housing rights and obligations of the Former RDA; and
- B. City is responsible for administration of the Low and Moderate Income Housing Asset Fund pursuant to Sections 34176 and 34176.1 of the Health & Safety Code, as amended most recently by Senate Bill 341, effective on January 1, 2014.
- C. Owner owns, or will acquire, all rights, title and interest in fee to the certain real property described in Exhibit "A" attached hereto and incorporated herein (the "Property"), including improvements located thereon which shall be improved by Owner as contemplated by this Agreement located at 1501-1531 North Blackstone Avenue and 1631 East Home Avenue, Fresno, California (the "Project"). The Property and Project are located within the territorial jurisdiction of the City.
- D. Owner proposes to develop a new mixed use project on the Property consisting of ninety one (91) residential rental units and 8,500 square feet of ground floor retail. Eighty one (81) units shall be available to households earning 60% or less of the Area Median Income (AMI), and nine (9) units shall be available to households earning 30% or less AMI (collectively, the "Affordable Units"). The Affordable Units are to be rented and preserved as Affordable Rental Housing for a period of fifty five (55) years.
- E. Owner agrees to undertake improvements in accordance with the combined Performance and Payment Schedule described in Exhibit "B" attached hereto and incorporated herein (the "Performance and Payment Schedule").
- F. To the extent Housing Set Aside Funds will exceed 50 percent of the cost of producing the Affordable Units, the City has determined based on substantial evidence, that the use of the Funds is necessary because the City or Owner of the Affordable Units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity. The Project

is not feasible and cannot be completed and restricted to the affordable rental housing purposes and uses provided under Law and this Agreement absent the financial support of the City.

G. The Property and associated on site and off site improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Property and the Affordable Units, cannot otherwise be reasonably paid for or financed solely through private financing, and are necessary to eliminate blight.

H. City is willing to assist Owner's construction of the Affordable Units by making available to Owner as a loan certain Low to Moderate Income Housing Asset Funds in the amount of \$1,500,000 (the "Loan") upon the terms and conditions specified in this Agreement. The Loan shall be allocated such that \$1,500,000 shall secure affordability covenants on the nine (9) units available to extremely low income families (30% AMI), and in addition, in consideration of this Agreement, affordability covenants on the eighty one (81) units available to lower income families (60% AMI).

I. The Loan shall be paid in accordance with the schedule set out in Exhibit "B" to the Agreement and repaid in accordance with the promissory note a specimen of which is attached hereto as Exhibit "G". The Loan and performance of the affordability and other covenants and restrictions set forth in this Agreement shall be evidenced by this Agreement and the Restrictions and Deed of Trust, attached hereto as Exhibit "H," which shall be recorded against and run with and encumber the Property. Said Agreement, Restrictions and Deed of Trust shall be recorded concurrent with construction loan closing.

NOW THEREFORE, in consideration of the above recitals, which are contractual in nature, the mutual covenants contained herein and such other and further consideration as is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **DEFINITIONS.** Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application and interpretation of the various terms used in this Agreement.
 - 1.1 "ADA" means the Americans with Disabilities Act of 1990.
 - 1.2 "Affordability Period" means a period of fifty-five (55) years commencing from the date City records the Certificate of Completion.
 - 1.3 "Affordable Rental Housing" or "Affordable Units" means the ninety (90) Units available at affordable rent, as defined by Cal. H.&S.C. Section 50052.5 (4), to persons and families of low and extremely low income, as

defined in Cal. H.&S.C. Section 50106 of Code, consistent with Recital D above which requirements shall be enforceable by covenants running with the land. As used in this Agreement, the term "Affordable Rent" shall mean annual rentals whose amount does not exceed the maximum percentage of income that can be devoted to rent as set forth by Health & Safety Code Section 50053, or its successor, for extremely low, very low, lower, and moderate income households, which is currently thirty percent (30%) of thirty percent (30%) for extremely low, thirty percent (30%) of fifty percent (50%) for very low, thirty percent (30%) of sixty percent (60%) for lower, and thirty percent (30%) of one-hundred ten percent (110%) for moderate of the Fresno Metropolitan Statistical Area Median Income adjusted for family size appropriate for the Unit. There will be no less than ninety (90) Affordable Units, and no less than nine (9) of the Affordable Units shall be for extremely low income households.

- 1.4 "Agreement" means this Owner Participation Agreement.
- 1.5 "Budget" means the Budget/Financial Plan for the Project attached hereto and incorporated herein as Exhibit "C" (the "Budget").
- 1.6 "Certificate of Completion" means that Certificate issued in the form attached as Exhibit "D" to Owner by City evidencing completion of the Project for purposes of this Agreement.
- 1.7 "City" shall mean the City of Fresno, California, a municipal corporation, acting in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno.
- 1.8 "Conditions Precedent of City" means the conditions precedent to the effectiveness of this Agreement against the City.
- 1.9 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
- 1.10 "Deed of Trust" shall mean the Deed of Trust recorded against the Property securing the Loan, as shown in Exhibit "H" of this Agreement.
- 1.11 "Default" means a party's failure to timely perform any action or covenant required by this Agreement following notice and opportunity to cure.
- 1.12 "Director" means the Executive Director of City in its Capacity as Housing Successor.

- 1.13 "Entitlements" mean all permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.
- 1.14 "Effective Date" means the date of complete execution of the Agreement following City approval thereof.
- 1.15 "Environmental Laws" means any federal, state, or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.
- 1.16 "Funding Source" means the Loan and other funding sources secured by Owner to construct the Improvements.
- 1.17 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Performance and Payment Schedule.
- 1.18 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated byphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, *et seq.*); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or

management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, NutraSweet and saccharine.

- 1.19 "Household" means one or more persons occupying an Affordable Unit.
- 1.20 "Housing Set-Aside Funds" means those California Health and Safety Code Section 34176 and 34176.1 monies in the Low and Moderate Income Housing Asset Fund held and administered by City a portion of which shall be made available as the Loan to Owner for eligible costs and expenses incurred by Owner in constructing the Improvements in such amounts, and upon such terms and conditions specified in this Agreement.
- 1.21 "Improvements" mean the construction of the Affordable Units and other units that Owner will complete on the Property as part of the Project, including associated fencing, and landscaping improvements.
- 1.22 "Law" means the Community Redevelopment Law of the State (California Health and Safety Code Sections 33000 *et seq.*) and the Dissolution Law (Assembly Bill x1 26, the California Supreme Court's decision in California Redevelopment Association, et al. v. Matosantos, Assembly Bill 1484, Senate Bill 341, and other subsequent dissolution legislation).
- 1.23 "Loan" means the principal sum of \$1,500,000 provided by City to Owner as a loan, upon the terms and conditions set forth in this Agreement and the Promissory Note attached hereto as Exhibit "G" to be secured by a no worse than 3rd position deed of trust lien against the Property. If the deed of trust securing the Promissory Note is recorded prior to the recordation of the deed or deeds of trust securing the other Funding Sources consistent with the Financing Plan, the City shall subordinate such deed of trust to such other deed(s) of trust, so long as the City deed of trust is no worse than third position. The Loan shall be allocated such that \$1,500,000 shall secure affordability covenants on the nine (9) units available to extremely low income families, and in addition, affordability covenants on the eighty one (81) units available to lower income families. Notwithstanding, the City will enter into a commercially reasonable intercreditor agreement.

- 1.24 "Loan Documents" are collectively this Agreement and all exhibits and attachments thereto any deed of trust given as security, as they may be amended, modified or restated from time to time.
- 1.25 "Material Change" means a change, modification, revision or alteration to the Loan Documents that significantly deviates from those previously approved by the City, provided that fully funded change(s) which do not result in a change in the number or type (i.e. residential, affordable) of Units and/or an increase in the total Loan funding provided in this Agreement shall not constitute Material Change(s).
- 1.26 "Owner" means 1501 N. Blackstone Ave., L.P., or an affiliate company in which it is a Member, Managing Member, Principal, or General Partner.
- 1.27 "Project" means the mixed-use development including ninety one (91) residential Units on the Property, of which ninety (90) Units shall be Affordable Rental Housing.
- 1.28 "Project Completion Date" means the date that City shall have determined the Project has reached completion in accordance with the plans and specifications in the Performance and Payment Schedule, as evidenced by City's issuance of a Certificate of Completion.
- 1.29 "Property" means the real property described in Exhibit "A," attached hereto.
- 1.30 "Release of Restrictions" means a release of those covenants, conditions and restrictions contained in this Agreement.
- 1.31 "Restrictions" means the affordability restrictions contained in this Agreement and Exhibit "F" thereto, containing all conditions, covenants, and restrictions required by the Law, any other applicable laws and regulations, and this Agreement, running with the Property and the Affordable Units thereon and burdening such for the Affordability Period.
- 1.32 "Performance and Payment Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Performance and Payment Schedule from time to time on mutual written agreement of Owner and City, but any delay or extension of the Completion Date is subject to the requirements in this Agreement.
- 1.33 "Security Financing Interest" means a security interest which Owner grants in the Property and the Improvements thereon before the City issues and records a Release of Restrictions.

1.34 "Unit" mean a residential unit constituting the Project.

2. CONDITIONS PRECEDENT TO CITY'S OBLIGATION TO PERFORM UNDER THIS AGREEMENT. The following are conditions precedent to City's obligation to perform under this Agreement. Until each and all of the conditions are satisfied, City is not obligated to take any action, or provide any funding, or further funding, under this Agreement. City, in writing by its authorized representative, may waive any condition or agree to extend the time for satisfaction of any condition set forth in this Section 2. City may terminate this Agreement as provided herein for the failure of a condition.

2.1 Owner shall pay for and provide a title report, recorded deed or other evidence acceptable to City that Owner owns the Property.

2.2 Owner has entered into, and provided City copies of agreements with any and all funding sources and the general contractor for the Project. All such funding source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner, agree to make reasonable efforts to (i) notify City immediately of any event of default by Owner under such agreement; (ii) notify City immediately of termination or cancellation of such agreement; and (iii) provide City, upon City's request, an estoppel certificate certifying that such agreement is in full force and effect and Owner is not in default under such agreement.

2.3 Owner has submitted evidence that the combined monies from the Funding Sources are not less than the greater of a total development cost of \$27,212,896 or the amount which City determines is necessary to complete the Project, including evidence of a loan commitment for such Funding Sources acceptable to the City. Owner intends to apply for one or more of the following sources of funds: (A) Affordable Housing and Sustainable Communities Funding ("AHSC") administered by the California Department of Housing and Community Development with an application date of February 2016; (B) the Low Income Housing Tax Credit program administered by the California Tax Credit Allocation Committee in the FY 16/17 Round 1 cycle with an application date of March 2017. If Owner does not receive 9% tax credits in Round 1, Owner may apply in Round 2 2017 with an application date in July 2017. If Owner fails to obtain both a funding commitment from AHSC (or equivalent) funding and a 9% tax credit reservation letter within the timeframe set forth above and in no event later than October 15, 2017, then this Agreement will automatically terminate. If City determines that said funds are not sufficient to complete the Project, Owner may satisfy this condition as agreed to by Owner and City in writing.

- 2.4 Owner will submit its Financing Plan to the City for review and acceptance provided that the purpose of City's review is solely to confirm Owner has sufficient funds available to complete the Improvements and maintain Project as this Agreement requires.

After City accepts the Financing Plan, Owner will not make any Material Change in the Financing Plan without first submitting such change to City for review and acceptance, which shall not be unreasonably withheld, delayed or conditioned.

- 2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Both Owner and City will promptly give the other copies of all reports and test results. Owner will indemnify, defend, and hold City harmless from any damages or claims arising out of Owner's inspections and tests.

- 2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring remediation, Owner will promptly notify City. Not later than ten (10) days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to City. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.

- 2.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall be true and correct in all material respects.

2.7.1 Owner will have signed and delivered all documents required hereunder.

2.7.2 Owner will have received all land use and development approvals, variances, permits and the like required for development of the Project.

2.7.3 Owner shall be in full compliance with the Performance and Payment Schedule.

- 2.8 Owner will have provided proof of insurance as required by this Agreement.
- 2.9 This Agreement, the executed Deed of Trust, and the executed Restrictions shall have been recorded with the Fresno County Recorder's Office.

3. OWNER OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT. The following obligations of Owner will run with the land and survive this Agreement:

- 3.1 Owner will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on or under the Property in violation of applicable laws or regulations. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, Owner shall install and use equipment and implement and follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal and disposal of Hazardous Materials.
- 3.2 Owner will notify the City and give City a copy of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental regulation relating to Hazardous Materials. Within 3 days after each incident, Owner will report to City any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Owner will, as soon as possible after the release, furnish City with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Owner will furnish City with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits and reports, even reports and other matters.

- 3.3 From the Effective Date of this Agreement, Owner shall indemnify, hold harmless and defend City, City and each of their officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys'

fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Owner's obligations under the preceding sentence shall apply regardless of whether City, City or any of their officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of City, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.4 The status and qualifications of Owner are of particular concern to City. From the Effective Date of this Agreement until the Restrictions expire, no voluntary or involuntary successor-in-interest of Owner will acquire any rights or powers under this Agreement, provided that the parties acknowledge the Owner shall hold the Affordable Units for rental as Affordable Rental Housing as provided in this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the right to transfer ownership of the Property to another person or entity having experience in the ownership and operation of Affordable Rental Housing, as reasonably determined by City, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, the sale of a partnership interest to generate proceeds in consideration of Tax Credits shall be a pre-approved transfer. In addition, the Developer's limited partner and any successor thereto, may, without the prior consent of the City and except as set forth in the senior permitted liens, sell, transfer, assign, pledge, hypothecate, and encumber some or all of the partnership interests in the Developer and the same shall not be a violation of this Agreement. The Developer's limited partner and any successor thereto, shall have the right, without the prior consent of the City and except as set forth in the senior permitted liens, to remove any or all of the Developer's general partners for cause as permitted under Developer's limited partnership agreement and replace any or all removed

general partners with a person or entity determined in the limited partner's sole discretion.

4. DEVELOPMENT OF THE PROPERTY.

4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all land use and other entitlements, permits, and approvals that City or any other governmental agency with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Owner will secure and pay all costs, charges and fees associated with, the following:

4.1.1 All permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements or the Property may require.

4.1.2 ADA/Barriers to the Disabled. The Project shall comply with all applicable federal, state and local accessibility requirements.

4.2 Scope of Development and Project Design. Owner has submitted a general or basic concept drawing to City, and a copy of which is attached as Exhibit "E" (the "Scope of Development and Project Design"). Owner will complete the Improvements on the Property in one phase, according to the Scope of Development and Project Design, and the plans, drawings, and documents that Owner submits to City. Owner shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards.

4.3 Books and Records. Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine and make excerpts or transcripts from such records. City may audit any conditions relating to this Agreement at City's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to City in which case Owner shall bear the cost of such audit. Owner shall also reasonably cooperate with and assist the City in City's compliance with any applicable audit requirements of the California Redevelopment Law including California Health and Safety Code Sections 33080 and 33080.1. This section shall survive for a period of four years after the expiration or termination of this Agreement.

4.4 Audit. Owner shall be accountable to City for all Loan funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with City and the State of California in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Loan funds and to keep all invoices, receipts and other documents related to expenditures financed with Loan funds for not less than four (4) years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.

4.5 Owner shall cause the issuance of all necessary discretionary governmental permits, approvals and entitlements, close any implicated funding or other escrow and begin/complete construction of the Improvements according to the Performance and Payment Schedule.

4.5.1 Project Completion. City, acting through and in the discretion of its Director, may extend dates within the performance schedule and/or the completion date of the Project for that period of time that City, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, acts of God, unusually severe weather or flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. City will not extend the completion date for acts or omissions occurring through the fault of Owner. An extension of time as provided in this subsection will be Owner's sole remedy for any delays in the Performance and Payment Schedule the Project completion date.

As a condition precedent to any extension requested by Owner, Owner will give the City notice within ten (10) days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by City

must be in writing and signed by the Director or the Director's designee, which approval shall not be unreasonably withheld, delayed or conditioned.

4.6 Subject to the terms of this Agreement, the Loan shall be disbursed to Owner according to the terms of this Agreement including Sections 2.2 and 2.3, and the Performance and Payment Schedule. All Loan funds shall be used solely for costs of the Project and Improvements.

4.7 Certificate of Completion. Owner will notify City when Owner deems the Project complete. Within ten (10) business days after such notice, City will inspect the Improvements. When City reasonably determines Owner has completed the Improvements as required in this Agreement and the Law, City will furnish Owner with the Certificate of Completion. City will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for constructing the Improvements, but will take such interest in the Property subject to the continuing covenants set forth in this Agreement.

4.7.1 If City determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, City will give Owner a written notice stating why City has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in City's opinion, Owner must take before City can issue the Certificate of Completion. City's failure to give the notice within ten (10) days, however, will not cause the Owner to be entitled to the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to City issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the Director: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by City or provided

in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Owner shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Scope of Development and Project Design for the Project. Such work or repair shall commence within ninety (90) days after the insurance proceeds are made available to Owner and shall be complete within one (1) year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.

4.9 Inspections. Owner shall permit, facilitate and require its contractors to permit and facilitate observation and inspection of the Project by City during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.

4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, Owner shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Owner shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with said relocation laws. For purposes of this Section 4.10 the parties acknowledge that as of the Effective Date the Project Property is vacant and unoccupied.

4.11 Reporting Requirements. Owner shall submit to City the following reports:

4.11.1 Annual Reports. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of this Agreement, on such dates as are agreeable between the parties and consistent with all federal and state reporting requirements applicable to the Project, Owner shall submit an annual report to City, in a form approved by City. Such annual report shall include for each of the Affordable Units: the rent, the annual income and the family size of the Household occupying the Affordable Unit. Such annual report shall also state the date the tenancy commenced for each Affordable Unit, certification from an officer of Owner that the Affordable Unit is in compliance with the Affordable Rental Housing requirements, and such other information the City may be required by Law to obtain. Owner shall provide any additional information reasonably requested by the City provided such information is directly related to Owner's compliance with this Agreement.

4.11.2 Annual Proof of Insurance. Annually, beginning in the year following City's issuance of the Certificate of Completion, and continuing until the expiration of the Agreement, Owner shall submit proof of insurance as required by this Agreement.

4.12 All Leases used to rent the Affordable Units are subject to the following:

4.12.1 Annual Income Certification and Reporting. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any Household one or more of whose members misrepresented any fact material to the Household's qualification as a Household for low income family. Each such lease shall also provide that the Household is subject to annual certification, and that, if the Household's annual income increases above the applicable limits for low income family such Household's rent may be subject to increase to the amount payable by tenant under federal, state or local law, except that, consonant with the Law, tenants of the Affordable Units that have been allocated to low income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42.

4.12.2 The leases for the Affordable Units shall provide that if the Project is subject to state or federal rules governing low income housing tax credits, the provision of those rules regarding continued occupancy by, and increases in rent for, Households whose incomes exceed the eligible income limitation shall apply in place of the provisions set forth in subsection 4.12.1 above.

4.13 With respect to the Project, Owner shall comply with the following:

4.13.1 Except to any extent otherwise provided in this Agreement, Owner is specifically responsible for all management functions with respect to the Affordable Units including, without limitation, the selection of tenants, certification and re-certification of Household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items and security. City shall have no responsibility for management of the Affordable Units of the Project.

4.14 Owner covenants and agrees the Affordable Units shall constitute Affordable Rental Housing during the entire Affordability Period. If Owner

fails to comply the requirement to lease the Affordable Units only to qualified Households during the Affordability period, as described in the attached Form of Regulatory Agreement and Declaration of Covenants and Restrictions attached hereto as Exhibit "F," City shall be entitled to enjoin Owner from leasing the Affordable Units in the Project, as Owner acknowledges that damages are not an adequate remedy at law for such breach.

5. INDEMNITY; INSURANCE

5.1 Owner shall indemnify, hold harmless and defend City, City and each of their officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, City, Owner, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Owner's performance of this Agreement. Owner's obligations under the preceding sentence shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City, City or any of their officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

5.2 Throughout the life of this Agreement, the Owner shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with an insurance company either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the City's Risk Manager or his/her designee. The following policies of insurance are required:

5.2.1 Until the Certificate of Completion is recorded, Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

5.2.2. Following the recording of the Certificate of Completion, COMMERCIAL PROPERTY insurance which shall be as broad as the most current version of Insurance Service Office (ISO) commercial Property Form CP 10 30 (Cause of Loss – Special Form), with limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of the Improvements with no

coinsurance penalty provisions. Such insurance shall include coverage for business income, including "rental value", in an amount equal to the two (2) years of the annual rent generated by the Improvements. Coverage for business income, including "rental value," shall be at least as broad as the most current version of Insurance Service Office (ISO) Commercial Property Form CP 00 30.

Owner shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Owner shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the term of this Agreement, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The Builders Risk (Course of Construction) and Property insurance policies shall be endorsed to name City as a loss payee.

Owner shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of this Agreement.

If at any time Owner fails to maintain the required insurance in full force and effect, Owner shall immediately discontinue all work under this Agreement until City receives notice that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Owner's failure to maintain any required insurance shall be sufficient cause for City to terminate this Agreement.

The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, City and each of their officials, officers, employees, agents

and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner.

Upon request of City, Owner shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

- 5.3 Owner will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the City hereby waives any requirement for said bonds at all time during which Owner is in full compliance with this Agreement and the Project remains fully funded.
- 5.4 Until City issues the Certificate of Completion City will have access to the Property, after reasonable notice to the Owner (except in emergencies), without charge or fee, during normal construction hours, for purposes of assuring compliance with this Agreement. City representatives will comply with all safety rules while on the Project or the Property.
- 5.5 Owner will design and construct the Improvements, and after that, prior to any allowable transfer or sale thereof, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. City makes no representation about which, if any, of such laws, ordinances, regulations or standards apply to development of the Project.

Owner acknowledges that Owner, not City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Owner further acknowledges that City shall not be liable or responsible at law or in equity for any failure by Owner to comply with any such laws, regardless of whether City knew or should

have known of the need for such compliance, or whether City failed to notify Owner of the need for such compliance.

- 5.6 Owner will take reasonable efforts to not permit any lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner, within 30 days after recordation of a claim of lien or stop notice or within 5 days after City's demand, whichever first occurs, will do the following:

5.6.1 Pay and discharge the same; or

5.6.2 Effect the release of such lien by recording and delivering to City a surety bond in sufficient form and amount (i.e. 150%), or otherwise; or

5.6.3 Give City other assurance which City, in its sole discretion, deems satisfactory to protect the City from the effect of the lien or bonded stop notice.

6. SECURITY FINANCING AND RIGHTS OF HOLDERS.

- 6.1 Notwithstanding any other provision of this Agreement, Owner may not grant a security interest in the Property before the City issues and records a Certificate of Completion, without the written consent of City, provided that City hereby approves the recommended security interest of Owner's financial institutions and tax credit investors, including their respective successors or assigns, as described in the Financing Plan.

7. CONTINUING OWNER OBLIGATIONS

- 7.1 In its performance of this Agreement, Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government

Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Owner will allow City representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the City.

- 7.2 Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. Owner will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Owner will notify City prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of City shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. **COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND.** The following covenants shall run with the land and shall bind Owner, and Owner's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the community and City without regard to technical classification or designation, legal or otherwise.

- 8.1 Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Owner shall devote the Affordable Units on the Property to the uses specified in this Agreement for the Affordability Period. All uses of the Affordable Units including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the Law. Without waiver or limitation, each of the Affordable Units to be constructed pursuant to this Agreement shall be maintained as Affordable Rental Housing pursuant to this Agreement and the Restrictions.
- 8.2 Owner and those taking under Owner will maintain the Property and all Improvements on site in reasonably good-condition and repair (and, as to landscaping, if any, in a healthy condition), all according to the Scope of Development and Project Design and related plans, as-amended from

time to time. Owner and those taking under Owner shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti; (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

City will give Owner written notice of any breach of this Section 8.2. Within 10 days from receipt of such notice, City and Owner will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Owner must cure the default within the agreed schedule or within (a) 10 days after the City's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property; or (b) 30 days after City's notice for any default involving the Improvements. If Owner does not cure the default within the agreed schedule, City, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

City may lien or assess the Property for the City's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Property, including any lawful administrative charge in the manner used by the City in the abatement of public nuisances. The notice and opportunity to cure provided for herein will supplement the noticing, hearing, and nuisance abatement order used by City. Owner will promptly pay all such amounts to City upon demand.

- 8.3 From the Effective Date until the expiration of the Affordability Period, Owner covenants to use and operate the Affordable Units on the Property as Affordable Rental Housing pursuant to this Agreement.
- 8.4 Owner covenants for itself and any successors in interest and all persons claiming by, through or under them, in perpetuity, that there shall be no discrimination against or segregation of any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Affordable Units, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Affordable Units.

- 8.5 All deeds, leases, or contracts concerning the Affordable Units shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein, conveyed. The foregoing covenants shall run with the land."

In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons because of race, color, creed, religion, sex, sexual preference, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation concerning the selection,

location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

- 8.6 City is the beneficiary of the covenants running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants are provided, without regard to whether City has been, remains, or is an owner of any land or interest in the Affordable Units on the Property. City may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the covenants for itself or any other beneficiaries.

9. **DEFAULTS AND REMEDIES**

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default.

Notwithstanding anything to the contrary contained in this Agreement, if a non-monetary default or event of default occurs under the terms of any of this Agreement, prior to exercising any remedies thereunder, the City will give Owner and Limited Partner written notice of such default; provided the failure by City to notify the lender and Limited Partner shall not vitiate or negatively affect any notice given to Borrower. If the default is reasonably capable of being cured within thirty (30) days, Owner shall have such period to effect a cure prior to exercise of remedies by City under this Agreement, or such longer period of time as may be specified in this Agreement. If the default is such that it is not reasonably capable of being cured within thirty (30) days (or such longer period if so specified), and if Owner (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to the exercise of any remedies by City.

The City hereby further agrees that any cure tendered or made by limited partners of Owner shall be accepted or rejected on the same basis as if tendered or made by Owner.

- 9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Fresno, State of California, in an appropriate municipal court in Fresno County, or in the District of the United States District Court serving Fresno County.
- 9.3 If Owner begins any legal action against City, it shall serve process on the City by personal service on the Director, or in any other manner the law permits. If City begins any legal action against the Owner, it will serve process on the Owner by personal service on Owner, Owner's Agent or in any other manner the law permits.
- 9.4 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any other rights or remedies for the same or any other Default of the other party.
- 9.5 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.
- 9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS

- 10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below:

To City:
City of Fresno (Housing Successor)
2344 Tulare, Suite 200
Fresno, CA 93721

With a Copy To:

City Attorney's Office
2600 Fresno Street
Fresno, CA 93721

To Owner:

To Investor:

To Limited Partner:

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

- 10.2 All of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.
- 10.3 The City may assign or transfer any of its interests, rights, or obligations hereunder at any time to any public agency without the consent of the Owner.
- 10.4 No member, official or employee of the City shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the City.
- 10.5 The relationship between the City and the Owner is that of a city and developer respectively, as permitted by law, and not that of a partnership or joint venture. City and Owner shall not be deemed or construed for any purpose to be the agent of the other.

- 10.6 Whenever this Agreement references an action or approval required or permitted by the City, the Director or his or her designee is authorized to act for the City as agent of the City unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires.
- 10.7 This Agreement may be signed in multiple counterparts which, when signed by all parties, will be one binding agreement. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.8 This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.9 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.10 Any waiver, alteration, change or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.11 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
- 10.12 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

- 10.13 No member, official or employee of City has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Owner represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers and attorneys.
- 10.14 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.
- 10.15 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Owner shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Owner as their sole source of recovery if not paid, and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and such person, each such person shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.
- 10.16 Owner hereby covenants and warrants that it is a duly authorized and existing California limited liability company, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.
- 10.17 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, City and Owner have signed this Agreement, and the City has approved this Agreement, on the dates and in the year set forth below.

City of Fresno,
a municipal corporation

1501 N. Blackstone Ave., L.P.
a California limited partnership

By: _____

By: _____

Date: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: _____

Its: _____

Date: _____

ATTEST:
YVONNE SPENCE, CMC

APPROVED AS TO FORM:
DOUGLAS T. SLOAN

By _____
Deputy

By: _____
Deputy

Date: _____

Date: _____

Attachments to Owner Participation Agreement (Blackstone/McKinley):

- Exhibit A: Legal Description of Property
- Exhibit B: Performance and Payment Schedule
- Exhibit C: Budget/Financial Plan
- Exhibit D: Certificate of Completion
- Exhibit E: Scope of Development and Project Design
- Exhibit F: Form of Regulatory Agreement and Declaration of Covenants and Restrictions
- Exhibit G: Form of Promissory Note
- Exhibit H: Form of Deed of Trust

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

THAT PORTION OF LOT ONE (1) OF FRESNO HEIGHTS HOMESTEAD TRACT, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JANUARY 13, 1888, IN BOOK 2, PAGE 39 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, LYING SOUTH AND WEST OF THE RIGHT OF WAY OF THE SANTA FE RAILROAD.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED MAY 19, 1944 IN BOOK 2177, PAGE 9 OF OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA.

APN: 451-064-16

EXHIBIT "B"
Performance and Payment Schedule
SCHEDULE OF PERFORMANCE

<u>Items Completed</u>	<u>Time for Performance</u>	<u>Estimated Date</u>
Submission of Site Plan Review		November 2015
Agency Board approval of Agreement		January 2016
Owner executes and delivers Agreement		January 2016
Apply for AHSC Funding		February 2016
Receive AHSC Funding		Summer 2016
Apply for 9% Tax Credits		March 2017
Receive 9% Tax Credits (Round 1)		June 2017
**Apply for 9% Tax Credits (Round 2)		July 2017
**Receive 9% Tax Credits (Round 2)		October 15, 2017
Submission of Building Plans	60 days after receiving Tax Credits	August 2017/**December 1, 2017
Submission and Approval – Certificates of Insurance	Within 180 days of receiving tax credits	No later than December 2017/**April 2018
Loan Disbursement	Upon Owner providing agreements evidencing all other funding sources sufficient to cover total development cost and satisfaction of all conditions precedent under this Agreement.	No later than December 2017/(**April 2018)
Commencement of Construction	At construction loan closing, within 180 days of receipt of tax credits	No later than December 2017/(**April 2018)
Completion of Construction	Within 18 months after commencement of construction	July 2019/(**October 2019)
Issuance of Certificate of Completion	Promptly after completion of construction and upon written request of Owner	

Improvements shall be completed within 18 months of the start of construction.

Construction shall commence by: December 2017/**April 2018

Construction shall be completed by: July 2019/**October 2019

** If Owner fails to receive 9% Tax Credits in Round 1 2017, Owner may apply in Round 2 2017, and the Performance Schedule shall be adjusted accordingly. If Owner is not awarded 9% Tax Credits by October 1, 2017, the Agreement shall terminate.

Exhibit C Budget/Financial Plan

Unit Mix and Rents Residential

Total	91
Affordable	90
Managers Unit	1

Unit Type	#	SF	Net Rent	AMI	Monthly Rent
1-BR	3	600	288	30%	864
1-BR	7	600	448	45%	3,136
1-BR	12	600	502	50%	6,024
1-BR	9	600	609	60%	5,481
2-BR	3	800	341	30%	1,023
2-BR	8	800	534	45%	4,272
2-BR	12	800	598	50%	7,176
2-BR	7	800	726	60%	5,082
3-BR	3	1,100	390	30%	1,170
3-BR	8	1,100	612	45%	4,896
3-BR	12	1,100	686	50%	8,232
3-BR	6	1,100	834	60%	5,004

Residential Cash Flow Projection

Monthly Gross Income Residential	52,360
Annual Gross Income Residential	628,320
Miscellaneous Income	10,920
Vacancy	-31,962
Effective Gross Income	607,278
Operating Expenses	409,400
Replacement Reserves	54,600
NOI Before Debt Service	143,278
AHSC Debt Service (.42% of AHSC Amount)	24,278
Permanent Loan Debt Service	100,309
Residential Net Cash Flow	18,691

Permanent Loan Detail

Loan Amount	1,432,400
Interest Rate	5.75%
Term	30
Required DCR	1.150

Residential Development Costs

Acquisition	1,600,000
Demolition	200,000
Hard Construction	18,916,510
Hard Cost Contingency	945,826
Architecture and Engineering	724,730
Soft Costs	4,625,830
Total Development Costs - Residential	27,012,896

Residential Sources and Uses

Final Costs	27,012,896
Perm Note	1,432,400
AHSC Funds	5,780,387
City Impact Fees	167,965
Successor Agency Loan	1,500,000
Deferred Developer Fee	270,870
Equity	17,861,274
Total Sources Residential	27,012,896
Shortfall	0

Exhibit C Budget/Financial Plan - Commercial

Retail Space	8,500 sq. ft.
Monthly Gross Income (\$1.50 NNN psf)	12,750
Annual Gross Income	153,000
Vacancy (25%)	-38,250
Effective Gross Income	114,750
Replacement Reserves	-4,250
Unreimbursed Operating Expense	-10,200
NOI Before Debt Service	100,300
Permanent Loan Debt Service	80,240
Commercial Net Cash Flow	20,060
Permanent Loan Detail	
Loan Amount	1,145,815
Interest Rate	5.75%
Term	30
Commercial Development Costs	
Acquisition	200,000
Demolition	35,000
Hard Construction	1,487,500
Hard Cost Contingency	74,375
Architecture and Engineering	85,000
Soft Costs	340,000
Total Development Costs - Commercial	2,221,875
Commercial Sources and Uses	
Final Costs	2,221,875
Perm Note	1,145,815
Equity	1,076,060
Total Sources Residential	2,221,875
Shortfall	0

EXHIBIT "D"
Certificate of Completion

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno, as Housing Successor to the
Redevelopment City of the City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Certificate of Completion is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

City of Fresno,
a municipal corporation in its capacity as
Housing Successor to the Redevelopment City
of the City of Fresno

By: _____

Marlene Murphey

Its: Executive Director

Dated: _____

Certificate of Completion
Blackstone & McKinley Residential Rental Project

R E C I T A L S :

A. By an Owner Participation Agreement (the "Agreement") dated [_____], 201_ between 1501 N. Blackstone Ave., L.P., a California limited partnership ("Owner") and the City of Fresno, a municipal corporation, in its capacity as Housing Successor to the Redevelopment City of the City of Fresno ("City"), Owner agreed to construct certain residential units on the premises legally described in Attachment "1" hereto (the "Property") and preserve the Affordable Units, as defined in the Agreement as rental housing for Low- Income Households with the assistance of City housing set aside funds while meeting the Affordable Housing, income targeting and other requirements of the Community Redevelopment Law set forth at California Health and Safety Code Sections 33000 et seq. for a fifty-five (55) year Affordability Period according to the terms and conditions of the Agreement.

B. The Agreement was recorded on [_____], 201_ in the Official Records of Fresno County, California as Instrument No. _____.

C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask City to record a Certificate of Completion.

D. Owner has asked City to furnish Owner with a recordable Certificate of Completion.

E. City's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. City certifies that Owner commenced the construction work on the Project on [_____], 20__, and completed the construction work on the Project on _____, 20__, and has done so in full compliance with the Agreement.

2. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.

3. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.

4. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion as of this ____ day of _____, 20__.

City of Fresno, a municipal corporation, in its capacity as Housing Successor to the Redevelopment City of the City of Fresno

By: _____
Marlene Murphey
Executive Director

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: _____, 20__

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:
CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Deputy

By: _____
Deputy

Dated: _____

Dated: _____

EXHIBIT 1 to CERTIFICATE OF COMPLETION

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

THAT PORTION OF LOT ONE (1) OF FRESNO HEIGHTS HOMESTEAD TRACT, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JANUARY 13, 1888, IN BOOK 2, PAGE 39 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, LYING SOUTH AND WEST OF THE RIGHT OF WAY OF THE SANTA FE RAILROAD.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED MAY 19, 1944 IN BOOK 2177, PAGE 9 OF OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA.

APN: 451-064-16

EXHIBIT "E"
SCOPE OF DEVELOPMENT AND PROJECT DESIGN

EXHIBIT "F"

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF FRESNO
2344 Tulare Street
Fresno, CA 93721
Attn: Executive Director

(Space Above This Line for Recorder's Office Use Only)

**REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS REGULATORY AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this ____ day of _____, _____, by and between the CITY OF FRESNO, a public body, corporate and politic ("City"), and 1501 N. Blackstone Ave., L.P., a California limited partnership ("Owner").

R E C I T A L S :

A. Pursuant to an Owner Participation Agreement by and between City and Owner dated _____, 201_ (the "OPA"), City has provided to Owner financial assistance in the amount of approximately One Million Five Hundred Thousand Eighty One Dollars (\$1,500,081.00) in loan funds (the "City Assistance"), for the purpose of assisting Owner in the acquisition of real property and the construction of a residential apartment complex thereon wherein one hundred percent of the units shall be rented to low income households, on that certain real property located in the City of Fresno, County of Fresno, State of California, more particularly described in Exhibit "1" attached hereto and incorporated herein by reference (the "Property").

B. Pursuant to the OPA, Owner has agreed to construct and maintain a rental apartment housing project consisting of ninety one (91) total residential units (hereinafter referred to collectively as the "Project") on the Property. The Project is also referred to in the OPA as the "Project," and is further described in the Scope of Development and Project Design attached to the OPA.

C. City, City, and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a rental apartment housing project with ninety (90) of the units available for rental by low income persons for the term of this Agreement.

A G R E E M E N T:

NOW, THEREFORE, the Owner and City declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Property, and are established expressly and exclusively for the use and benefit of the City, the residents of the City of Fresno, and every person renting a dwelling unit on the Property.

AFFORDABILITY RESTRICTIONS RUNNING WITH LAND

In addition to the covenants and conditions contained in the OPA, the following California Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.) affordability requirements shall be imposed upon the ninety (90) Affordable Units on the Property funded under the Agreement and shall bind the Owner and all purchasers of the Property and their successors until the date that is fifty-five (55) years following recordation of the City's Certificate of Completion as defined in the OPA.

The Affordable Units on the Property are held and will be held, transferred, encumbered, used, sold, conveyed and occupied subject to the covenants, restrictions, and limitations set forth in this Agreement, all of which are in furtherance of the Project, the Community Redevelopment Law including City's obligations set forth at California Health & Safety Code respect to Low and Moderate Income Housing Asset Funds. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Affordable Units upon the Property or any part thereof, will inure to the benefit of the City, and will be enforceable by it. Any purchaser under a contract of sale or other transferee of an interest covering any right, title or interest in any part of the Affordable Units upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenants, and

limitations set forth in this Agreement until the date that is fifty-five (55) years following recordation of the City's Certificate of Completion.

1. Restrictions. The following covenants and restrictions ("Restrictions") on the use and enjoyment of the Affordable Units upon the Property shall be in addition to any other covenants and restrictions affecting the Property, and all such covenants and restrictions are for the benefit and protection of the City and shall run with the Affordable Units upon the Property and be binding on any future owners of the Property and inure to the benefit of and be enforceable by City. These covenants and restrictions are as follows:

a. From the date of recordation of this Agreement until the expiration of the Affordability Period, the ninety (90) Affordable Units funded under the OPA are to be used as Low Income Affordable Rental Housing and affordable replacement dwellings as provided for in the OPA and this Agreement. Owner agrees to file a recordable document setting forth the Project Completion Date and the Affordability Period as and when determined by the City. Unless otherwise provided in the Agreement, the term "Affordable Rental Housing" shall include without limitation compliance with the following requirements:

Nondiscrimination. There shall be no discrimination against nor segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, or handicap in the sale, transfer, use, occupancy, tenure, or enjoyment of any of the Property, nor shall Owner or any person claiming under the Owner, establish or permit any practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of owners or vendees of the Property.

Principal Residence. Each of the Affordable Units upon the Property shall be leased only to natural persons, who shall occupy such as a principal residence.

Income Requirements. Nine (9) of the ninety (90) Affordable Units constituting Low Income Affordable Rental Housing upon the Property may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than thirty percent (30%) of the most recent annual median income calculated and published

by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent for extremely low income households, consistent with the applicable California Redevelopment Law, including California Health & Safety Code Section 50053(b). The remaining eighty one (81) Affordable Units may be leased only to (a) natural person(s) whose annual household income at the time of initial occupancy is not greater than eighty percent (80%) of the most recent annual median income calculated and published by HUD for the Fresno Metropolitan Statistical Area applicable to such household's size, and at an affordable rent for lower income households, consistent with the applicable California Redevelopment Law, including California Health & Safety Code Section 50053(b). The income requirements referenced in this paragraph shall be referred to collectively as the "Low-Income Requirements."

Injunctive Relief and Recapture. Should any of the ninety (90) Affordable Units constituting Low Income Affordable Rental Housing upon the Property not continue, at the time of initial occupancy, to satisfy the Low-Income Requirements, then, during the Affordability Period, such Unit(s) shall be made available for subsequent lease only to Households that qualify as a required Extremely Low, Very Low-, Lower, or Moderate-Income Household, as defined in California Health & Safety Code Sections 50106, 50105, and 50079.5 for use as the Household's principal residence.

2. Enforcement of Restrictions. Without waiver or limitation, the City shall be entitled to injunctive or other equitable relief against any violation or attempted violation of this Agreement, including the Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

3. Income Computation and Certification Reporting Requirements. Prior to each Household's occupancy of an Affordable Unit, Owner shall comply with all of the following requirements:

a. Income Computation. Immediately prior to a Household's occupancy of an Affordable Unit, Owner shall obtain and maintain on file an Income Computation and Certification form, attached hereto as Exhibit "2," from each such Household dated immediately prior to the date of

initial occupancy in the Project by such Household. In addition, the Owner will provide such further information as may be required in the future by the City. Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income as is satisfactory to the City; and (v) obtain such other information as may be requested by the City. A copy of each such completed Income Computation and Certification form shall be filed with the City prior to the occupancy of an Affordable Unit by a Household whenever possible, but in no event more than thirty (30) days after initial occupancy by said Household.

b. **Income Recertification.** Immediately prior to the first anniversary date of the occupancy of an Affordable Unit by a Household and on each anniversary date thereafter, Owner shall recertify the income of such Household by obtaining a completed Income Computation and Certification form based upon the current income of each occupant of the Affordable Unit. In the event the recertification demonstrates that such Household's income exceeds the income at which such Household would qualify to rent the Affordable Unit, such Household will no longer qualify for Affordable Rent. Owner shall provide the City with a copy of each such completed recertification with the next submission of Certificate of Continuing Program Compliance, as specified herein.

c. **Certificate of Continuing Program Compliance.** Upon the issuance of the Certificate of Completion and annually by October 31 of each year, or at any time upon the written request of City, Owner shall advise the City of the occupancy of the Project by delivering a Certificate of Continuing Program Compliance, attached hereto as Exhibit "3," certifying: (i) the number of Affordable Units of the Project which were occupied or deemed occupied pursuant to this Agreement by a Household during such period; and (ii) to the knowledge of Owner either: (a) no unremedied default has occurred under this Agreement; or (b) a default has occurred, in which event the Certificate of Continuing Program Compliance shall describe the

nature of the default and set forth the measures being taken by the Owner to remedy such default.

d. **Maintenance of Records.** Owner shall maintain complete and accurate records pertaining to the Affordable Units, and shall permit any duly authorized representative of the City to inspect the books and records of Owner pertaining to the Project including, but not limited to, those records pertaining to the occupancy of the Affordable Units.

e. **Reliance on Tenant Representations.** Each lease between Owner and a Household shall contain a provision to the effect that Owner has relied on the income certification and supporting information supplied by the Household in determining qualification for occupancy of the Affordable Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

4. **Acceptance and Ratification.** All present and future owners of the Property and other persons claiming by, through, or under them shall be subject to and shall comply with the above Restrictions. The acceptance of a deed of conveyance to the Property shall constitute an agreement that the Restrictions, as such may be amended or supplemented from time to time, is accepted and ratified by such future owners, tenant or occupant, and such Restrictions shall be a covenant running with the land and shall bind any person having at any time any interest or estate in the Property, all as though such Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

5 **Benefit.** This Agreement and the Restrictions herein shall run with and bind the Property for a term commencing on the date this Agreement is recorded in the Office of the Recorder of the County of Fresno, State of California, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of City and/or any other person entitled to enforce these Restrictions shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

6. **Costs and Attorney's Fees.** In any proceeding arising because of failure of Owner or any future owner of the Property to comply with the Restrictions required by this Agreement, as may be amended from time to time, City shall be entitled to recover

its respective costs and reasonable attorney's fees incurred in connection with such default or failure.

7. Waiver. Neither Owner nor any future owner of the Property may exempt itself from liability for failure to comply with the Restrictions required in this Agreement.

8. Severability. The invalidity of the Restrictions or any other covenant, restriction, condition, limitation, or other provision of this Agreement shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement and each shall be enforceable to the greatest extent permitted by law.

9. Pronouns. Any reference in this Agreement and the Restrictions herein to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

10. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Agreement are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Agreement or any provision hereof.

11. Capitalized Terms. All capitalized terms used in this Agreement, unless otherwise defined herein, shall have the meanings assigned to such terms in the OPA.

12. Amendments. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Fresno.

13. Notice. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, or by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City:

City of Fresno as Housing Successor
2344 Tulare Street, Suite 200
Fresno, CA 93721
Attn: Executive Director

Copy to: City Attorney
Fresno City Hall
2600 Fresno Street
Fresno, CA 92612

Owner: _____

Investor: _____

Limited Partner: _____

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

14. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California.

15. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

16. FURTHER ASSURANCES. The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Owner have executed this Regulatory Agreement and Declaration of Covenants and Restrictions by duly authorized representatives on the date first written hereinabove.

ATTEST:
CITY CLERK

Deputy

CITY OF FRESNO,
a municipal corporation in its capacity as
Housing Successor to the Redevelopment
Agency of the City of Fresno

By: _____
Marlene Murphey
Executive Director

APPROVED AS TO FORM:
CITY ATTORNEY

Deputy

1501 N. BLACKSTONE AVE., L.P., a
California limited partnership

By _____
Date: _____
Name: _____
Title: _____

[END OF SIGNATURES]

Attachments:

- Exhibit A: Legal Description of Property
- Exhibit B: Income Computation and Certification Form
- Exhibit C: Certificate of Continuing Program Compliance

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared

_____ personally known to me (or 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 signatures(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

///

EXHIBIT "1" to REGULATORY AGREEMENT

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

THAT PORTION OF LOT ONE (1) OF FRESNO HEIGHTS HOMESTEAD TRACT, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JANUARY 13, 1888, IN BOOK 2, PAGE 39 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, LYING SOUTH AND WEST OF THE RIGHT OF WAY OF THE SANTA FE RAILROAD.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED MAY 19, 1944 IN BOOK 2177, PAGE 9 OF OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA.

APN: 451-064-16

**EXHIBIT "2" TO REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIONS**



**City of Fresno as Housing
Successor to the
Redevelopment Agency of
the City of Fresno**

**2344 Tulare Street
Suite 200
Fresno, CA 93721
www.fresnorda.com
559.621.7628**

**Multi-Family Housing Program
INCOME COMPUTATION AND CERTIFICATION**

Property Information

Name of Property:	Number of Bedrooms (see table on page 3 for allowable rents)	Income Category	Maximum Income Level of Household (percent of Area Median Income)
Property Address:			
Rental Agent (Name):	<input type="checkbox"/> 0 (studio)	Extremely Low	<input type="checkbox"/> 30% of AMI
Owner Certification (Signature):	<input type="checkbox"/> 1 bedroom	Very Low	<input type="checkbox"/> 50% of AMI
	<input type="checkbox"/> 2 bedrooms	Lower	<input type="checkbox"/> 80% of AMI
	<input type="checkbox"/> 3 bedrooms	Moderate	<input type="checkbox"/> 120% of AMI
<small>Owner has relied on the income certification and supporting information supplied by the Applicant in determining qualification for occupancy of the Affordable Unit, and any material misstatement in such certification by Applicant (whether or not intentional) may be cause for immediate termination of such lease.</small>			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Applicant Contact Information

Information on primary lease applicant(s).

Name (LAST, FIRST, M.I.)	Current Address City, State, Zip	Contact Phone No.	Other Phone No.
1.	1. (if different)	1. (if different)	1. (if different)
2.	2.	2.	2.

Household Information

List all members of the household* proposed to live at the address listed above.

Name (LAST, FIRST, MIDDLE INITIAL)	Social Security	Employer/ Contact Phone Number	Birth Date (mm/dd/yyyy)	Relationship
	CA Driver's License			
1.				<i>Self</i>
2.				
3.				

*Household is a group of related or unrelated persons occupying the same house with at least one member being the head of the household. If roommates, please complete above form as "Self" for each roommate. Use a separate page for additional household members.
Show income received from the following sources by all persons listed above. Do not show income from persons less than 14 years of age.

Yes	No	Source of Income	Gross Income (Current Year)	Person Receiving Income (As Shown Above)
<input type="checkbox"/>	<input type="checkbox"/>	Wages or salary from employment.		
<input type="checkbox"/>	<input type="checkbox"/>	Earnings from self-employment		
<input type="checkbox"/>	<input type="checkbox"/>	Unemployment Compensation		
<input type="checkbox"/>	<input type="checkbox"/>	Social Security or Supplemental Security Income (SSI)		
<input type="checkbox"/>	<input type="checkbox"/>	Veteran's Benefits		
<input type="checkbox"/>	<input type="checkbox"/>	Worker's Compensation		
<input type="checkbox"/>	<input type="checkbox"/>	Child support or alimony payments		
<input type="checkbox"/>	<input type="checkbox"/>	Pensions or Annuities/Railroad Retirement		
<input type="checkbox"/>	<input type="checkbox"/>	Property rental income		
<input type="checkbox"/>	<input type="checkbox"/>	Aid to Families w/Dependent Children(AFDC)		
<input type="checkbox"/>	<input type="checkbox"/>	Dividends/Interest		
<input type="checkbox"/>	<input type="checkbox"/>	Other types of income:		
Total Gross Income				
Total Household Members				

Statement and Signature(s)

I/we _____, being duly sworn, depose and say that I/we are year-round occupants of _____ (ADDRESS, CITY & ZIP CODE).

I/We the applicant(s) certify that all information in this certification and all information furnished in support of this certification is correct and complete to the best of my/our knowledge. I/We understand that the willful falsification of this information (whether or not intentional) will be cause for immediate termination of such lease. I/We agree to provide additional information that may be requested to process this income certification.

I certify that my income does not exceed the stated income level noted on page 1 of this document, and that I am eligible for a unit made available at affordable rent for lower income households, as defined by California Health & Safety Code ("H.&S.C.") Section 50053(b), to persons and families of low income, as defined in H.&S.C. Section 50093, as shown in the table below.

I/We have read the aforementioned statement and release, and understand all of the items. I/We execute it voluntarily, on the date listed below, with full knowledge of its significance. I/We certify under penalty of perjury that the facts and statements presented in this Income Computation and Certification, as well as the attached documents are true and accurate. Perjury is punishable by imprisonment in the state of California. (CA Penal Code Section 118 & 126).

APPLICANT

DATE

APPLICANT

DATE

Income Verification

Owner shall use its best efforts to verify that the income provided by an applicant is accurate by taking the following steps as a part of the verification process: (i) obtain three (3) pay stubs for the most recent pay

periods; (ii) obtain a written verification of income and employment from applicant's current employer; (iii) obtain an income verification form from the Social Security Administration and/or California Department of Social Services if the applicant receives assistance from either agency; (iv) if an applicant is unemployed or did not file a tax return for the previous calendar year, obtain other verification of such applicant's income; and (v) obtain such other information as may be requested by the Agency. A copy of each such completed Income Computation and Certification form shall be completed and made available for Agency review prior to the occupancy of an Affordable Unit by a Household whenever possible, but in no event more than thirty (30) days after initial occupancy by said Household.

2015 Maximum Income Levels						
	One Person	Two Person	Three Person	Four Person	Five Person	Six Person
Extremely Low ($\leq 30\%$ of AMI)	\$12,150	\$15,930	\$20,090	\$24,250	\$28,410	\$32,570
Very-Low Income ($\leq 50\%$ of AMI)	\$20,300	\$23,200	\$26,100	\$28,950	\$31,300	\$33,600
Lower Income – ($\leq 80\%$ of AMI)	\$32,450	\$37,050	\$41,700	\$46,300	\$50,050	\$53,750
Moderate Income – ($\leq 120\%$ AMI)	\$48,650	\$55,600	\$62,550	\$69,500	\$75,050	\$80,600

2015 Maximum Rent Limits

- Affordable Rent for Extremely Low Income Households is the product of 30% times 30% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(1).
- Affordable Rent for Very Low Income Households is the product of 30% times 50% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(2).
- Affordable Rent for Lower Income Households is the product of 30% times 60% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(3).
- Affordable Rent for Moderate Income Households is the product of 30% times 110% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(4).
- Maximum Rents are calculated based on household sizes "appropriate to the unit" of 1 person for a studio unit; 2 persons for a one-bedroom apartment; 3 persons for a two bedroom apartment; 4 persons for a three bedroom apartment; 5 persons for a four bedroom apartment (Health & Safety Code Section 50052.5(h)).

	Maximum Rent	Est. Utility Allowance*	Net Rent
Maximum Rent for Extremely Low Income Households			
Maximum Monthly Rent for a Studio Apartment	\$303.75	\$(42.00)	\$261.75
Maximum Monthly Rent for a One-Bedroom Apartment	\$384.75	\$(42.00)	\$342.75
Maximum Monthly Rent for a Two-Bedroom Apartment	\$502.25	\$(54.00)	\$448.25

Maximum Monthly Rent for a Three-Bedroom Apartment	\$606.25	\$(66.00)	\$540.25
Maximum Monthly Rent for a Four-Bedroom Apartment	\$710.25	\$(75.00)	\$635.25

	Maximum	Est. Utility	Net
Maximum Rent for Very Low Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$507.50	\$(42.00)	\$465.50
Maximum Monthly Rent for a One-Bedroom Apartment	\$580.00	\$(42.00)	\$538.00
Maximum Monthly Rent for a Two-Bedroom Apartment	\$652.50	\$(54.00)	\$598.50
Maximum Monthly Rent for a Three-Bedroom Apartment	\$723.75	\$(66.00)	\$657.75
Maximum Monthly Rent for a Four-Bedroom Apartment	\$782.50	\$(75.00)	\$707.50

	Maximum	Est. Utility	Net
Maximum Rent for Lower Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$608.75	\$(42.00)	\$566.75
Maximum Monthly Rent for a One-Bedroom Apartment	\$695.00	\$(42.00)	\$653.00
Maximum Monthly Rent for a Two-Bedroom Apartment	\$782.50	\$(54.00)	\$728.50
Maximum Monthly Rent for a Three-Bedroom Apartment	\$868.75	\$(66.00)	\$802.75
Maximum Monthly Rent for a Four-Bedroom Apartment	\$938.75	\$(75.00)	\$863.75

	Maximum	Est. Utility	Net
Maximum Rent for Moderate Income Households	Rent	Allowance*	Rent
Maximum Monthly Rent for a Studio Apartment	\$1,115.00	\$(42.00)	\$1,073.00
Maximum Monthly Rent for a One-Bedroom Apartment	\$1,275.00	\$(42.00)	\$1,233.00
Maximum Monthly Rent for a Two-Bedroom Apartment	\$1,433.75	\$(54.00)	\$1,379.75
Maximum Monthly Rent for a Three-Bedroom Apartment	\$1,592.50	\$(66.00)	\$1,526.50
Maximum Monthly Rent for a Four-Bedroom Apartment	\$1,720.00	\$(75.00)	\$1,645.00

* The utility allowance shown above is for a low-rise (1-2 stories) project constructed in 2011 or later.

**Exhibit "3" TO REGULATORY AGREEMENT AND
DECLARATION OF COVENANTS AND RESTRICTIONS**



**City of Fresno as Housing
Successor to the
Redevelopment Agency of the
City of Fresno
Redevelopment Agency**

**2344 Tulare Street
Suite 200
Fresno, CA 93721
www.fresnorda.com
559.621.7628**

Multi-Family Housing Program

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Period Covered from _____ to _____

The undersigned, 1501 N. Blackstone Ave., L.P., a California limited partnership (the "Owner"), has read and is thoroughly familiar with the provisions of the Owner Participation Agreement ("OPA") and documents referred to therein executed by Owner and the Redevelopment Agency of the City of Fresno ("Agency") including but not limited to the Regulatory Agreement and Declaration of Covenants and Restrictions ("Regulatory Agreement"). As of the date of this Certificate, for the period shown above, the following number of Units in the Project are: (i) occupied by tenants satisfying the Low-Income Requirements (as defined in the Regulatory Agreement) as a principal residence ("Eligible Tenants"), or (ii) currently vacant and being held available for such occupancy and have been so held continuously since the date an Eligible Tenant vacated such Unit:

<u>Occupied Affordable Units</u>	<u>Vacant Affordable Units</u>
_____	_____

Property Information

Name of Property:	Number of Units by Bedrooms (see table for allowable rents)	Income Category	Number of Units by Income Level of Tenants (percent of AMI)		
Property Address:			0 (studio)	Extremely Low	30% of AMI
			1 bedroom	Very Low	50% of AMI
			2 bedrooms	Lower	80% of AMI
			3 bedrooms	Moderate	120% of AMI
Owner completing this Certificate has relied on the income certification and supporting information supplied by each Applicant in determining qualification for occupancy of the Affordable Unit.					

The Owner certifies that the information contained in the Occupancy Summary attached is true and accurate and hereby certifies that (1) a review of the activities of the Owner during such period and of the Owner's performance under the OPA and the documents referred to therein has been made under the supervision of the undersigned, and (2) to the best knowledge of the undersigned, based on the review described in clause (1) hereof, the Owner is not in default under any of the terms and provisions of the

2015 Maximum Rent Limits

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- Affordable Rent for Very Low Income Households is the product of 30% times 50% of the area median income adjusted for family size appropriate to the unit less a reasonable allowance for utilities (Health and Safety Code Section 50053(b)(2).
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* The utility allowance shown above is for a low-rise (1-2 stories) project constructed in 2011 or later.

EXHIBIT "G"

PROMISSORY NOTE

DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for cancellation.

\$1,500,000.00
[_____] , 2016

Fresno, California

For value received, the undersigned, 1501 N. Blackstone Ave., L.P., a California limited partnership ("Borrower"), promises to pay to the order of the City of Fresno in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("Lender" or "Beneficiary"), the sum of \$1,500,000.00, together with interest on unpaid principal at the rate of 3% per annum, with such interest accruing as of the Payment Commencement Date, to the extent such funds are loaned to the Borrower, all due and payable as described herein and pursuant to the Owner Participation Agreement. This Promissory Note ("Note") is made and entered into in accordance with the terms of the Owner Participation Agreement dated [_____] 201_, entered into between Borrower and Lender ("Agreement").

Commencing on May 15th of the year immediately following issuance of the Certificate of Occupancy for the Project (the "Payment Commencement Date"), and continuing on the same date each year thereafter until the date which is fifty-five (55) years after the Payment Commencement Date ("Maturity Date"), Borrower shall submit to the Lender an audited project financial statement (covering the previous calendar year) along with Lender's pro rata share of the annual Project Residual Receipts (as defined below) as calculated by Borrower. The actual and final amount of Lender's share of Residual Receipts shall be determined by the Lender upon review of the audited financial statement. "Residual Receipts" are determined on a cash basis and defined as revenue minus the total of approved operating expenses, deferred portion of the developer fees in the development budget, approved debt service, deposits to operating and replacement reserve accounts per contract, and approved related party expenses. Such annual payments shall continue until the Maturity Date at which time the entire remaining unpaid balance of principal together with interest and unpaid penalties or late charges where applicable thereon shall be all due and payable, along with attorney's fees and costs of collection, and without relief from valuation and appraisal laws. Lender's share of Residual Receipts shall be 25%.

Any failure to make a payment required hereunder shall constitute a default under this Note.

All capitalized terms used in this Note, unless otherwise defined, will have the respective meanings specified in the Agreement.

This Note, and any extensions or renewals hereof, is secured by a Deed of Trust with Assignment of Rents on real estate in Fresno County, California (the "Property"), dated as of the same date as this Note, and executed in favor of and delivered to the Lender ("Deed of Trust"). The Deed of Trust provides for acceleration of the repayment of this Note upon stated events. The Deed of Trust shall be insured by Old Republic Title Company or similar nationally recognized Title Company as no worse than an ALTA or CLTA third position lien.

Time is of the essence with respect to all terms of this Note. It will be a default under this Note if Borrower defaults under the Agreement or other documents pursuant to the Agreement, including but not limited to the Deed of Trust and Regulatory Agreement and Declaration of Covenants and Restrictions (collectively, the "Project Loan Documents"), and if Borrower fails to pay when due any sum payable under this Note, or under any other obligation secured by a Deed of Trust or other lien senior to the Deed of Trust which secures this Note after the expiration of the applicable cure period. Borrower shall promptly inform Lender of any new or additional financing or funding, and Borrower shall provide Lender copies of all agreements with any and all Funding Sources for this Project, in accordance with the terms set forth in Section 2.2 of the Agreement. In the event of a default by Borrower, the Borrower shall pay a late charge equal to 2% of any outstanding payment. All payments collected shall be applied first to payment of any costs, fees or other charges due under this Note or any other project loan documents then to the interest and then to principal balance. On the occurrence of a default or on the occurrence of any other event that under the terms of the Agreement or Project Loan Documents gives rise to the right to accelerate the balance of the indebtedness, then, at the option of Lender, this Note or any notes or other instruments that may be taken in renewal or extension of all or any part of the indebtedness will immediately become due without any further presentment, demand, protest, or notice of any kind.

The indebtedness evidenced by this Note may, at the option of the Borrower, be prepaid in whole or in part, at any time, without penalty. Lender will apply all the prepayments first to the payment of any costs, fees, late charges, or other charges due under this Note, the Agreement or Project Loan Documents, and then to the interest and then to the principal balance.

All payments are payable in lawful money of the United States of America at any place that Lender or the legal holders of this Note may, from time to time, in writing designate, and in the absence of that designation, then to Lender at its address of record provided in the Agreement.

Borrower agrees to pay all costs including, without limitation, attorney fees, incurred by the holder of this Note in enforcing payment, whether or not suit is filed, and including, without limitation, all costs, attorney fees, and expenses incurred by the holder of this Note in connection with any bankruptcy, reorganization, arrangement, or other similar proceedings involving the undersigned that in any way affects the exercise by the holder of this Note of its rights and remedies under this Note. All costs incurred

by the holder of this Note in any action undertaken to obtain relief from the stay of bankruptcy statutes are specifically included in those costs and expenses to be paid by Borrower. Borrower will pay to Lender all attorney fees and other costs referred to in this paragraph on demand.

Any notice, demand, or request relating to any matter set forth herein shall be in writing and shall be given as provided in the Agreement.

No delay or omission of Lender in exercising any right or power arising in connection with any default will be construed as a waiver or as an acquiescence, nor will any single or partial exercise preclude any further exercise. Lender may waive any of the conditions in this Note and no waiver will be deemed to be a waiver of Lender's rights under this Note, but rather will be deemed to have been made in pursuance of this Note and not in modification. No waiver of any default will be construed to be a waiver of or acquiescence in or consent to any preceding or subsequent default.

The Deed of Trust provides as follows:

DUE ON SALE—CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

Lender may transfer this Note and deliver to the transferee all or any part of the Property then held by it as security under this Note, and the transferee will then become vested with all the powers and rights given to Lender; and Lender will then be forever relieved from any liability or responsibility in the matter, but Lender will retain all rights and powers given by this Note with respect to Property not transferred.

If any one or more of the provisions in this Note is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or

impaired. This Note will be binding on and inure to the benefit of Borrower, Lender, and their respective successors and assigns.

Borrower agrees that this Note will be deemed to have been made under and will be governed by the laws of California in all respects, including matters of construction, validity, and performance, and that none of its terms or provisions may be waived, altered, modified, or amended except as Lender may consent to in a writing duly signed by Lender or its authorized agents.

The Loan shall be non-recourse to the Borrower and all constituent members of the Borrower.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed by Borrower or Borrower's authorized agent(s) as of the date and year first above written.

Borrower:

1501 N. Blackstone Ave., L.P.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT "H"

DEED OF TRUST

**Recording requested by,
and when recorded mail to:**

City of Fresno
2344 Tulare St., Suite 200
Fresno, Ca. 93721
Attention: Executive Director

INSTRUCTIONS TO COUNTY RECORDER:

Index this instrument as
(i) a Deed of Trust, and
(ii) a Fixture Filing

Space above for Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between 1501 N. Blackstone Ave., L.P., a California limited partnership whose principal executive office is at 5947 Variel Avenue, Woodland Hills, CA 91367 (the "Trustor"), in favor of OLD REPUBLIC TITLE COMPANY, whose address is 7451 N. Remington Avenue, Suite 102, Fresno, CA 93711 (the "Trustee"), for the benefit of the CITY OF FRESNO (the "Beneficiary"), with offices at 2344 Tulare St., Suite 200, Fresno, California 93721.

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Fresno, Fresno County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;

(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon; and

(vii) All articles of personal property owned by the Trustor and now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, and all other goods, chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the ones herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner; subject, however, to (and only to) any purchase money security interests in such personal property.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:

(a) Payment to the Beneficiary of an indebtedness in the principal amount of One Million Five Hundred Thousand Eighty One Dollars (\$1,500,081.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation or Trustor in this Deed of Trust, the Note, the Owner Participation Agreement between Beneficiary and Trustor related to the Property (the "Owner Participation Agreement") contemplating the improvement of the "Project" (as that term is defined in the Owner Participation Agreement); and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Owner Participation Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Owner Participation Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (i) a policy of broad-form builder's risk insurance sufficient to cover 100 percent of the replacement value of all buildings and improvements on the Property including; without limitation, labor and materials in place or to be used as part of the permanent construction

(including, without limitation, surplus miscellaneous materials and supplies incidental to the work, and scaffolding, staging, towers, forms and equipment not owned or rented by the Beneficiary, the cost of which is not included in the cost of work), insuring against loss or damage by fire, extended coverage perils and such other hazards, casualties or other contingencies as from time to time may be reasonably required by the Beneficiary; (ii) a policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence; and (iii) such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. The foregoing minimum insurance coverage limits shall be subject to reasonable adjustment from time to time by the Beneficiary. Each such policy shall be endorsed with a standard mortgage clause with loss payable to the Beneficiary and the Trustor, and shall provide that the policy shall not be canceled or materially changed without at least thirty (30) days' prior notice to the Beneficiary. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral, including assessments on appurtenant water stock; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair and not remove or demolish any buildings on the Property; to the extent insurance or condemnation proceeds are available; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any

obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s), as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

The term "Construction/Permanent Financing Loan" means, collectively, the construction financing and take-out financing, and any refinancing or replacement of that financing from time to time, to be provided by a commercial or other lender(s); provided, however, that (i) before entering into any Construction/Permanent Financing Loan, the Trustor shall give the Beneficiary notice of the Construction/Permanent Financing Loan and copies of the loan agreement and all other loan documents evidencing the Construction/Permanent Financing Loan; (ii) the funds disbursed from each Construction/Permanent Financing Loan shall be used only for costs and charges associated with the loan and for the operation, maintenance and/or improvement of the Project or the Property as provided in the Owner Participation Agreement or to refinance existing indebtedness; (iii) the interest on each Construction/Permanent Financing Loan shall be at a reasonable rate based on all the facts and circumstances; and (iv) the combined amounts of all Construction/Permanent Financing Loans or any re-financing thereof and the Note secured by this Deed of Trust shall not exceed one hundred percent (100%) of the fair market value of the Property as improved by the Project under the Owner Participation Agreement (such value to be determined by a qualified appraiser reasonably acceptable to Trustor and Beneficiary).

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Owner Participation Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of

the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Owner Participation Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

DUE ON SALE-CONSENT BY BENEFICIARY. Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance of Property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than fifty percent (50%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of Trustor, other than a transfer to the managing member of Trustor or an affiliate of the managing member. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable law.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary, subject to the rights of the holder of any senior deed of trust securing a Construction/Permanent Financing Loan. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any covenant or agreement in this Deed of Trust or the Owner Participation Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by the Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Fresno County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall

include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at its principal place of business, address set forth above.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

29. PROVIDED THAT NO NOTICE OF DEFAULT HEREUNDER THEN APPEARS OF RECORD AND SUBJECT TO THE CONDITIONS IN SECTION 10 ABOVE AND/OR IN THE OWNER PARTICIPATION AGREEMENT, THIS DEED OF TRUST SHALL BE SUBORDINATE AND SUBJECT TO ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN. BENEFICIARY SHALL, UPON REQUEST OF TRUSTOR, EXECUTE SUCH SUBORDINATION AGREEMENT OR OTHER DOCUMENTATION REASONABLY NECESSARY TO SUBORIDINATE THE LIEN AND CHARGE OF THIS DEED OF TRUST TO LIEN OF ANY DEED OR DEEDS OF TRUST SECURING A CONSTRUCTION/PERMANENT FINANCING LOAN, AS PROVIDED IN THE OWNER PARTICIPATION AGREEMENT.

30. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

31. Capitalized terms not otherwise defined herein shall have the meanings given them in the Owner Participation Agreement or the Note.

* * * * *

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TRUSTOR:
1501 N. Blackstone Ave., L.P.
a California limited partnership

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Attachment: Exhibit A – Legal Description of the Property

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
) ss.
COUNTY OF FRESNO)

On _____, 20____, before me, _____, Notary Public, 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.

(SEAL)

EXHIBIT A to DEED OF TRUST

LEGAL DESCRIPTION

Real property in the City of Fresno, County of Fresno, State of California, described as follows:

THAT PORTION OF LOT ONE (1) OF FRESNO HEIGHTS HOMESTEAD TRACT, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED JANUARY 13, 1888, IN BOOK 2, PAGE 39 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, LYING SOUTH AND WEST OF THE RIGHT OF WAY OF THE SANTA FE RAILROAD.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA IN THE DEED RECORDED MAY 19, 1944 IN BOOK 2177, PAGE 9 OF OFFICIAL RECORDS OF FRESNO COUNTY, CALIFORNIA.

APN: 451-064-16